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(2014/C 142/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 18 March 2014 (request for a preliminary ruling from the Oberlandesgericht Braunschweig — Germany) — Criminal proceedings against International Jet Management GmbH

(Case C-628/11) ([1])

(Reference for a preliminary ruling — Article 18 TFEU — Prohibition of any discrimination on the ground of nationality — Commercial flights from a third State to a Member State — Legislation of a Member State providing that European Union air carriers not having an operating licence issued by that State must obtain an authorisation for each flight from a third State)

(2014/C 142/02)

Language of the case: German

Referring court

Oberlandesgericht Braunschweig

Party in the main proceedings

International Jet Management GmbH

Re:

Request for a preliminary ruling — Oberlandesgericht Braunschweig — Interpretation of Article 18 TFEU — Commercial flights from a third State to a Member State — Legislation of a Member State providing that air carriers not having an operating licence issued by that State must obtain an authorisation for each flight from a third State — Financial penalty imposed on a Community air carrier not complying with that legislation

Operative part of the judgment

1. *Article 18 TFEU, which enshrines the general principle of non-discrimination on grounds of nationality, is applicable to a situation such as that at issue in the main proceedings, in which a first Member State requires an air carrier holding an operating licence issued by a second Member State to obtain an authorisation to enter the airspace of the first Member State to operate private flights in non-scheduled traffic from a third country to that first Member State, although such an authorisation is not required for air carriers holding an operating licence issued by that first Member State.*

2. *Article 18 TFEU must be interpreted as precluding legislation of a first Member State which requires, on pain of a fine, an air carrier holding an operating licence issued by a second Member State to obtain an authorisation to enter the airspace of the first Member State to operate private flights in non-scheduled traffic from a third country to that first Member State, although such an authorisation is not required for air carriers holding an operating licence issued by that first Member State, and which makes the grant of that authorisation subject to production of a declaration confirming that the air carriers holding an operating licence issued by that first Member State are either not willing to operate those flights or are prevented from operating them.*

([1]) OJ C 80, 17. 3. 2012.

Judgment of the Court (Fifth Chamber) of 20 March 2014 — European Commission v Republic of Poland

(Case C-639/11) ([1])

(Failure of a Member State to fulfil obligations — Registration of motor vehicles — Articles 34 TFEU and 36 TFEU — Directive 70/311/EEC — Directive 2007/46/EC — Driving on the right in a Member State — Obligation, for the purpose of registration, to reposition to the left-hand side the steering equipment of passenger vehicles positioned on the right-hand side)

(2014/C 142/03)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: G. Wilms, G. Zavvos and K. Herrmann, acting as Agents)

Defendant: Republic of Poland (represented by: B. Majczyna and M. Szpunar, acting as Agents)

Intervener in support of the defendant: Republic of Lithuania (represented by D. Kriaučiūnas and R. Krasuckaitė, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 34 TFEU, of Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers, as amended (OJ, English Special Edition 1970(II), p. 375) and of Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ 2007 L 263, p. 1) — Legislation of a Member State prohibiting the registration of right-hand-drive vehicles.

Operative part of the judgment

The Court:

1. *Declares that, by making registration in its territory of passenger vehicles having their steering equipment on the right-hand side, whether they are new or previously registered in other Member States, dependent on the repositioning of the steering wheel to the left-hand side, the Republic of Poland has failed to fulfil its obligations under Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ 1970 L 133, p. 10), Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1), and under Article 34 TFEU.*

2. *Orders the Republic of Poland to pay the costs.*

3. *Orders the Republic of Lithuania to bear its own costs.*

([1]) OJ C 73, 10.3.2012.

Judgment of the Court (Fifth Chamber) of 20 March 2014 — European Commission v Republic of Lithuania

(Case C-61/12) ([1])

(Failure of a Member State to fulfil obligations — Registration of motor vehicles — Articles 34 TFUE and 36 TFUE — Directive 70/311/EEC — Directive 2007/46/EC — Driving on the right in a Member State — Obligation, for the purpose of registration, to reposition to the left-hand side the steering equipment of passenger vehicles positioned on the right-hand side)

(2014/C 142/04)

Language of the case: Lithuanian

Parties

Applicant: European Commission (represented by: A. Steiblytė, G. Wilms and G. Zavvos, acting as Agents)

Defendant: Republic of Lithuania (represented by: D. Kriaučiūnas and R. Krasuckaitė, acting as Agents)

Interveners in support of the defendant: Republic of Estonia (represented by: M. Linntam, acting as Agent), Republic of Latvia (represented by: I. Kalniņš and A. Nikolajeva, acting as Agents), Republic of Poland (represented by: B. Majczyna and M. Szpunar, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 34 TFEU, Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ, English Special Edition 1970 (II), p. 375) and Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1) — National legislation prohibiting the registration of new right-hand-drive passenger cars despite the compliance of those vehicles with the requirements laid down by the Framework Directive and the separate directives — Refusal to register right-hand-drive passenger cars previously registered in another Member State.

Operative part of the judgment

The Court:

1. *Declares that, by prohibiting the registration of passenger vehicles having their steering-wheel on the right-hand side, and/or by requiring, for the purpose of registering passenger vehicles with the steering equipment situated on the right-hand side, whether they are new or previously registered in other Member States, the steering-wheel to be repositioned to the left-hand side, the Republic of Lithuania has failed to fulfil its obligations under Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ 1970 L 133, p. 10), Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1), and under Article 34 TFEU.*

2. *Orders the Republic of Lithuania to pay the costs.*

3. *Orders the Republic of Estonia, the Republic of Latvia and the Republic of Poland to bear their own costs.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Tenth Chamber) of 20 March 2014 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Caixa d'Estalvis i Pensions de Barcelona v Generalidad de Cataluña

(Case C-139/12) ([1])

(Request for a preliminary ruling — Sixth VAT Directive — Exemptions — Transactions concerning the sale of shares and involving the transfer of interests in immovable property — Imposition of an indirect tax distinct from VAT — Articles 49 TFEU and 63 TFEU — Purely internal situation)

(2014/C 142/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Caixa d'Estalvis i Pensions de Barcelona

Respondent: Generalidad de Cataluña

Re:

Request for a preliminary ruling — Tribunal Supremo — Interpretation of Art. 13B(d) 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) — Exemption of transactions involving shares referred to in Art. 13B(d)(5) — Exception — Transactions concerning the sale of shares and involving the transfer of interests in immovable property — National law subjecting the acquisition of the majority of the capital of a company the assets of which are essentially shares in immovable property to an indirect tax distinct from VAT

Operative part of the judgment

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 91/680/EEC of 16 December 1991, must be interpreted as not precluding a national provision, such as Article 108 of Law 24/1988 on the Stock Market (Ley 24/1988 del Mercado de Valores) of 28 July 1988, as amended by Law 18/1991 on Income Tax payable by Natural Persons (Ley 18/1991 del Impuesto sobre la Renta de las Personas Físicas) of 6 June 1991, which makes the acquisition of the majority of the capital of a company, the assets of which essentially comprise immovable property, subject to an indirect tax other than value added tax, such as that at issue in the main proceedings.

([1]) OJ C 174, 16.6.2012.

Judgment of the Court (Grand Chamber) of 18 March 2014 (request for a preliminary ruling from the Employment Tribunal, Newcastle upon Tyne — United Kingdom) — C. D. v S. T.

(Case C-167/12) ([1])

(Request for a preliminary ruling — Social policy — Directive 92/85/EEC — Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Article 8 — Commissioning mother who has had a baby through a surrogacy arrangement — Refusal to grant her maternity leave — Directive 2006/54/EC — Equal treatment of male and female workers — Article 14 — Less favourable treatment of a commissioning mother as regards the grant of maternity leave)

(2014/C 142/06)

Language of the case: English

Referring court

Employment Tribunal, Newcastle upon Tyne

Parties to the main proceedings

Applicant: C. D.

Defendant: S. T.

Re:

Request for a preliminary ruling — Employment Tribunal Newcastle upon Tyne — Interpretation of Articles 1(1), 2(c), 8(1) and 11(2)(b) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1) — Interpretation of Articles 14 and 2(1)(a), (b) and (c) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23) — Prohibition of any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC — Scope — Non-biological mother having recourse to surrogacy — Right to maternity leave.

Operative part of the judgment

1) *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) must be interpreted as meaning that Member States are not required to provide maternity leave pursuant to Article 8 of that directive to a female worker who as a commissioning mother has had a baby through a surrogacy arrangement, even in circumstances where she may breastfeed the baby following the birth or where she does breastfeed the baby;*

2) *Article 14 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, read in conjunction with Article 2(1)(a) and (b) and (2)(c) of that directive, must be interpreted as meaning that an employer's refusal to provide maternity leave to a commissioning mother who has had a baby through a surrogacy arrangement does not constitute discrimination on grounds of sex.*

([1]) OJ C 194, 30.6.2012.

Judgment of the Court (Grand Chamber) of 18 March 2014 (request for a preliminary ruling from the Equality Tribunal — Ireland) — Z v A Government Department, The Board of Management of a Community School

(Case C-363/12) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2006/54/EC — Equal treatment of male and female workers — Commissioning mother who has had a baby through a surrogacy arrangement — Refusal to grant her paid leave equivalent to maternity leave or adoptive leave — United Nations Convention on the Rights of Persons with Disabilities — Directive 2000/78/EC — Equal treatment in employment and occupation — Prohibition of any discrimination on the ground of disability — Commissioning mother unable to bear a child — Existence of a disability — Validity of Directives 2006/54 and 2000/78)

(2014/C 142/07)

Language of the case: English

Referring court

Equality Tribunal

Parties to the main proceedings

Applicant: Z

Defendant: A Government Department, The Board of Management of a Community School

Re:

Request for a preliminary ruling — Equality Tribunal (Ireland) — Interpretation of Articles 4 and 14 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23) — Interpretation of Articles 3(1) and 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Biological mother having recourse to surrogacy — Person suffering from a physical disability which prevents her from giving birth — Right to maternity leave.

Operative part of the judgment

1. *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, in particular Articles 4 and 14 thereof, must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave to a female worker who as a commissioning mother has had a baby through a surrogacy arrangement does not constitute discrimination on grounds of sex.*

   The situation of such a commissioning mother as regards the grant of adoptive leave is not within the scope of that directive.

2. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave or adoptive leave to a female worker who is unable to bear a child and who has availed of a surrogacy arrangement does not constitute discrimination on the ground of disability.*

   The validity of that directive cannot be assessed in the light of the United Nations Convention on the Rights of Persons with Disabilities, but that directive must, as far as possible, be interpreted in a manner that is consistent with that Convention.

([1]) OJ C 311, 13.10.2012.

Judgment of the Court (Grand Chamber) of 18 March 2014 — European Commission v European Parliament, Council of the European Union

(Case C-427/12) ([1])

(Action for annulment — Choice of legal basis — Articles 290 TFEU and 291 TFEU — Delegated act and implementing act — Regulation (EU) No 528/2012 — Article 80(1) — Biocidal products — European Chemicals Agency — Setting of fees by the Commission)

(2014/C 142/08)

Language of the case: French

Parties

Applicant: European Commission (represented by: B. Smulders, C. Zadra and E. Manhaeve, Agents)

Defendants: European Parliament (represented by: L. Visaggio and A. Troupiotis, Agents), Council of the European Union (represented by: M. Moore and I. Šulce, Agents)

Interveners in support of the defendants: Czech Republic (represented by: M. Smolek, E. Ruffer and D. Hadroušek, Agents), Kingdom of Denmark (represented by: V. Pasternak Jørgensen and C. Thorning, Agents), French Republic (represented by: G. de Bergues, D. Colas and N. Rouam, Agents), Kingdom of the Netherlands (represented by: M. Bulterman and M. Noort, Agents), Republic of Finland (represented by: H. Leppo and J. Leppo, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell and M. Holt, Agents, and by B. Kennelly, Barrister)

Re:

Action for annulment — Article 80(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1), in so far as it provides for the adoption of measures setting the fees payable to the European Chemicals Agency (ECHA) by an implementing act under Article 291 TFEU and not by a delegated act in accordance with Article 290 TFEU — Choice of legal basis — Attribution of the regulatory powers which the EU legislature may confer on the Commission.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay the costs;*

3. *Orders the Czech Republic, the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own respective costs.*

([1]) OJ C 355, 17.11.2012.

Judgment of the Court (Seventh Chamber) of 20 March 2014 — Rousse Industry v European Commission

(Case C-271/13 P) ([1])

(Appeal — State aid — Aid granted by the Republic of Bulgaria in the form of debt write-off — Commission decision declaring that aid incompatible with the internal market and ordering its recovery — Concept of 'new aid' — Duty to state reasons)

(2014/C 142/09)

Language of the case: Bulgarian

Parties

Appellant: Rousse Industry (represented by: A Angelov and S Panov, advokati)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and D. Stefanov, Agents)

Re:

Appeal brought against the judgment of 20 March 2013 in Case T-489/11 *Rousse Industry* v *Commission*, by which the General Court (Fourth Chamber) dismissed the action brought by Rousse Industry for the annulment in part of Commission Decision 2012/706/EU of 13 July 2011 on the State aid SA.28903 (C 12/2010) (ex N 389/2009) implemented by Bulgaria in favour of Rousse Industry (OJ 2012 L 320, p. 27) — State aid in the form of debt write-off — Decision declaring that aid incompatible with the internal market and ordering its recovery — Infringement of procedural rules adversely affecting the rights of the applicant — Infringement of EU law by the General Court.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Rousse Industry AD to pay the costs.*

([1]) OJ C 207, 20.7.2013.

Request for a preliminary ruling from the Sozialgericht Duisburg (Germany) lodged on 16 January 2014 — Ana-Maria Talasca, Angelina Marita Talasca v Stadt Kevelaer

(Case C-19/14)

(2014/C 142/10)

Language of the case: German

Referring court

Sozialgericht Duisburg (Germany)

Parties to the main proceedings

Applicants: Ana-Maria Talasca, Angelina Marita Talasca

Defendant: Stadt Kevelaer

Questions referred

(a) Is the second sentence of Paragraph 7(1) of Book II of the Sozialgesetzbuch (SGB) compatible with European Community law?

(b) If not, must the legal situation be altered by the Federal Republic of Germany, or does a different legal situation arise immediately, and if so, which?

(c) Does the second sentence of Paragraph 7(1) of Book II of the SGB remain in force until a (possibly) necessary change to the law by the institutions of the Federal Republic of Germany?

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 18 December 2013 — ŠKO-ENERGO, s.r.o. v Odvolací finanční ředitelství

(Case C-43/14)

(2014/C 142/11)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: ŠKO-ENERGO, s.r.o.

Defendant: Odvolací finanční ředitelství

Question referred

Must Article 10 of Directive 2003/87/EC ([1]) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as preventing the application of provisions of national law which make the allocation free of charge of emission allowances in the relevant period subject to gift tax?

([1]) OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Fővárosi Ítelőtábla lodged on 27 January 2014 — Criminal proceedings against István Balázs and Dániel Papp

(Case C-45/14)

(2014/C 142/12)

Language of the case: Hungarian

Referring court

Fővárosi Ítelőtábla

Party/parties to the main proceedings

Defendants: Isztván Balázs and Dániel Papp

Other party: Fővárosi Fellebbviteli Főügyészség

Question(s) referred

The Court of Justice is asked give a preliminary ruling on the question whether the rules or lack of rules on lawful accusation in Paragraph 2 of the Hungarian Law on criminal procedure

1. Breach the 'right to an effective remedy and to a fair trial' enshrined in Article 47 of the Charter of Fundamental Rights of the European Union?

2. Result in the breach of the 'right not to be tried or punished twice in criminal proceedings for the same criminal offence' enshrined in Article 50 of the Charter of Fundamental Rights of the European Union, in Article 14(7) of the International Covenant on Civil and Political Rights and in Article 4(1) of Protocol No 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950?

3. Result in the breach of the 'prohibition of abuse of rights' laid down by Article 54 of the Charter of Fundamental Rights of the European Union?

Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 28 January 2014 — Jürgen Kaiser v Condor Flugdienst GmbH

(Case C-46/14)

(2014/C 142/13)

Language of the case: German

Referring court

Amtsgericht Rüsselsheim

Parties to the main proceedings

Applicant: Jürgen Kaiser

Defendant: Condor Flugdienst GmbH

Question referred

Is there an obligation on an airline company which wishes to rely on the exemption possibility in Article 5(3) of Regulation No 261/2004 ([1]) to set out and prove that all reasonable measures were undertaken by it to avoid the likely consequences of extraordinary circumstances in the shape of cancellation or considerable delay or that no such reasonable measures were available to it?

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

Request for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 4 February 2014 — Pfeifer & Langen GmbH & Co. KG v Bundesanstalt für Landwirtschaft und Ernährung

(Case C-51/14)

(2014/C 142/14)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Appellant: Pfeifer & Langen GmbH & Co. KG

Respondent: Bundesanstalt für Landwirtschaft und Ernährung

Questions referred

1. Does Article 14(3) of Regulation (EEC) No 1998/78 ([1]) contain the definitive provisions governing the replacement of sugar for storage-cost-reimbursement purposes and is it not a precondition under that provision that the replacement sugar must be produced by another manufacturer established on the territory of the same Member State?

2. If the answer is in the affirmative: Does Article 14(3) of Regulation (EEC) No 1998/78 make it a condition for claiming reimbursement of storage costs that the replacement C sugar is 'physically replaced' at the premises of the sugar manufacturer?

3. If Article 2(2) of Regulation (EEC) No 2670/81 ([2]) is applicable to the replacement of sugar: Does Article 2(2) of Regulation (EEC) No 2670/81 make it a condition for claiming reimbursement of storage costs that the replacement C sugar is 'physically replaced' at the premises of the sugar manufacturer?

4. In the alternative: Is Article 2(2) of Regulation (EEC) No 2670/81 invalid in so far as it requires the replacement sugar to have been 'produced by another manufacturer established on the territory of the same Member State'?

([1]) Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (OJ 1978 L 231, p. 5).

([2]) Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14).

Request for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 4 February 2014 — Pfeifer & Langen GmbH & Co. KG v Bundesanstalt für Landwirtschaft und Ernährung

(Case C-52/14)

(2014/C 142/15)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Appellant: Pfeifer & Langen GmbH & Co. KG

Respondent: Bundesanstalt für Landwirtschaft und Ernährung

Questions referred

1. In respect of interruption of the limitation period, is the competent authority within the meaning of the third subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 ([1]) the authority which is responsible for the act relating to investigation or legal proceedings, irrespective of whether it had granted the financial resources? Must the act relating to investigation or legal proceedings be directed at the adoption of an administrative measure or penalty?

2. Can the 'person in question' within the meaning of the third subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 also be an employee of an undertaking who has been interviewed as a witness?

3. Must 'any [notified] act … relating to investigation or legal proceedings' (third subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95) relate to specific errors in the assessment of sugar production (irregularities) by the sugar manufacturer which are normally assumed or determined only in the context of a duly conducted market supervision inspection? Can a final report concluding or evaluating the result of the inspection, in which no further questions on specific irregularities are asked, also be a notified 'act … relating to investigation proceedings'?

4. Does the occurrence of 'repeated irregularities' within the meaning of the second subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 require that the acts or omissions assessed as irregularities be closely linked in time in order to be regarded as a 'repetition'? If so, are they no longer closely linked in time if, inter alia, the irregularity in the assessment of a sugar quantity occurs only once in a sugar marketing year and occurs again only in a following or subsequent sugar marketing year?

5. Can the occurrence of repeated irregularities within the meaning of the second subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 be ended by the fact that the competent authority, while aware of the complexity of the facts, has not, or has not regularly or carefully, inspected the undertaking?

6. When does the double limitation period of eight years under the fourth subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 begin in the case of continuous or repeated irregularities? Does this limitation period begin to run after any act regarded as an irregularity (first subparagraph of Article 3(1) of the regulation) or after the last repeated act (second subparagraph of Article 3(1) of the regulation)?

7. Can the double limitation period of eight years under the fourth subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 be interrupted by acts of the competent authority relating to investigation or legal proceedings?

8. Where there are different irregularities affecting the assessment of subsidies, must the limitation periods to be calculated under Article 3(1) of Regulation (EC, EURATOM) No 2988/95 be determined separately in respect of each irregularity?

9. Is the running of the double limitation period under the fourth subparagraph of Article 3(1) of Regulation (EC, EURATOM) No 2988/95 conditional on the authority's awareness of the irregularity?

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 6 February 2014 — Hauptzollamt Hannover v Amazon EU Sàrl

(Case C-58/14)

(2014/C 142/16)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Defendant and appellant: Hauptzollamt Hannover

Applicant and respondent: Amazon EU Sàrl

Questions referred

1. Is the description of goods in subheading 8543 7010 of the Combined Nomenclature ([1]) to be understood as covering only apparatus which have exclusively translation or dictionary functions?

2. If the first question is to be answered in the negative: Does subheading 8543 7010 of the Combined Nomenclature cover also apparatus the translation or dictionary functions of which are secondary by comparison with their main function (in this case, a reading function)?

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff; Commission Regulation (EU) No 861/2010 of 5 October 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2010 L 284, p. 1).

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 7 February 2014 — Firma Ernst Kollmer Fleischimport und -export v Hauptzollamt Hamburg-Jonas

(Case C-59/14)

(2014/C 142/17)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Firma Ernst Kollmer Fleischimport und -export

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. In a case where the infringement of a provision of Community law was discovered only after the occurrence of prejudice, does the irregularity which is necessary for the commencement of the limitation period under the first subparagraph of Article 3(1) of Regulation (EC, Euratom) No 2988/95 ([1]) and which is defined in Article 1(2) of that regulation presuppose, in addition to an act or omission by the economic operator, that the general budget of the European Union or budgets managed by the European Union were prejudiced, so that the limitation period begins to run only after the occurrence of the prejudice, or does the limitation period begin, irrespective of when the prejudice occurs, with the act or omission of the economic operator which constitutes an infringement of a provision of Community law?

2. If the reply to the first question is that the limitation period does not begin until the occurrence of the prejudice:

   In connection with a demand for repayment of an export refund which has been definitively granted, is there already prejudice within the meaning of Article 1(2) of Regulation (EC, Euratom) No 2988/95 when an amount equal to the export refund within the meaning of Article 5(1) of Regulation (EEC, Euratom) No 565/80 has been paid to the exporter, without the security under Article 6 of that regulation having already been released, or is there no prejudice until the release of the security or the definitive grant of the export refund?

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

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 10 February 2014 — Finanzamt Linz v Bundesfinanzgericht, Außenstelle Linz

(Case C-66/14)

(2014/C 142/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Finanzamt Linz

Defendant authority: Bundesfinanzgericht, Außenstelle Linz

Parties concerned: IFN-Holding AG, IFN Beteiligungs GmbH

Questions referred

1. Does Article 107 TFEU (ex Article 87 EC), in conjunction with Article 108(3) TFEU (ex Article 88(3) EC), preclude a national measure under which, in the context of group taxation, goodwill is to be amortised in the case where a holding is acquired in a domestic company — thereby reducing the basis of assessment for tax purposes, and hence the tax burden — whereas such amortisation of goodwill on acquisition of a holding is not permissible in other cases of income and corporation tax?

2. Does Article 49 TFEU (ex Article 43 EC), in conjunction with Article 54 TFEU (ex Article 48 EC), preclude legal provisions of a Member State under which, in the context of group taxation, goodwill is to be amortised in the case where a holding is acquired in a domestic company, whereas such amortisation of goodwill may not be carried out in regard to acquisition of a holding in a non-resident corporation (in particular, a corporation established in another EU Member State)?

Request for a preliminary ruling from the Bundessozialgericht (Germany) lodged on 10 February 2014 — Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others

(Case C-67/14)

(2014/C 142/19)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Appellant: Jobcenter Berlin Neukölln

Respondents: Nazifa Alimanovic, Sonita Alimanovic, Valentina Alimanovic, Valentino Alimanovic

Questions referred

1. Does the principle of equal treatment under Article 4 of Regulation (EC) No 883/2004 ([1]) — with the exception of the clause in Article 70(4) of Regulation (EC) No 883/2004 excluding the provision of benefits outside the Member State of residence — also apply to the special non-contributory cash benefits referred to in Article 70(1) and (2) of Regulation (EC) No 883/2004?

2. If the first question is answered in the affirmative: may the principle of equal treatment laid down in Article 4 of Regulation (EC) No 883/2004 be limited by provisions of national legislation implementing Article 24(2) of Directive 2004/38/EC ([2]) which do not under any circumstances allow access to those benefits in the case where the right of residence of the European Union citizen from another Member State arises solely out of the search for employment, and, if so, to what extent may that principle be so limited?

3. Does Article 45(2) TFEU, in conjunction with Article 18 TFEU, preclude a national provision which does not under any circumstances allow the grant of a social benefit which is intended to ensure subsistence and to facilitate access to the labour market to European Union citizens who can invoke the exercise of their right of free movement as job-seekers in the case where those citizens enjoy a right of residence arising solely out of the search for employment, irrespective of their link with the host Member State?

([1]) 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).

([2]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Request for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 10 February 2014 — Dragoș Constantin Târșia v Romanian State, through the Ministerul Finanțelor și Economiei, Serviciul Public Comunitar Regim Permise de Conducere și Inmatriculare a Autovehiculelor

(Case C-69/14)

(2014/C 142/20)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Dragoș Constantin Târșia

Defendants: Romanian State, through the Ministerul Finanțelor și Economiei, Serviciul Public Comunitar Regim Permise de Conducere și Inmatriculare a Autovehiculelor

Question referred

Can Articles 17, 20, 21 and 47 of the Charter of Fundamental Rights of the European Union, Article 6 of the Treaty on the European Union, Article 110 of the Treaty on the Functioning of the European Union, the principle of legal certainty laid down in European Union law and in the case-law of the Court of Justice be interpreted as precluding a rule such as that found in Article 21(2) of Law No 554/2004 which allows for revision of national judicial decisions when there is an infringement of the principle of the primacy of [European Union] law exclusively in administrative proceedings and which does not allow for revision of national judicial decisions delivered in proceedings other than administrative proceedings (civil or criminal proceedings) when there is an infringement of the same principle of primacy of [European Union] law at issue in those decisions?

Request for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch (Netherlands) lodged on 10 February 2014 — X, interested party: Directeur van het onderdeel Belastingregio Belastingdienst/X van de rijksbelastingdienst

(Case C-72/14)

(2014/C 142/21)

Language of the case: Dutch

Referring court

Gerechtshof te 's-Hertogenbosch

Parties to the main proceedings

Appellant: X

Interested party: Directeur van het onderdeel Belastingregio Belastingdienst/X van de rijksbelastingdienst

Questions referred

1. In the *Fitzwilliam* ([1]) judgment the Court of Justice ruled that an E 101 certificate, issued by the competent institution of a Member State, is binding on the social security institutions of other Member States, even if the content of that certificate is incorrect. Does that decision also apply to cases such as that at issue here, where the designation rules of the Regulation ([2]) do not apply?

2. Is it significant for the answer to that question that it was not the intention of the competent institution to issue an E 101 certificate, yet for administrative reasons it consciously and deliberately used documents which, judging by their format and content, appear to be E 101 certificates, while the interested party believed, and was also reasonably entitled to believe, that he had received such a certificate?

([1]) Case C-202/97 *FTS* [2000] ECR I-883.

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

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 10 February 2014 — UAB Eturas and Others v Lietuvos Respublikos konkurencijos taryba

(Case C-74/14)

(2014/C 142/22)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania)

Parties to the main proceedings

Appellants: UAB Eturas and Others

Respondent: Lietuvos Respublikos konkurencijos taryba (Lithuanian Competition Council)

Interested third parties: UAB Aviaeuropa, UAB Grand Voyage, UAB Kalnų upė, UAB Keliautojų klubas, UAB Smaragdas travel, UAB 700LT, UAB Aljus ir Ko, UAB Gustus vitae, UAB Tropikai, UAB Vipauta, UAB Vistus

Questions referred

1. Should Article 101(1) of the Treaty on the Functioning of the European Union be interpreted as meaning that, in a situation in which economic operators participate in a common computerised information system of the type described in this case and the Competition Council has proved that a system notice on the restriction of discounts and a technical restriction on discount rate entry were introduced into that system, it can be assumed that those economic operators were aware, or must have been aware, of the system notice introduced into the computerised information system and, by failing to oppose the application of such a discount restriction, expressed their tacit approval of the price discount restriction and for that reason may be held liable for engaging in concerted practices under Article 101(1) TFEU?

2. If the first question is answered in the negative, what factors should be taken into account in the determination as to whether economic operators participating in a common computerised information system, in circumstances such as those in the main proceedings, have engaged in concerted practices within the meaning of Article 101(1) TFEU?

Request for a preliminary ruling from the Landgericht Hannover (Germany) lodged on 14 February 2014 — TUIfly GmbH v Harald Walter

(Case C-79/14)

(2014/C 142/23)

Language of the case: German

Referring court

Landgericht Hannover

Parties to the main proceedings

Applicant: TUIfly GmbH

Defendant: Harald Walter

Questions referred

1. Is Article 7 of Regulation EC No 261/2004 ([1]) of the European Parliament and of the Council to be interpreted as meaning that a non-notified 'early' flight, with the result that the passengers cannot take the flight, is also covered by the regulation?

2. Is the regulation to be interpreted as meaning that, with the exception of Article 5, the cause of the delay is not decisive?

3. Is the aim of the regulation, namely to compensate for the damage arising from a loss of time, also affected if the passenger would arrive earlier and therefore time arrangements before the flight are concerned?

4. Does the lack of notification of the bringing forward of the flight, the consequence of which was that the holiday resort was reached later than planned, result in the regulation being applied?

5. Is the aim of the regulation to provide a high level of protection, with the result that the restriction of the passenger's time arrangements is protected? Also in respect of an early arrival?

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

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 17 February 2014 — Nannoka Vulcanus Industries BV; other party: College van gedeputeerde staten van Gelderland

(Case C-81/14)

(2014/C 142/24)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Nannoka Vulcanus Industries BV

Other party: College van gedeputeerde staten van Gelderland

Questions referred

1. Does it follow from Annex IIB to Council Directive 1999/13/EC ([1]) of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations that the operator of installations for which a constant solid content of product can be assumed and used to define the reference point for emission reductions, where substitutes containing little or no solvent are still under development, must be given a time extension for the implementation of its reduction scheme, in derogation from the time frame set out in that annex?

If Question 1 is answered in the affirmative:

2. Is particular action on the part of the operator of the installation or authorisation from a competent authority required for the conferring of a time extension for the implementation of the reduction scheme provided for in Annex IIB to Directive 1999/13/EC?

3. On the basis of which criteria can the length of the time extension provided for in Annex IIB to Directive 1999/13/EC be determined?

([1]) OJ 1999 L 85, p. 1.

Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 17 February 2014 — Agenzia delle Entrate v Nuova Invincibile

(Case C-82/14)

(2014/C 142/25)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Agenzia delle Entrate

Defendant: Nuova Invincibile

Question referred

[Is a measure such as the tax amnesty provided for in Article 9(17) of Law No 289/2002, which relates to periods in the distant past and is intended to provide some degree of compensation to persons affected by natural disasters], in so far as it has an effect on the total amounts received (or receivable) after the application of VAT, caught by the prohibition underlying the judgment of Court of Justice of the European Union of 17 July 2008 in Case C-132/06?

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 17 February 2014 — CEZ Razpredelenie Bulgaria AD v Komisa za zashtita ot diskiminatsia

(Case C-83/14)

(2014/C 142/26)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: CEZ Razpredelenie Bulgaria AD

Defendant: Komisa za zashtita ot diskiminatsia

Other parties to the proceedings: Komisa za energiyno i vodno regulirane, Anelia Georgieva Nikolova, in business as the shopkeeper 'Anelia Nikolova-Rosa'

Questions referred

1. Is the expression 'ethnic origin' used in Council Directive 2000/43/EC of 29 June 2000 ([1]) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and in the Charter of Fundamental Rights of the European Union to be interpreted as covering a homogeneous group of Bulgarian citizens of Roma origin such as those living in the 'Gizdova mahala' district of the town of Dupnitsa?

2. Does the expression 'comparable situation' within the meaning of Article 2(2)(a) of Directive 2000/43/EC apply to the circumstances of the present case, in which the commercial measuring instruments are positioned in Roma districts of the town at a height of between 6 and 7 metres whereas in other districts not densely populated by Roma they are generally positioned lower than 2 metres above ground?

3. Is Article 2(2)(a) of Directive 2000/43 to be interpreted so that the positioning of commercial measuring instruments in Roma districts of town at a height of between 6 and 7 metres constitutes less favourable treatment of the population of Roma origin compared to the population of other ethnic origin?

4. On the assumption that there has been less favourable treatment, does that treatment, pursuant to the abovementioned provision, result in the circumstances of the main case in whole or in part from the fact that it affects the Roma ethnic group?

5. Under Directive 2000/34 is a national provision such as Paragraph 1(7) of the Supplementary Provisions of the Zakon za zashtita ot diskriminatsia (Law on Protection against discrimination; 'ZZD') — according to which any measure, action or failure to act which directly or indirectly affects rights or legitimate interests constitutes 'unfavourable treatment' — permissible?

6. Is the expression 'apparently neutral practice' within the meaning of Article 2(2)(b) of Directive 2000/43 applicable to the practice of the CEZ Razpredelenie Bulgaria AD of positioning commercial measuring instruments at a height of between 6 and 7 metres? How should the phrase 'apparently neutral' be interpreted — as meaning that the practice is obviously neutral or that it only seems neutral, at first glance?

7. For a finding that there has been indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/43, is it necessary that the neutral practice places persons in a particularly less favourable position on the ground of racial or ethnic origin, or is it sufficient that that practice affects only persons of a specific ethnic origin? In that context, under Article 2(2)(b) of Directive 2000/43 is a national provision such as Article 4(3) ZZD — according to which there is indirect discrimination where a person is placed in a more unfavourable position because of the characteristics set out in Article 2(1) (including ethnic origin) — permissible?

8. How should the expression 'put … at a particular disadvantage' within the meaning of Article 2(2)(b) of Directive 2000/43 be interpreted? Does it correspond to the expression 'less favourable treatment' used in Article 2(2)(a) of Directive 2000/43, or does it cover only particularly serious and obvious cases of unequal treatment? Does the practice described in the present case amount to particularly unfavourable treatment? If there has been no particularly serious and obvious case of putting someone in an unfavourable position, is that sufficient to conclude that there has been no indirect discrimination (without examining whether the practice in question is justified, appropriate and necessary in view of attaining a legitimate aim)?

9. Are national provisions such as Article 4(2) and (3) ZZD — which for direct discrimination require 'unfavourable treatment' and for indirect discrimination require 'placing in a more unfavourable position' but which do not, unlike the directive, make a distinction according to the degree of seriousness of the unfavourable treatment concerned — permissible under Article 2(2)(a) and (b) of Directive 2000/43?

10. Is Article 2(2)(b) of Directive 2000/43 to be interpreted as meaning that the practice of the CEZ Razpredelenie Bulgaria AD in question in relation to the security of the electricity network and the correct recording of electricity consumption is objectively justified? Is this practice also appropriate in the light of the obligation of CEZ Razpredelenie Bulgaria AD to grant consumers free access to the electricity meter readings? Is that practice necessary when, according to media publications, there are other technically and financially feasible means of securing the commercial measuring instruments?

([1]) OJ 2000 L 180, p. 22.

Request for a preliminary ruling from the Juzgado de lo Social No 1 de Granada (Spain) lodged on 18 February 2014 — Marta León Medialdea v Ayuntamiento de Huétor Vega

(Case C-86/14)

(2014/C 142/27)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 1 de Granada

Parties to the main proceedings

Applicant: Marta León Medialdea

Defendant: Ayuntamiento de Huétor Vega

Questions referred

1. Is a worker employed under a non-permanent contract of indefinite duration, as envisaged by the legislation and the case-law, a fixed-term worker within the meaning of the definition set out in Directive 1999/70/EC? ([1])

2. Is it compatible with EU law for the national court to interpret and apply national law in such a way that, as regards fixed-term employment contracts in the public sector entered into in circumvention of the law which are transformed into non-permanent contracts of indefinite duration, the public authorities may fill or eliminate the posts held by persons employed under such contracts unilaterally, without paying any compensation to the worker, where the legislation does not lay down other measures to limit the misuse of temporary contracts?

3. Would the same conduct by the public authority be compatible with EU law if, in filling or eliminating the post, the worker concerned was paid the compensation provided for in the event of termination of temporary contracts entered into lawfully?

4. Would the same conduct by the public authority be compatible with EU law if, in order to fill or eliminate the post, it was required to have recourse to the procedures and grounds provided for in the event of dismissal for objective reasons and to pay the same compensation?

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 21 February 2014 — A2A SpA v Agenzia delle Entrate

(Case C-89/14)

(2014/C 142/28)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: A2A SpA

Defendant: Agenzia delle Entrate

Question referred

Must Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) and Articles 9, 11 and 13 of Commission Regulation (EC) No 794/2004 ([2]) of 21 April 2004 implementing Regulation No 659/1999 be interpreted as precluding national legislation which, in relation to the recovery of State aid pursuant to a Commission decision notified on 7 June 2002, provides that the interest is to be determined on the basis of Chapter V of Regulation No 794/2004 (that is to say, on the basis of Articles 9 and 11 thereof, in particular) and, in consequence, that an interest rate based on the system of compound interest is to be applied?

([1]) OJ 1999 L 83, p. 1.

([2]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).

Request for a preliminary ruling from the Judecătoria Câmpulung (Romania) lodged on 25 February 2014 — Liliana Tudoran, Florin Iulian Tudoran, Ilie Tudoran v SC Suport Colect SRL

(Case C-92/14)

(2014/C 142/29)

Language of the case: Romanian

Referring court

Judecătoria Câmpulung

Parties to the main proceedings

Applicants: Liliana Tudoran, Florin Iulian Tudoran, Ilie Tudoran

Defendant: SC Suport Colect SRL

Questions referred

1. Are Council Directive 93/13/EC ([1]) of 5 April 1993 on unfair terms in consumer contracts and Directive 2008/48/EC ([2]) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC applicable also to a credit agreement concluded on 5 October 2006, before Romania acceded to the European Union, but whose effects are still produced now, in that the terms thereof form the subject of enforcement at present, following successive assignments of the debt for which it makes provision?

2. If the answer to Question 1 is in the affirmative, can terms such as those concerning 'service of the borrower's debt', that refer to the existence of delays in payment on the part of the debtor, and those relating to the increase in the rate of interest after one year, after which the rate is the variable reference rate of the Banca Comercială Română, posted at the bank's headquarters, increased by 1,90 [percent], be considered to be unfair within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts?

3. Does the principle of effective judicial protection of the rights that individuals derive from EU law, as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, preclude a provision of national law, such as that laid down in Article 120 of Emergency Decree No 99 of December 2006 on credit institutions and capital adequacy, which recognises the enforceability of a bank credit agreement concluded by private agreement and without allowing the terms thereof to be negotiated with the debtor, under which, with brief verification and after obtaining authorisation for enforcement in a non-contentious procedure, and with limited scope for the court to assess the amount of the debt, a bailiff may seize the debtor's assets

4. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as precluding a law of a Member State, such as Article 372 et seq. of the former Code of Civil Procedure, from allowing a creditor to seek enforcement of a debt deriving from unfair contractual terms by seizing an asset charged as security through the sale of the immovable property, notwithstanding the consumer's objection, without an independent judge's carrying out an examination of the contractual terms?

5. Does the existence in national law of a provision such as Article 120 of Emergency Decree No 99 of December 2006 on credit institutions and capital adequacy, which recognises the enforceability of the bank credit agreement, prejudice the right to freedom of establishment laid down in Article 49 TFEU and the freedom to provide services laid down in Article 45 TFEU in that it discourages citizens of the Union from establishing themselves in a State in which the same value as an enforceable instrument represented by a judgment is conferred on a bank agreement concluded by a private institution?

6. If the answer to the preceding questions is in the affirmative, can the national court raise of its own motion the non-enforceability of such an instrument pursuant to which the enforcement of a debt stated in a contract is carried out?

([1]) OJ 1993 L 95, p. 29.
([2]) OJ 2008 L 133, p. 66.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 27 February 2014 — Flight Refund Ltd v Deutsche Lufthansa AG

(Case C-94/14)

(2014/C 142/30)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Flight Refund Ltd

Defendant: Deutsche Lufthansa AG

Questions referred

1. Is it possible to pursue a claim for compensation based on Article 19 of the Montreal Convention in the context of the European order for payment procedure?

2. In relation to a compensation claim based on Article 19 of the Montreal Convention, are the competence of a notary — treated as a national court — who is authorised to issue a European order for payment, and the competence of a court after proceedings have become contentious once the defendant has lodged a statement of opposition, determined by the jurisdictional rules contained in Regulation (EC) No 1896/2006 ([1]) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ('Regulation No 1896/2006'), Council Regulation (EC) No 44/2001 ([2]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Regulation No 44/2001') and/or by the Convention for the Unification of Certain Rules for International Carriage by Air made in Montreal on 28 May 1999 ('the Montreal Convention')? How do these rules of law interrelate?

3. In the event that the jurisdictional rules of the Montreal Convention prevail, can the claimant opt to pursue his claim before a court established in a State Party, even where there is no additional connecting factor, or must the court where his claim is pursued have territorial jurisdiction under the procedural rules of the Member State concerned?

   In addition, how should the optional jurisdictional rule under the Montreal Convention be interpreted, which refers to the court in the place where the carrier has a place of business through which the contract was made?

4. Can a European payment order which has been issued in breach of the purpose of the regulation or by an authority which does not have jurisdiction *ratione materiae* be the subject of an *ex officio* review? Or must the contentious proceedings following the lodging of a statement of opposition, where there is a lack of jurisdiction, be discontinued *ex officio* or on request?

5. To the extent that the Hungarian courts have jurisdiction to hear the contentious proceedings, do the national rules of procedure need to be interpreted, in accordance with European Union law and the Montreal Convention, as meaning that they necessarily appoint at least one court which, even where there is no additional connecting factor, is obliged to hear the substance of the contentious proceedings arising from the lodging of a statement of opposition?

(1) OJ 2006 L 399, p. 1.
(2) OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Tribunal de grande instance de Nîmes (France) lodged on 28 February 2014 — Jean-Claude Van Hove v CNP Assurances SA

(Case C-96/14)

(2014/C 142/31)

Language of the case: French

Referring court

Tribunal de grande instance de Nîmes

Parties to the main proceedings

Applicant: Jean-Claude Van Hove

Defendant: CNP Assurances SA

Question referred

Must Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) be interpreted as meaning that the concept of a term relating to the definition of the main subject matter of a contract which appears in that provision covers a term of an insurance contract intended to ensure that loan repayments payable to the lender will be covered in the event of the borrower's total incapacity for work if that term prevents the insured person from receiving that cover in the event that he is declared capable of carrying on unpaid employment?

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

Request for a preliminary ruling from the Gyulai Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 3 March 2014 — SMK Kft. v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága, Nemzeti Adó- és Vámhivatal

(Case C-97/14)

(2014/C 142/32)

Language of the case: Hungarian

Referring court

Gyulai Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: SMK Kft.

Defendants: Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága, Nemzeti Adó- és Vámhivatal

Questions referred

1. May Article 55 of the VAT Directive ([1]) in force until 1 January 2010 be interpreted as referring only to those taxable persons receiving a supply of services who do not have, or are not required to have, an identification number for VAT purposes in the Member State of the place where the services are physically supplied?

2. If the first question is answered in the affirmative, is Article 52 of the VAT Directive exclusively applicable for determination of the place of performance of the services?

3. If the first question is answered in the negative, must Article 55 of the VAT Directive in force until 1 January 2010 be interpreted as meaning that, when the taxable person receiving the services covered by a contract has, or ought to have, an identification number for VAT purposes in more than one Member State, the decision of that recipient of the services exclusively determines the fiscal identification number under which it receives the supply of services (including cases in which the taxable person receiving the supply is deemed to be established in the Member State of the place of physical performance of the services, but also has an identification number for VAT purposes in another Member State)?

4. If the answer to the third question should be that the right to decide of the recipient of the supply of services is limited, must Article 55 of the VAT Directive be interpreted as meaning that:

   — until 31 December 2009, it may be considered that the supply of services was performed under the VAT identification number indicated by the recipient of that supply, if the latter also has the status of taxable person registered (established) in another Member State and the goods are sent or transported outside the Member State in which the supply has been physically performed?

   — is determination of the place of performance of the services influenced by the fact that the recipient of the supply is a taxable person established in another Member State which delivers the finished goods, sending or transporting them outside the Member State where the services have been supplied to an intermediate purchaser, who in turn re-sells the goods in a third Member State of the Community without the recipient of the services covered by the contract transporting the goods back to its establishment?

5. If the recipient of the supply of services does not have an unlimited right to decide, do the following factors influence the applicability of Article 55 of the VAT Directive, in force until 1 January 2010:

   — the circumstances in which the recipient of certain works carried out on goods acquires the appropriate raw materials and places them at the disposal of the person carrying them out;

   — the Member State from which and the fiscal identification number under which the taxable person receiving the services effects delivery of the finished goods resulting from such works;

   — the fact that — as occurs in the main proceedings — the finished goods resulting from such works are the subject of various deliveries as part of a chain of operations, still within the country in which the works are carried out, and that they are transported directly from that country to the final purchaser?

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

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 3 March 2014 — Berlington Hungary Tanácsadó és Szolgáltató Kft. and Others v Magyar Állam

(Case C-98/14)

(2014/C 142/33)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicants: Berlington Hungary Tanácsadó és Szolgáltató Kft., Lixus Szerencsejáték Szervező Kft., Lixus Projekt Szerencsejáték Szervező Kft., Lixus Invest Szerencsejáték Szervező Kft., Megapolis Terminal Szolgáltató Kft.

Defendant: Magyar Állam (Hungarian State)

Questions referred

In connection with the amendments to the Law on games of chance made in 2011 increasing the amount of tax on gambling:

1. Is non-discriminatory legislation of a Member State compatible with Article 56 TFEU if, by a single measure and with no transitional period, it introduces a five-fold increase in the previous amount of direct tax, known as gambling tax, to be paid on slot machines operated in amusement arcades and, in addition introduces a tax on gambling at a percentage rate, in such a way that it restricts the activity of operators of games of chance who run amusement arcades?

2. May Article 34 TFEU be interpreted as meaning that its scope covers nondiscriminatory legislation of a Member State which, by a single measure and with no transitional period, introduces a five-fold increase in the previous amount of direct tax, known as gambling tax, to be paid on slot machines operated in amusement arcades and, in addition introduces a tax on gambling at a percentage rate, in such a way that it restricts the importation of slot machines into Hungary from elsewhere in the European Union?

3. If questions 1 and/or 2 are answered in the affirmative, may a Member State rely exclusively on the regularisation of the budgetary position in the context of the application of Articles 36 TFEU, 52(1) TFEU and 61 TFEU or where there are overriding requirements?

4. If questions 1 and/or 2 are answered in the affirmative, having regard to Article 6(3) TFEU, must account be taken of the general principles of law, as regards the restrictions imposed by a Member State and the grant of a period of adjustment to new tax rules?

5. If questions 1 and/or 2 are answered in the affirmative, must the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur* be interpreted as meaning that infringement of Articles 34 TFEU and/or 56 TFEU may give rise to liability for damages on the part of the Member State on the ground that those provisions — because of their direct effect — confer rights on individuals in the Member States?

6. Can Directive 98/34/EC ([1]) be interpreted as meaning that a tax provision of a Member State which introduces in a single step a fivefold increase in the amount of a direct tax on gambling which has to be paid in respect of slot machines operated in amusement arcades and, in addition, introduces a tax at a percentage rate constitutes a '*de facto* technical regulation'?

7. If question 6 is answered in the affirmative, may individuals of a Member State allege that the Member State has breached Articles 8(1) and/or 9(1) of Directive 98/34/EC, and therefore failed to fulfil its obligations, thereby giving rise to liability for damages; in other words, is that Directive intended to confer rights on individuals? What matters must the national court take into account in order to determine whether the defendant has committed a sufficiently serious breach and what type of claim for damages can such a breach give rise to?

In connection with the amendment of the Law on games of chances made in 2012 which prohibited the operation of slot machines in amusement arcades (allowing them only in casinos):

1. Is non-discriminatory legislation of a Member State compatible with Article 56 TFEU if it prohibits with immediate effect the use of slot machines in amusement arcades, without allowing the operators of games of chance affected a transitional or adjustment period or offering them appropriate compensation, and, at the same time, establishes in favour of casinos a monopoly in the operation of slot machines?

2. Can Article 34 TFEU be interpreted as meaning that it must also be decisive and applicable in the event that a Member State adopts non-discriminatory legislation which, although it does not directly prohibit the purchase of slot machines from elsewhere in the European Union, restricts or prohibits the effective use and operation of such machines in the organisation of games of chance, without allowing the operators of games of chance affected who carry out that activity a transitional or adjustment period or any compensation?

3. If questions 1 and 2 are answered in the affirmative, what criteria must the national court take into account to determine whether the restriction was necessary, appropriate and proportionate in the context of the application of Articles 36 TFEU, 52(1) TFEU and 61 TFEU or where there are overriding requirements?

4. If questions 1 and/or 2 are answered in the affirmative, having regard to Article 6(3) TFEU, must account be taken of the general principles of law, as regards the prohibitions laid down by a Member State and the grant of a period of adjustment? Must account be taken of fundamental rights — such as the right to property and the prohibition on depriving a person of property without compensation — in connection with the restriction arising in the present case and, if so, in what way?

5. If questions 1 and/or 2 are answered in the affirmative, must the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur* be interpreted as meaning that infringement of Articles 34 TFEU and/or 56 TFEU may give rise to liability for damages on the part of the Member State on the ground that those provisions — because of their direct effect — confer rights on individuals in the Member States?

6. Can Directive 98/34/EC be interpreted as meaning that a provision of a Member State which, by restricting the use of slot machines to casinos, prohibits their use in amusement arcades constitutes 'other requirements'?

7. If question 6 is answered in the affirmative, may individuals of a Member State allege that the Member State has breached Articles 8(1) and/or 9(1) of Directive 98/34/EC and therefore failed to fulfil its obligations, thereby giving rise to liability for damages; in other words, is that Directive intended to confer rights on individuals? What matters must the national court take into account in order to determine whether the defendant has committed a sufficiently serious breach and what type of claim for damages can such a breach give rise to?

8. Is the principle of Community law applicable according to which the Member States are obliged to pay compensation to individuals for damage resulting from breaches of Community law attributable to the Member States also where the Member State has sovereignty in the area which the adopted legislation concerns? In such a case do fundamental rights and the general principles of law derived from the common constitutional traditions of the Member States also serve as a guide?

([1]) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37).

Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas (Lithuania) lodged on 4 March 2014 — Bronius Jakutis and Kretingalės kooperatinė ŽŪB v Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos and Lietuvos valstybė

(Case C-103/14)

(2014/C 142/34)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicants: Bronius Jakutis, Kretingalės kooperatinė ŽŪB

Defendants: Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos, Lietuvos valstybė

Third parties: Lietuvos Respublikos Vyriausybė, Lietuvos Respublikos žemės ūkio ministerija

Questions referred

1. Regarding appraisal, under Article 10(1) of Regulation No 73/2009, ([1]) applied in conjunction with Articles 7 and 121, of the level of direct payments in the old and new EU Member States:

   a. Must Article 7(1) of Regulation No 73/2009, applied in conjunction with Article 10(1) and Article 121, be interpreted as meaning that in 2012 the level of direct payments of the old EU Member States that are in excess of EUR 5 000 is 90%?

   b. If the first question is answered in the affirmative, does that mean that in 2012 the level of direct payments in the new and old EU Member States has not equalised, on the basis of the content and objectives of Article 10(1) and Article 121 of Regulation No 73/2009?

c. Are the end of Article 10(1) of Regulation No 73/2009 ('… taking into account any reductions applied under Article 7(1)') and Commission working document DS/2011/14/REV 2, in which for the purposes of comparison a different basis for direct payments is laid down — in the new EU Member States the level of direct payments is appraised without modulation having been applied (90% in accordance with Article 121), whilst in the old EU Member States modulation has been applied (100% minus 10% in accordance with Article 7(1)) — contrary to the Act of Accession and to principles of EU law, inter alia the principles of the protection of legitimate expectations, of sound administration, of fair competition and of non-discrimination, as well as to the objectives of the common agricultural policy, which are laid down in Article 39 TFEU?

2. Regarding the incompatibility of Article 10(1) and the end of the final subparagraph of Article 132(2) of Regulation No 73/2009, and the measures of EU law adopted on their basis, with the Act of Accession and European Union principles:

a. Are the end of Article 10(1) of Regulation No 73/2009 ('… taking into account any reductions applied under Article 7(1)') and the end of the final subparagraph of Article 132(2) ('… taking into account, from 2012, the application of Article 7 in conjunction with Article 10'), as well as Commission working document DS/2011/14/REV 2 and Commission Implementing Decision C(2012) 4391 final which were adopted on their basis, contrary to the Act of Accession, which does not prescribe the modulation of direct payments and the reduction of complementary national direct payments in the new EU Member States and/or the year in which equalisation of direct payments in the new and old EU Member States is presumed?

b. Are Article 10(1) and the final subparagraph of Article 132(2) of Regulation No 73/2009, as well as Commission working document DS/2011/14/REV 2 and Commission Implementing Decision C(2012) 4391 final, inasmuch as, in accordance with their content and objectives, the modulation of direct payments and the reduction of complementary national direct payments are applied in 2012 in the new EU Member States, which receive considerably less support than the old EU Member States, contrary to principles of EU law, inter alia the principles of the protection of legitimate expectations, of fair competition and of non-discrimination, and to the objectives of the common agricultural policy, which are laid down in Article 39 TFEU, in particular the objective of increasing agricultural productivity?

c. Does the amendment of the final subparagraph of Article 132(2) of Regulation No 73/2009 ('taking into account, from 2012, the application of Article 7 in conjunction with Article 10'), which was carried out under the corrigendum procedure (OJ 2010 L 43, p. 7) (an amendment by which an alteration of a nontechnical nature was made, and the content of the provision was fundamentally amended as it was laid down that equalisation of direct payments in the new and old EU Member States was presumed in 2012), infringe principles of EU law, inter alia the principles of the protection of legitimate expectations, of legal certainty, of sound administration and of non-discrimination?

d. Does the word 'dydis' ['level'] used in Article 1c set out in point 27(b) of Chapter 6.A ('Agriculture') of Annex II to the Act of Accession have the same meaning as the word 'lygis' ['level'] in the final subparagraph of Article 132(2) of Regulation No 73/2009?

3. Are the Commission implementing decision and Commission working document DS/2011/14/REV 2, which were not published in the *Official Journal of the European Union* and do not state adequate reasons (they were adopted in reliance solely upon the presumption that in 2012 the level of direct payments in the new and old EU Member States equalised), contrary to the Act of Accession and in breach of principles of EU law, inter alia the principles of legal certainty, of the protection of legitimate expectations and of sound administration? If so, must Article 1(4) of the Commission implementing decision be annulled as contrary to Regulation No 73/2009 and the Act of Accession?

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

Request for a preliminary ruling from the Conseil d'État (France) lodged on 6 March 2014 — FCD — Fédération des entreprises du commerce et de la distribution, FMB — Fédération des magasins de bricolage et de l'aménagement de la maison v Ministre de l'écologie, du développement durable et de l'énergie

(Case C-106/14)

(2014/C 142/35)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: FCD — Fédération des entreprises du commerce et de la distribution, FMB — Fédération des magasins de bricolage et de l'aménagement de la maison

Defendant: Ministre de l'écologie, du développement durable et de l'énergie

Question referred

'Where an "article" within the meaning of Regulation No 1907/2006 (REACH) ([1]) is composed of several elements which themselves meet the definition of "article" given by the regulation, are the obligations resulting from Article 7(2) and Article 33 of the regulation to apply only with regard to the assembled article or with regard to each of the elements which meet the definition of "article"?'

([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)

Request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria lodged on 7 March 2014 — 'GST — Sarviz AG Germania' v Direktor na direktsia 'Obzhalvane i danachno-osiguritelna praktika' Plovdiv pri Tsentralno upravlenie na NAP

(Case C-111/14)

(2014/C 142/36)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: 'GST — Sarviz AG Germania'

Defendant: Direktor na direktsia 'Obzhalvane i danachno-osiguritelna praktika' Plovdiv pri Tsentralno upravlenie na NAP

Questions referred

1. Must Article 193 of Directive 2006/112/EC ([1]) be interpreted as meaning that either the taxable person who makes taxable supplies of goods or services, or the person who purchases the goods or receives the services, is exclusively liable for the value added tax, where the taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the value added tax is payable, in so far as that is provided for by the Member State concerned, and not that both persons share liability for that tax?

2. In so far as it is to be assumed that only one of the two persons is liable for the value added tax — either the supplier/service provider or the purchaser/recipient, where that is provided for by the Member State concerned, is the rule in Article 194 of the directive also applicable to cases in which the recipient of the services wrongly applied the reverse-charge procedure because it assumed that the service provider had not created a fixed establishment for the purposes of value added tax in the territory of the Republic of Bulgaria, although the service provider had in fact created a fixed establishment in relation to the services supplied?

3. Must the principle of fiscal neutrality, which is of fundamental importance for the establishment and functioning of the common system of value added tax, be interpreted as meaning that it permits a tax assessment practice, such as that in the main proceedings, in accordance with which the value added tax is also invoiced to the service provider despite the reverse-charge procedure applied by the recipient of the supply of services, where account is taken of the fact that the recipient has already invoiced the tax for the supply of services, that there is no risk of any loss of tax revenue and that the system for correction of tax documents provided for under national law is not applicable?

4. Must the principle of value added tax neutrality be interpreted as meaning that it does not permit the tax authorities, on the basis of a national provision, to refuse to grant a refund of the value added tax invoiced several times to the provider of a service, in respect of which the recipient invoiced the value added tax in accordance with Article 82(2) of the ZDDS, where the tax authorities refused to grant the recipient the right to deduct the value added tax invoiced several times on account of the absence of the corresponding tax document, but the system for correction provided for under national law on the basis of the present binding tax adjustment notice is no longer applicable?

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

GENERAL COURT

Judgment of the General Court of 20 March 2014 — Faci v Commission

(Case T-46/10) ([1])

(Competition — Agreements, decisions and concerted practices — European markets in ESBO/esters heat stabilisers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fixing prices, allocating markets and customers and exchanging commercially sensitive information — Proof of one aspect of the infringement — Fines — Equal treatment — Good administration — Reasonable time — Proportionality)

(2014/C 142/37)

Language of the case: English

Parties

Applicant: Faci SpA (Milan, Italy) (represented by: S. Piccardo, lawyer, S. Crosby, Solicitor, and S. Santoro, lawyer)

Defendant: European Commission (represented by: initially by K. Mojzesowicz, F. Ronkes Agerbeek and J. Bourke, subsequently by F. Ronkes Agerbeek, J. Bourke and F. Castilla Contreras and lastly by F. Ronkes Agerbeek, F. Castilla Contreras and R. Sauer, Agents)

Re:

Application for annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38589 — Heat Stabilisers), or, in the alternative, for annulment of the fine imposed on the applicant or a reduction in its amount.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Faci SpA to pay the costs.*

([1]) OJ C 100, 17.4.2010.

Judgment of the General Court of 20 March 2014 — Reagens v Commission

(Case T-181/10) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to requests that certain undertakings' inability to pay be taken into account in cartel proceedings — Refusal of access — Exception relating to the protection of commercial interests of a third party — Exception relating to the protection of the purpose of inspections, investigations and audits — Overriding public interest — Obligation to carry out a concrete and individual examination — Partial access)

(2014/C 142/38)

Language of the case: English

Parties

Applicant: Reagens SpA (San Giorgio di Piano, Italy) (represented initially by B. O'Connor, Solicitor, L. Toffoletti, E. De Giorgi and D. Gullo, lawyers, and subsequently by B. O'Connor, L. Toffoletti and E. De Giorgi)

Defendant: European Commission (represented initially by P. Costa de Oliveira and J. Bourke, and subsequently by P. Costa de Oliveira and F. Ronkes Agerbeek, acting as Agents)

Re:

Application for annulment of Commission Decision Gestdem No 2009/5145 of 23 February 2010, refusing the applicant access to certain documents in the file in Case COMP/38589 — Heat stabilisers, on the basis 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).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision Gestdem No 2009/5145 of 23 February 2010, refusing the applicant access to certain documents in the administrative file in Case COMP/38589 — Heat stabilisers, on the basis 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, to the extent that it refuses access to the non-confidential versions of the undertakings' requests and to the European Commission's first questionnaire;*

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

3. *Orders Reagens SpA to pay half of its own costs and half of the costs incurred by the Commission;*

4. *Orders the Commission to pay half of its own costs and half of the costs incurred by Reagens.*

([1]) OJ C 179, 3.7.2010.

Judgment of the General Court of 21 March 2014 — Yusef v European Commission

(Case T-306/10) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Freezing of a person's funds and economic resources as a result of his inclusion on a list drawn up by a United Nations body — Sanctions Committee — Subsequent inclusion in Annex I to Regulation No 881/2002 — Commission's refusal to de-list — Action for failure to act — Fundamental rights — Right to be heard, right to effective judicial review and right to property)

(2014/C 142/39)

Language of the case: English

Parties

Applicant: Hani El Sayyed Elsebai Yusef (London, United Kingdom) (represented initially by E. Grieves, Barrister, and H. Miller, Solicitor, and subsequently by E. Grieves, H. Miller and P. Moser QC, and R. Graham, solicitor)

Defendant: European Commission (represented by: E. Paasivirta, M. Konstantinidis and T. Scharf, Agents)

Intervener in support of the defendant: Council of the European Union (represented initially by E. Finnegan and R. Szostak, and subsequently by E. Finnegan, Agents)

Re:

Application seeking a declaration, in accordance with Article 265 TFEU, that the Commission unlawfully failed to revoke Commission Regulation (EC) No 1629/2005 of 5 October 2005 amending for the 54th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2005 L 260, p. 9), in so far as that act concerns the applicant

Operative part of the judgment

The Court:

1. *Declares that the European Commission has failed to fulfil its obligations under the FEU Treaty and under Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001, by not remedying the procedural deficiencies and substantive irregularities affecting the freezing of the funds of Mr Hani El Sayyed Elsebai Yusef.*

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

3. *Orders the Commission to pay, apart from its own costs, the costs incurred by Mr Yusef and the sums advanced by way of legal aid by the cashier of the Court.*

4. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 260, 25.9.2010.

Judgment of the General Court of 25 March 2014 — Deutsche Bank v OHIM (Leistung aus Leidenschaft)

(Case T-539/11) ([1])

(Community trade mark — Application for Community word mark Leistung aus Leidenschaft — Trade mark consisting of an advertising slogan — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Equal treatment — Obligation to state reasons — Evidence presented for the first time before the General Court)

(2014/C 142/40)

Language of the case: German

Parties

Applicant: Deutsche Bank AG (Frankfurt on Main) (represented by: R. Lange, T. Götting and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 August 2011 (Case R 188/2011-4) concerning an application for registration of word sign Leistung aus Leidenschaft as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutsche Bank AG to pay the costs.*

([1]) OJ C 13, 14.1.2012.

Judgment of the General Court of 25 March 2014 — Deutsche Bank v OHIM (Passion to Perform)

(Case T-291/12) ([1])

(Community trade mark — International registration designating the European Union — Word mark Passion to Perform — Trade mark consisting of an advertising slogan — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Equal treatment)

(2014/C 142/41)

Language of the case: English

Parties

Applicant: Deutsche Bank AG (Frankfurt on Main, Germany) (represented by: R. Lange, T. Götting and G. Hild, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 24 April 2012 (Case R 2233/2011-4) concerning an application for registration of word sign Passion to Perform as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutsche Bank AG to pay the costs.*

([1]) OJ C 273, 8.9.2012.

Judgment of the General Court of 26 March 2014 — Still v OHIM (Fleet Data Services)

(Joined Cases T-534/12 and T-535/12) ([1])

(Community Trade Mark — Applications for registration of the Community figurative marks Fleet Data Services and Truck Data Services — Absolute ground for refusal — Descriptiveness — Absence of any distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — The right to be heard — Article 75, second sentence, of Regulation No 207/2009)

(2014/C 142/42)

Language of the case: German

Parties

Applicant: Still GmbH (Hamburg, Germany) (represented by: S. Waller, lawyer)

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

Re:

Two actions brought against two decisions of the First Board of Appeal of OHIM of 10 September 2012 (Case R 130/2012-1 and Case R 4/2012-1), concerning applications for registration, first, of the figurative sign Fleet Data Services and, secondly, the figurative sign Truck Data Services as Community trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Still GmbH to pay the costs.*

(1) OJ C 32, 2.2.2013.

Judgment of the General Court of 21 March 2014 — FTI Touristik v OHIM (BigXtra)

(Case T-81/13) (1)

(Community trade mark — Application for Community word mark BigXtra — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2014/C 142/43)

Language of the case: German

Parties

Applicant: FTI Touristik GmbH (Munich, Germany) (represented by A. Parr, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 November 2012 (case R 2521/2011-1), relating to an application for registration of the word sign BigXtra as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders FTI Touristik GmbH to pay the costs.*

(1) OJ C 108, 13.4.2013.

Order of the General Court of 5 March 2013 — Chrysamed Vertrieb v OHIM — Chrysal International (Chrysamed)

(Case T-46/12) (1)

(Community trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2014/C 142/44)

Language of the case: German

Parties

Applicant: Chrysamed Vertrieb GmbH (Salzburg, Austria) (represented by: initially T. Schneider, subsequently M. Koch and finally I. Rungg, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Chrysal International BV (Naarden, Netherlands) (represented by: A. Killan, M. Marell and M. Senftleben, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 November 2011 (Case R 64/2011-1), relating to opposition proceedings between Chrysal International BV and Chrysamed Vertrieb GmbH

Operative part of the order

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

2. *Chrysamed Vertrieb GmbH shall pay the costs.*

([1]) OJ C 98, 31.3.2012.

Order of the General Court of 3 February 2014 — Imax v OHIM — Himax Technologies (IMAX)

(Case T-198/13) ([1])

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

(2014/C 142/45)

Language of the case: English

Parties

Applicant: Imax Corporation (Mississauga, Canada) (represented by: V. von Bomhard, lawyer, and K. Hughes, solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Himax Technologies, Inc. (Hsinhua, Taiwan)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 23 January 2013 (Case R 740/2012-5), relating to opposition proceedings between Himax Technologies, Inc. and Imax Corporation.

Operative part of the order

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

2. *The parties shall bear their own costs.*

([1]) OJ C 171, 15.6.13.

Action brought on 27 January 2014 — BR IP Holder v OHIM — Greyleg Investments (HOKEY POKEY)

(Case T-62/14)

(2014/C 142/46)

Language in which the application was lodged: English

Parties

Applicant: BR IP Holder LLC (Canton, United States) (represented by: F. Traub, lawyer, and C. Rohsler, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Greyleg Investments Ltd (Baltonsborough, United Kingdom)

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 22 November 2013 given in Case R 1091/2012-4;

— 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 'HOKEY POKEY' for 'confectionery' in Class 30 — Community trade mark application No 9 275 678

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

Mark or sign cited in opposition: Earlier, non-registered trade mark 'HOKEY POKEY' claimed to be in use in the United Kingdom for 'confectionery, namely ice cream'

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

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 14 February 2014 — Société Générale v Commission

(Case T-98/14)

(2014/C 142/47)

Language of the case: French

Parties

Applicant: Société Générale SA (Paris, France) (represented by: P. Zelenko, J. Marthan and D. Kupka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 2(c) of the European Commission decision No C(2013) 8512 final of 4 December 2013 in the EIRD case in so far as it imposes a fine on Société Générale;

— reduce the amount of the fine imposed by that decision on Société Générale to an appropriate amount;

— order, in any event, the European Commission to pay all 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 a manifest error of assessment committed by the Commission in the determination of the method of calculating the values of sales, in so far as the values adopted in the contested decision on the basis of that method do not reflect the respective positions of the banks against which the action has been brought on the relevant market during the infringement period (first part). The applicant submits that the Commission has thereby infringed its duty of diligence (second part) and has infringed the principles of equal treatment (third part) and of the protection of legitimate expectations (fourth part).

2. Second plea in law, alleging a failure to state reasons as regards the choice of the method applied by the Commission in order to calculate the value of the sales by the banks against which the action has been brought.

3. Third plea in law, claiming that the General Court should exercise its unlimited jurisdiction in order to reduce the applicant's fine to an appropriate amount reflecting the respective positions of the banks against which the action has been brought on the relevant market.

Action brought on 14 February 2014 — Universal Utility International v OHIM (Greenworld)

(Case T-106/14)

(2014/C 142/48)

Language of the case: German

Parties

Applicant: Universal Utility International GmbH & Co. KG (Kaarst, Germany) (represented by J. Mietzel, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 December 2013 in Case R 1658/2013-4;

— in the alternative, annul the contested decision in so far as it upheld the refusal of the application for the services in classes 35 and 39;

— in the further alternative, annul the contested decision in so far as it upheld the refusal of the application for the services in class 35;

— order OHIM to pay the costs, including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark Greenworld for goods and services in Classes 4, 35 and 39 — Community trade mark application No 11 616 588

Decision of the Examiner: Application refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— Breach of Article 7(1)(c) of Regulation No 40/94

— Breach of Article 7(1)(b) of Regulation No 40/94

Action brought on 17 February 2014 — Burazer and Others v European Union

(Case T-108/14)

(2014/C 142/49)

Language of the case: Croatian

Parties

Applicants: Drago Burazer (Zagreb, Croatia), Nikolina Nežić (Zagreb), Blaženka Bošnjak (Sv. Ivan Zelina, Croatia), Bosiljka Grbašić (Križevci, Croatia), Tea Tončić (Pula, Croatia), Milica Bijelić (Dubrovnik, Croatia), Marijana Kruhoberec (Varaždin, Croatia) (represented by: Mato Krmek, lawyer)

Defendant: European Union

Form of order sought

The applicants claim that the Court should:

— declare, by a judgment, that the European Union must compensate the applicants for the injury they suffered as a result of the European Commission's partial failure to fulfil its obligation to monitor the implementation of the Treaty of Accession of the Republic of Croatia to the European Union, imposed on that institution under Article 36 of the Act of Accession (Annex VII, point 1), as regards the introduction of the bailiff service in the legal order of the Republic of Croatia;

— suspend deliberations regarding the amount of the claim until the judgment in the present case has become final;

— reserve the decision as to costs for the later judgment.

Pleas in law and main arguments

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

1. First plea in law: the European Commission failed to fulfil its obligations under Article 36 of the Act of Accession (Annex VII, point 1), which forms an integral part of the Treaty of Accession of the Croation Republic to the European Union concluded between the Croation Republic and the Member States of the European Union [Narodne novine — Međunarodni ugovori n° 2/12 (Official Journal — International Treaties)], in failing to prevent the derogation from the legislation establishing and governing the profession of bailiff, which the Republic of Croatia had adopted during the negotiations on accession to the European Union. Article 36 of the Act of Accession tasks the Commission with monitoring the commitments entered into by the Republic of Croatia during the negotiations on accession to the European Union and, accordingly, the legal obligations assumed by the Republic of Croatia to establish a bailiff service and to ensure the full implementation of that service in the Croatian legal order by 1 January 2012 at the latest. However, the European Commission does not have the power to allow any unilateral amendment of the obligations thus entered into by the Republic of Croatia.

2. Second plea in law: by the abovementioned infringement, the European Commission directly injured the applicants, who had been appointed as bailiffs and who had legitimate expectations that they would take up their duties on 1 January 2012.

3. Third plea in law: in failing to fulfil its obligations, the Commission clearly and seriously exceeded the limits of its discretion and, in frustrating the limited expectations of the applicants (appointed bailiffs), caused them significant material and non-material damage which the European Union must make good in accordance with the second paragraph of Article 340 TFEU.

Action brought on 17 February 2014 — Škugor and Others v European Union

(Case T-109/14)

(2014/C 142/50)

Language of the case: Croatian

Parties

Applicants: Davor Škugor (Sisak, Croatia), Ivan Gerometa (Vrsar, Croatia), Kristina Samardžić (Split, Croatia), Sandra Cindrić (Karlovac, Croatia), Sunčica Gložinić (Varaždin, Croatia), Tomislav Polić (Kaštel Novi, Croatia), Vlatka Pižeta (Varaždin) (represented by: Mato Krmek, lawyer)

Defendant: European Union

Form of order sought

The applicants claim that the Court should:

— declare, by a judgment, that the European Union must compensate the applicants for the injury they suffered as a result of the European Commission's partial failure to fulfil its obligation to monitor the implementation of the Treaty of Accession of the Republic of Croatia to the European Union, imposed on that institution under Article 36 of the Act of Accession (Annex VII, point 1), as regards the introduction of the bailiff service in the legal order of the Republic of Croatia;

— suspend deliberations regarding the amount of the claim until the judgment in the present case has become final;

— reserve the decision as to costs for the later judgment.

Pleas in law and main arguments

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

1. First plea in law: the European Commission failed to fulfil its obligations under Article 36 of the Act of Accession (Annex VII, point 1), which forms an integral part of the Treaty of Accession of the Croatian Republic to the European Union concluded between the Croatian Republic and the Member States of the European Union [Narodne novine — Međunarodni ugovori nº 2/12 (Official Journal — International Treaties)], in failing to prevent the derogation from the legislation establishing and governing the profession of bailiff, which the Republic of Croatia had adopted during the negotiations on accession to the European Union. Article 36 of the Act of Accession tasks the Commission with monitoring the commitments entered into by the Republic of Croatia during the negotiations on accession to the European Union and, accordingly, the legal obligations assumed by the Republic of Croatia to establish a bailiff service and to ensure the full implementation of that service in the Croatian legal order by 1 January 2012 at the latest. However, the European Commission does not have the power to allow any unilateral amendment of the obligations thus entered into by the Republic of Croatia.

2. Second plea in law: by the abovementioned infringement, the European Commission directly injured the applicants, who had been appointed as bailiffs and who had legitimate expectations that they would take up their duties on 1 January 2012.

3. Third plea in law: in failing to fulfil its obligations, the Commission clearly and seriously exceeded the limits of its discretion and, in frustrating the limited expectations of the applicants (appointed bailiffs), caused them significant material and non-material damage which the European Union must make good in accordance with the second paragraph of Article 340 TFEU.

Action brought on 19 February 2014 — Finland v Commission

(Case T-124/14)

(2014/C 142/51)

Language of the case: Finnish

Parties

Applicant: Republic of Finland (represented by: J. Heliskoski and S. Hartikainen)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Implementing Decision C(2013) 8743 final 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 so far as a financial correction of EUR 927 827,58 has been applied to the Republic of Finland on the ground that it has failed to fulfil its obligations under Article 55 of Regulation (EC) No 1974/2006;

— order the Commission to pay the costs incurred by the Republic of Finland.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, according to which the Commission has incorrectly interpreted and applied Article 55 of Regulation No 1974/2006. ([1]) The Commission has erroneously considered that the rules laid down in Finland for the grant of aid for the purchase of second-hand machinery and equipment is not compatible with the second subparagraph of Article 55(1) of Regulation No 1974/2006.

([1]) 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 2006 L 368, p. 15).

Action brought on 14 February 2014 — Gappol Marzena Porczyńska v OHIM — GAP (ITM) (GAPPol)

(Case T-125/14)

(2014/C 142/52)

Language in which the application was lodged: Polish

Parties

Applicant: PP Gappol Marzena Porczyńska (Łódź, Poland) (represented by J. Gwiazdowska, lawyer)

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

Other party to the proceedings before the Board of Appeal: GAP (ITM), Inc. (San Francisco, United States)

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 2 December 2013 in Case R 686/2013-1;

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

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 figurative mark containing the word element 'GAPPol' for goods and services in Classes 20, 25 and 37 — Application No 8 346 165 for a Community trade mark.

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 word marks 'GAP', Community figurative marks containing the word element 'GAP', as well as national word marks 'GAP' and national figurative marks containing the word element 'GAP', for goods in Class 25.

Decision of the Opposition Division: opposition upheld in part.

Decision of the Board of Appeal: appeal dismissed.

Pleas in law: breach of Article 8(1)(b) and 8(5) of Regulation No 207/2009.

Action brought on 28 February 2014 — Germany v Commission

(Case T-134/14)

(2014/C 142/53)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze, J. Möller and T. Lübbig, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with Article 264 TFEU, the decision of the European Commission of 18 December 2013 in the procedure State aid SA.33995 (2013/C) (ex 2013/NN) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, C(2013) 4424 final;

— order the defendant to pay the 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: Infringement of Article 4(3) and (4) of Regulation (EC) No 659/1999 ([1]) and of Article 108(2) TFEU

   The applicant submits here that the defendant initiated the formal investigation procedure without satisfying its special duty of care to clarify the facts completely. Had the Commission carefully clarified the facts, there would have been no reason to open the formal investigation procedure.

2. Second plea in law: Manifest errors of assessment in the evaluation of the facts

   By the second plea, the applicant submits that the Commission misunderstood the underlying facts, namely the functioning of the Law for the priority of renewable energy sources, in particular the financial flows system under that law. In addition, the Commission misunderstood the role 'of the State' as legislator and as body with responsibility for supervisory authorities and incorrectly deduced a situation of control therefrom.

3. Third plea in law: No favouring of energy-intensive users through the special compensation scheme

   The applicant submits that the Commission erred in law in applying Article 107(1) TFEU by accepting, contrary to the case-law of the General Court, that energy-intensive users had been favoured.

4. Fourth plea in law: No favouring through State resources

   The applicant submits here that the Commission also erred in law in applying Article 107(1) TFEU in this respect when it accepted that public authorities had control over the assets of the various private companies participating in the regime of the Law on the priority of renewable energy sources.

5. Fifth plea in law: Incorrect interpretation and application of Articles 30 and 110 TFEU

   By the fifth plea, the applicant submits that the Commission infringed the principle of a proper administrative procedure and the principle of protection of legitimate expectations by reviewing the Law on the priority of renewable energy sources in accordance with Articles 30 and 110 TFEU, although the method by which that law functions has been known to it for over ten years. The Commission also errs in law in applying Articles 30 and 110 TFEU because there is neither any taxation within the meaning of those provisions nor any discriminatory situation.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 28 February 2014 — SolarWorld and Others v Council

(Case T-141/14)

(2014/C 142/54)

Language of the case: English

Parties

Applicants: SolarWorld AG (Bonn, Germany); Brandoni solare SpA (Castelfidardo, Italy); and Solaria Energia y Medio Ambiente, SA (Madrid, Spain) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare the application admissible and well-founded;

— Annul Article 3 of Council Implementing Regulation (EU) No 1238/2013 ([1]);

— Join this case with Case T-507/13; and

— Order the defendant to pay the applicants' costs.

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 Article 3 of the contested regulation reflects a manifest error of assessment, and violates Articles 8 of the Basic Anti-Dumping Regulation ([2]) to the extent it exempts from the measures Chinese producers from which the Commission accepted a joint undertaking in violation of the applicants' right to a fair legal process and the principle of good administration, the applicants' rights of defense, and Articles 8(4) and 19(2) of the Basic AD Regulation.

2. Second plea in law, alleging that Article 3 of the contested regulation reflects a manifest error of assessment, and violates Articles 8 of the Basic AD Regulation, to the extent it exempts from the measures Chinese producers from which the Commission accepted an unlawful joint undertaking.

3. Third plea in law, alleging that Article 3 of the contested regulation violates Article 101(1) TFEU to the extent it grants certain Chinese producers an exemption from the measures in question on the basis of an undertaking offer, accepted and confirmed by Implementing Decision 2013/707/EU ([3]) and by Commission Decision 2013/423/EU ([4]), which is a horizontal price fixing arrangement.

([1]) Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 1)

([2]) 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)

([3]) Commission Implementing Decision 2013/707/EU of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (OJ 2013 L 325, p. 214)

([4]) Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ 2013 L 209, p. 26)

Action brought on 28 February 2014 — SolarWorld and Others v Council

(Case T-142/14)

(2014/C 142/55)

Language of the case: English

Parties

Applicants: SolarWorld AG (Bonn, Germany); Brandoni solare SpA (Castelfidardo, Italy); and Solaria Energia y Medio Ambiente, SA (Madrid, Spain) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare the application admissible and well-founded;

— Annul Article 2 of Council Implementing Regulation (EU) No 1239/2013 ([1]);

— Join this case with Case T-507/13; and

— Order the defendant to pay the applicants' costs.

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 Article 2 of the contested regulation reflects a manifest error of assessment, and violates Article 13 of the Basic AS Regulation ([2]) to the extent it exempts from the measures Chinese producers from which the Commission accepted a joint undertaking in violation of the applicants' right to a fair legal process and the principle of good administration, the applicants' rights of defence, and Articles 13(4) and 29(2) Basic AS Regulation.

2. Second plea in law, alleging that Article 2 of the contested regulation reflects a manifest error of assessment, and violates Article 13 of the Basic AS Regulation, to the extent it exempts from the measures Chinese producers from which the Commission accepted an unlawful joint undertaking.

3. Third plea in law, alleging that Article 3 of the contested regulation violates Article 101(1) TFEU to the extent it grants certain Chinese producers an exemption from the measures in question on the basis of an undertaking offer, accepted and confirmed by Implementing Decision 2013/707/EU ([3]) and by Commission Decision 2013/423/EU ([4]), which is a horizontal price fixing arrangement.

([1]) Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 66)

([2]) Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ 2009 L 188, p. 93)

([3]) Commission Implementing Decision 2013/707/EU of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (OJ 2013 L 325, p. 214)

([4]) Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ 2013 L 209, p. 26)

Action brought on 28 February 2014 — Yingli Energy (China) and Others v Council

(Case T-160/14)

(2014/C 142/56)

Language of the case: English

Parties

Applicants: Yingli Energy (China) Co. Ltd (Baoding, China); Baoding Tianwei Yingli New Energy Resources Co. Ltd (Baoding); Hainan Yingli New Energy Resources Co. Ltd (Haikou, China); Hengshui Yingli New Energy Resources Co. Ltd (Hengshui, China); Tianjin Yingli New Energy Resources Co. Ltd (Tianjin, China); Lixian Yingli New Energy Resources Co. Ltd (Baoding); Baoding Jiasheng Photovoltaic Technology Co. Ltd (Baoding); Beijing Tianneng Yingli New Energy Resources Technology Co. Ltd (Beijing, China); Yingli Energy (Beijing) Co. Ltd (Beijing); Yingli Green Energy Europe (Düsseldorf, Germany); Yingli Green Energy South East Europe GmbH (Grünwald, Germany); Yingli Green Energy France SAS (Lyon, France); Yingli Green Energy Spain, SL (La Moraleja, Spain); Yingli Green Energy Italia Srl (Rome, Italy); and Yingli Green Energy International AG (Kloten, Switzerland) (represented by: A. Willems, S. De Knop and J. Charles, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare the action admissible;

— Annul Council Implementing Regulation (EU) No 1238/2013 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 1), as far as it applies to the applicants;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that by imposing anti-dumping measures on crystalline silicon photovoltaic modules and key components consigned from the People's Republic of China whereas the Notice of initiation mentioned only crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, the Institutions violated Articles 5(10) and 5(11) of Council Regulation (EC) No 1225/2009 ([1]).

2. Second plea in law, alleging that by imposing anti-dumping measures on crystalline silicon photovoltaic modules and key components that were not subject to an anti-dumping investigation, the Institutions violated Articles 1 and 17 of Council Regulation (EC) No 1225/2009.

3. Third plea in law, alleging that by applying a non-market economy methodology for calculating the dumping margin of products from market economy countries, the Institutions violated Article 2 of Council Regulation (EC) No 1225/2009.

4. Fourth plea in law, alleging that by conducting one single investigation for two distinct products (i.e., crystalline silicon photovoltaic modules and cells), the Institutions violated Article 1(4) of Council Regulation (EC) No 1225/2009.

5. Fifth plea in law, alleging that by making the applicants' market economy determination more than three months after the initiation of the investigation and after having received all information necessary to calculate the dumping margins, the Institutions violated Article 2(7)(c) of Council Regulation (EC) No 1225/2009.

6. Sixth plea in law, alleging that by failing to separately quantify the injury suffered by the Union industry caused by both the dumped imports and other known factors and, as a consequence, by imposing a duty rate in excess of what is necessary to remove the injury caused by the dumped imports to the Union industry, the Institutions violated Articles 3 and 9(4) of Council Regulation (EC) No 1225/2009.

7. Seventh plea in law, alleging that by failing to disclose the essential facts and considerations on the basis of which the Institutions intended to impose definitive anti-dumping measures, the Institutions violated Article 20(2) of Council Regulation (EC) No 1225/2009.

([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 28 February 2014 — Yingli Energy (China) and Others v Council

(Case T-161/14)

(2014/C 142/57)

Language of the case: English

Parties

Applicants: Yingli Energy (China) Co. Ltd (Baoding, China); Baoding Tianwei Yingli New Energy Resources Co. Ltd (Baoding); Hainan Yingli New Energy Resources Co. Ltd (Haikou, China); Hengshui Yingli New Energy Resources Co. Ltd (Hengshui, China); Tianjin Yingli New Energy Resources Co. Ltd (Tianjin, China); Lixian Yingli New Energy Resources Co. Ltd (Baoding); Baoding Jiasheng Photovoltaic Technology Co. Ltd (Baoding); Beijing Tianneng Yingli New Energy Resources Technology Co. Ltd (Beijing, China); Yingli Energy (Beijing) Co. Ltd (Beijing); Yingli Green Energy Europe (Düsseldorf, Germany); Yingli Green Energy South East Europe GmbH (Grünwald, Germany); Yingli Green Energy France SAS (Lyon, France); Yingli Green Energy Spain, SL (La Moraleja, Spain); Yingli Green Energy Italia Srl (Rome, Italy); and Yingli Green Energy International AG (Kloten, Switzerland) (represented by: A. Willems, S. De Knop and J. Charles, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare the action admissible;

— Annul Council Implementing Regulation (EU) No 1239/2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 66), as far as it applies to the applicants;

— Order the defendants to pay the costs.

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 by imposing countervailing measures on crystalline silicon photovoltaic modules and key components consigned from the People's Republic of China whereas the Notice of initiation mentioned only crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, the Institutions violated Articles 10(12) and 10(13) of Council Regulation (EC) No 597/2009 ([1]).

2. Second plea in law, alleging that by imposing countervailing measures on crystalline silicon photovoltaic modules and key components that were not subject to an anti-subsidy investigation, the Institutions violated Articles 1 and 27 of Council Regulation (EC) No 597/2009.

3. Third plea in law, alleging that by conducting one single investigation for two distinct products (i.e., crystalline silicon photovoltaic modules and cells), the Institutions violated Article 2(c) of Council Regulation (EC) No 597/2009.

([1]) Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ 2009 L 188, p. 93)

Action brought on 3 March 2014 — PRS Mediterranean v OHIM — Reynolds Presto Products (NEOWEB)

(Case T-166/14)

(2014/C 142/58)

Language in which the application was lodged: English

Parties

Applicant: PRS Mediterranean Ltd (Tel Aviv, Israel) (represented by: A. Späth and V. Töbelmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Reynolds Presto Products, Inc. (Richmond, United States)

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 28 November 2013 given in Joined Cases R 889/2012-2 and R 635/2012-2;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'NEOWEB' for goods in Class 19 — Community trade mark application No 6 184 568

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: Various national trademarks of the word mark 'GEOWEB' for goods in Classes 1, 17 and 19 and the non-registered mark 'GEOWEB' used in the course of trade in all Member States of the European Union

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal proceedings

Pleas in law: Infringement of Articles 8(1)(b), 8(3), 8(4) and 8(5) CTMR.

Action brought on 20 March 2014 — Stahlwerk Bous v Commission

(Case T-172/14)

(2014/C 142/59)

Language of the case: German

Parties

Applicant: Stahlwerk Bous GmbH (Bous, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

   — The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

   — The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

   — If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — WeserWind v Commission

(Case T-173/14)

(2014/C 142/60)

Language of the case: German

Parties

Applicant: WeserWind GmbH Offshore Construction Georgsmarienhütte (Bremerhaven, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

   — The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

   — The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

   — If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Dieckerhoff Guss v Commission

(Case T-174/14)

(2014/C 142/61)

Language of the case: German

Parties

Applicant: Dieckerhoff Guss GmbH (Gevelsberg, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

   — The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

   — The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

   — If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Walter Hundhausen v Commission

(Case T-175/14)

(2014/C 142/62)

Language of the case: German

Parties

Applicant: Walter Hundhausen GmbH (Schwerte, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

   — The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

   — The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

   — If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Georgsmarienhütte v Commission

(Case T-176/14)

(2014/C 142/63)

Language of the case: German

Parties

Applicant: Georgsmarienhütte GmbH (Georgsmarienhütte, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

— The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

— The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

— If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Harz Guss Zorge v Commission

(Case T-177/14)

(2014/C 142/64)

Language of the case: German

Parties

Applicant: Harz Guss Zorge GmbH (Zorge, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

— The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

— The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

— The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

— If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Friedrich Wilhelms-Hütte Eisenguss v Commission

(Case T-178/14)

(2014/C 142/65)

Language of the case: German

Parties

Applicant: Friedrich Wilhelms-Hütte Eisenguss GmbH (Mülheim an der Ruhr, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

— The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

— The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

— The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

— If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 20 March 2014 — Schmiedewerke Gröditz v Commission

(Case T-179/14)

(2014/C 142/66)

Language of the case: German

Parties

Applicant: Schmiedewerke Gröditz GmbH (Gröditz, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

— The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

— The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

— The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

— If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 21 March 2014 — Schmiedag v Commission

(Case T-183/14)

(2014/C 142/67)

Language of the case: German

Parties

Applicant: Schmiedag GmbH (Hagen, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Breach of essential procedural requirements

   — The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

2. Infringement of the Treaties

   — The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.

   — The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

3. Compatibility with the common market

   — If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

Action brought on 21 March 2014 — Atlantic Multipower Germany v OHIM — Nutrichem Diät + Pharma (NOxtreme)

(Case T-186/14)

(2014/C 142/68)

Language in which the application was lodged: German

Parties

Applicant: Atlantic Multipower Germany GmbH & Co. OHG (Hamburg, Germany) (represented by: W. Berlit, lawyer)

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

Other party to the proceedings before the Board of Appeal: Nutrichem Diät + Pharma GmbH (Roth, 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 29 January 2014 in Case R 764/2013-4;

— Annul the decision of the Cancellation Division of 12 April 2013 (filing No: 6333C);

— Order the intervener to pay the costs including those incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'NOxtreme' for goods in Classes 5, 29, 30 and 32 — Community trade mark No 10 177 889

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Nutrichem Diät + Pharma GmbH

Grounds for the application for a declaration of invalidity: the national and Community figurative marks, including the word element 'X-TREME', for goods in Classes 5, 29 and 32

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

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law:

— Infringement of Article 57(2) and (3) in conjunction with Article 42(2) and (3) of Regulation No 207/2009;

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

Order of the General Court of 14 February 2014 — Alfa-Beta Vassilopoulos v OHIM — Henkel (AB terra Leaf)

(Case T-522/12) ([1])

(2014/C 142/69)

Language of the case: English

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

([1]) OJ C 32, 2.2.2013.

Order of the General Court of 10 February 2014 — Jinko Solar and Others v Parliament and Others

(Case T-142/13) ([1])

(2014/C 142/70)

Language of the case: English

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

([1]) OJ C 123, 27.4.2013.

Order of the General Court of 5 March 2014 — Triarii v Commission

(Case T-435/13) ([1])

(2014/C 142/71)

Language of the case: English

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

([1]) OJ C 304, 19.10.2013.

Order of the General Court of 27 February 2014 — Fard and Sarkandi v Council

(Case T-439/13) ([1])

(2014/C 142/72)

Language of the case: English

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

([1]) OJ C 367, 14.12.2013.

Order of the General Court of 5 February 2014 — Hermann Trollius v ECHA

(Case T-466/13) ([1])

(2014/C 142/73)

Language of the case: English

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

([1]) OJ C 325, 9.11.2013.

Order of the General Court of 19 March 2014 — Stichting Sona and Nao v Commission

(Case T-505/13) ([1])

(2014/C 142/74)

Language of the case: Dutch

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

([1]) OJ C 344, 23.11.2013.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 26 March 2014 — CP v Parliament

(Case F-8/13) ([1])

(Civil service — Official — Head of Unit — Trial period — Non-confirmation of the post of Head of Unit — Reassignment to a post other than management — Internal rules of the Parliament)

(2014/C 142/75)

Language of the case: French

Parties

Applicant: CP (represented by: L. Levi and A. Tymen, lawyers)

Defendant: Parliament (represented by: O. Caisou-Rousseau and V. Montebello-Demogeot, Agents)

Re:

The application to annul the decision not to confirm the applicant in his post of Head of Unit and to transfer him to the Directorate General for Internal Policies

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 23 March 2012 by which the European Parliament did not confirm CP in his post as Head of Unit and transferred him with his post to the Directorate General for Internal Policies;*

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

3. *Orders the European Parliament to bear its own costs and to pay the costs incurred by CP.*

([1]) OJ C 108 13/04/2013, p. 39.

Order of the Civil Service Tribunal (Third Chamber) of 27 February 2014 — Walton v Commission

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

(Civil service — Temporary agent — Severance grant — Resignation found by judgment of the General Court of the European Communities — Determination of the date of resignation — Authority of res judicata — Decisions of the appointing authority becoming definitive in the absence of legal action — Non-observance of the prior administrative procedure — Manifestly inadmissible)

(2014/C 142/76)

Language of the case: French

Parties

Applicant: Robert Walton (Oxford, United Kingdom) (represented by: F. Moyse, lawyer)

Defendant: European Commission (represented by: J. Currall and A.-C. Simon, Agents)

Re:

Action for annulment of the rejection of the application for reimbursement of the unpaid sum which the Commission ought to pay to the applicant as the severance grant.

Operative part of the order

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

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

(1) OJ C 207, 20/07/2013, p. 58.

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