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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 6 May 2014 — European Commission v European Parliament, Council of the European Union

(Case C-43/12) ([1])

(Action for annulment — Directive 2011/82/EU — Cross-border exchange of information on road safety related traffic offences — Choice of legal basis — Article 87(2)(a) TFEU — Article 91 TFEU — Maintenance of the effects of the directive in case of annulment)

(2014/C 202/02)

Language of the case: French

Parties

Applicant: European Commission (represented by: T. van Rijn and R. Troosters, acting as Agents)

Defendants: European Parliament (represented by: F. Drexler and A. Troupiotis and by K. Zejdová, acting as Agents), Council of the European Union (represented by: J. Monteiro and E. Karlsson, acting as Agents)

Interveners in support of the defendant: Kingdom of Belgium (represented by: J.-C. Halleux, T. Materne, acting as Agents, and by S. Rodrigues and F. Libert, avocats, Ireland (represented by: E. Creedon, acting as Agent, and by N. Travers, Barrister-at-Law), Hungary (represented by: M.Z. Fehér and by K. Szíjjártó and K. Molnár, acting as Agents), Republic of Poland (represented by: B. Majczyna and M. Szpunar, acting as Agents), Slovak Republic (represented by: B. Ricziová, acting as Agent), Kingdom of Sweden (represented by: A. Falk and C. Stege, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell and S. Behzadi-Spencer, acting as Agents, and by J. Maurici and J. Holmes, Barristers)

Re:

Action for annulment — Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences (OJ 2011 L 288, p. 1) — Choice of legal basis — Replacement of the proposed legal basis in the field of common transport policy by another, in the field of police cooperation — Objectives of improving road safety — Maintaining the effects of the directive in the event of annulment

Operative part of the judgment

The Court:

1. *Annuls Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences;*

2. *Maintains the effects of Directive 2011/82 until the entry into force within a reasonable period of time — which may not exceed 12 months as from the date of delivery of the present judgment — of a new directive based on the correct legal basis, that is to say, Article 91(1)(c) TFEU;*

3. *Orders the European Parliament and the Council of the European Union to pay the costs;*

4. *Orders the Kingdom of Belgium, Ireland, Hungary, the Republic of Poland, the Slovak Republic, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Fifth Chamber) of 8 May 2014 (request for a preliminary ruling from the Cour de cassation — Luxembourg) — Caisse nationale des prestations familiales v Ulrike Wiering, Markus Wiering

(Case C-347/12) ([1])

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Regulation (EEC) No 574/72 — Family benefits — Allowance for bringing up a family — 'Elterngeld' — 'Kindergeld' — Calculation of the supplementary allowance)

(2014/C 202/03)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Caisse nationale des prestations familiales

Defendants: Ulrike Wiering, Markus Wiering

Re:

Request for a preliminary ruling — Cour de cassation du Grand-Duché de Luxembourg — Interpretation of Articles 1(u)(i), 4(1)(h) and 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended (OJ, English Special Edition 1971(II), p. 416) — Interpretation of Article 10(1)(b)(i) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (OJ, English Special Edition 1972(I), p. 160) — Concept of 'family benefit' — Worker residing in Germany and carrying out his profession in Luxembourg — Aggregation of rights to family benefits — Calculation of the differential allowance paid by Luxembourg — Account taken of the German education allowances 'Elterngeld' and 'Kindergeld'

Operative part of the judgment

Articles 1(u)(i) and 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, and Article 10(1)(b)(i) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, must be interpreted as meaning that, in a situation such as that in the main proceedings, for the purpose of calculating the supplementary allowance to which a migrant worker may be entitled in his or her Member State of employment, it is not possible to take account of all the family benefits received by the worker's family under the legislation of the Member State of residence since, subject to verifications to be carried out by the referring court, 'Elterngeld', provided for under German law, is not a benefit of the same kind, within the meaning of Article 12 of Regulation No 1408/71, as 'Kindergeld', provided for under German law, or the family allowances provided for under Luxembourg law.

([1]) OJ C 287, 22.9.2012.

Judgment of the Court (Tenth Chamber) of 8 May 2014 — Bolloré v European Commission

(Case C-414/12 P) ([1])

(Appeal — Competition — Cartels — Market in carbonless paper — Attributability of liability to the parent company for the infringement committed by its subsidiary — Direct participation of the parent company in the infringement — Equal treatment — Duration of the administrative procedure and legal proceedings — Reasonable period of time — Rights of the defence)

(2014/C 202/04)

Language of the case: French

Parties

Appellant: Bolloré (represented by: P. Gassenbach, C. Lemaire and O. de Juvigny, lawyers)

Other party to the proceedings: European Commission (represented by: W. Mölls and R. Sauer, acting as Agents, and N. Coutrelis, lawyer)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 27 June 2012 in Case T-372/10 *Bolloré* v *Commission*, by which the General Court dismissed an action for annulment or amendment of Commission Decision C (2010) 4160 final of 23 June 2010 relating to a proceeding under Article 101 TFUE and Article 53 of the EEA Agreement (Case COMP/36.212 — Carbonless paper) — Decision taken following annulment of a first decision — Attribution of liability for the infringement to the parent company as direct perpetrator — Fine — Lawfulness of infringements and penalties — Equal treatment — Reasonable period of time — Rights of the defence

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bolloré to pay the costs of the present appeal.*

([1]) OJ C 355, 17.11.2012.

Judgment of the Court (First Chamber) of 8 May 2014 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — Pelckmans Turnhout NV v Walter Van Gastel Balen NV and Others

(Case C-483/12) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Principles of equality and non-discrimination — Implementation of EU law — Scope of application of EU law — None — Lack of jurisdiction of the Court)

(2014/C 202/05)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicant: Pelckmans Turnhout NV

Defendants: Walter Van Gastel Balen NV, Walter Van Gastel NV, Walter Van Gastel Lifestyle NV, Walter Van Gastel Schoten NV

Intervening parties: Ministerraad

Re:

Request for a preliminary ruling — Grondwettelijk Hof — Belgium — Interpretation of Article 6(3) TEU, Articles 34, 35, 36, 56 and 57 TFEU, and Articles 15, 16, 20 and 21 of the Charter of Fundamental Rights of the European Union — National legislation requiring retail establishments to close one day per week — Exceptions provided for in respect of retailers established in certain places or marketing certain products

Operative part of the judgment

The Court of Justice of the European Union has no jurisdiction to answer the question referred by the Grondwettelijk Hof (Belgium).

([1]) OJ C 26, 26.1.2013.

Judgment of the Court (Second Chamber) of 8 May 2014 — Bimbo SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Panrico SA

(Case C-591/12 P) ([1])

(Appeal — Community trade mark — Opposition proceedings — Application for registration of the word mark BIMBO DOUGHNUTS — Earlier Spanish word mark DOGHNUTS — Relative grounds for refusal — Regulation (EC) No 40/94 — Article 8(1)(b) — Global assessment of the likelihood of confusion — Independent distinctive role of one element of a composite word mark)

(2014/C 202/06)

Language of the case: English

Parties

Appellant: Bimbo SA (represented by: C. Prat, abogado, and R. Ciullo, Barrister)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral and J. Crespo Carrillo, acting as Agents), Panrico SA (represented by: D. Pellisé Urquiza, abogado)

Re:

Appeal brought against the judgment of the General Court (Seventh Chamber) of 10 October 2012 in Case T-569/10 *Bimbo SA* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* by which the General Court dismissed an action for annulment brought by the applicant for the word mark 'BIMBO DOUGHNUTS' for goods in Class 30 against the decision R 838/2009-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 October 2010 dismissing the action against the decision of the Opposition Division refusing registration of that mark in opposition proceedings brought by the proprietor of the international and national word marks 'DONUT', 'DOGHNUTS' and 'DONUTS' and the international and national figurative marks containing the word 'donuts' for goods in Class 30 — Article 8(1)(b) of Regulation (EC) No 207/2009 — Likelihood of confusion

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 55, 23.2.2013.

Judgment of the Court (Fourth Chamber) of 8 May 2014 (request for a preliminary ruling from the Supreme Court — Ireland) — H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General

(Case C-604/12) (1)

(Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — Directive 2005/85/EC — Minimum standards on procedures in Member States for granting or withdrawing refugee status — National procedural rule under which an application for subsidiary protection may be considered only after an application for refugee status has been refused — Lawfulness — Procedural autonomy of the Member States — Principle of effectiveness — Right to good administration — Charter of Fundamental Rights of the European Union — Article 41 — Impartiality and expeditiousness of the procedure)

(2014/C 202/07)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: H. N.

Defendants: Minister for Justice, Equality and Law Reform, Ireland, Attorney General

Re:

Request for a preliminary ruling — Supreme Court — Interpretation of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) — Application for subsidiary protection status made by a person who had not previously made an application for refugee status

Operative part of the judgment

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refuges or as persons who otherwise need international protection and the content of the protection granted, the principle of effectiveness and the right to good administration do not preclude a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that, first, it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.

(1) OJ C 86, 23.3.2013.

Judgment of the Court (Fifth Chamber) of 8 May 2014 (request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg –Germany) — Technische Universität Hamburg-Harburg, Hochschul-Informations-System GmbH v Datenlotsen Informationssysteme GmbH

(Case C-15/13) ([1])

(Public supply contracts — Directive 2004/18/EC — Award of a contract without initiating a tendering procedure — In-house award — Contractor legally separate from the contracting authority — Condition of 'similar control' — Contracting authority and contractor not linked by a relationship of control — Third party public authority exercising partial control over the contracting authority and control over the contractor which could be qualified as 'similar' — 'Horizontal in-house transaction')

(2014/C 202/08)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht Hamburg

Parties to the main proceedings

Applicants: Technische Universität Hamburg-Harburg, Hochschul-Informations-System GmbH

Defendant: Datenlotsen Informationssysteme GmbH

Re:

Request for a preliminary ruling — Hanseatisches Oberlandesgericht Hamburg — Interpretation of the term 'public contract' in Article 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Possible inclusion of a contract between a company and a university subject to the control of the same public body, which is the public contracting authority within the meaning of the directive (horizontal in-house transaction) — Extent of the control of that public authority

Operative part of the judgment

Article 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that a contract for the supply of products concluded between (i) a university which is a contracting authority and whose purchases of products and services are controlled by a German Federal State, and (ii) an undertaking under private law, owned by the Federation and by Federal States, including the abovementioned Federal State, constitutes a public contract for the purposes of that provision, and must therefore be subject to the public procurement rules laid down in that directive.

([1]) OJ C 114, 20.4.2013.

Judgment of the Court (Ninth Chamber) of 8 May 2014 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Assica — Associazione Industriali delle Carni e dei Salumi, Kraft Foods Italia SpA v Associazione fra produttori per la tutela del 'Salame Felino' and Others

(Case C-35/13) ([1])

(Agriculture — Agricultural products and foodstuffs — Regulation (EEC) No 2081/92 — Article 2 — Protection of geographical indications and designations of origin — Material scope — Protection on national territory — Absence of Community registration — Consequences — Protection of designations relating to products for which there is no specific link between their characteristics and their geographical origin — Conditions)

(2014/C 202/09)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Assica — Associazione Industriali delle Carni e dei Salumi, Kraft Foods Italia SpA

Defendants: Associazione fra produttori per la tutela del 'Salame Felino', La Felinese Salumi SpA, Salumificio Monpiù Srl, Salumi Boschi Fratelli SpA, Gualerzi SpA, Alinovi Tullio di Alinovi Giorgio & C. Snc, Salumificio Gastaldi di Gastaldi Franco & C. Snc, Boschi Cav. Umberto SpA, Fereoli Mario & Figlio Snc, Salumificio Ducale Snc di Morini & Tortini, Fereoli Gino & Figlio Snc, Ronchei Srl, Salumificio B.R.B. Snc

Re:

Request for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 2 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) — Designation of origin which has not been registered and in respect of which there is no legally binding measure establishing the boundaries of the geographical area of production, the rules and regulations governing production, and any requirements which producers may have to satisfy in order to be entitled to use that designation — Possibility of prohibiting, as an act of unfair competition, the use within the national territory of that designation in respect of national products which do not originate in the places covered by the designation

Operative part of the judgment

Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as amended by Council Regulation (EC) No 535/97 of 17 March 1997, must be interpreted as meaning that it does not afford protection to a geographical designation which has not obtained a Community registration, but that that geographical designation may be protected, should the case arise, under national legislation concerning geographical designations relating to products for which there is no specific link between their characteristics and their geographical origin, provided, however, that, first, the implementation of that legislation does not undermine the objectives pursued by Regulation No 2081/92 as amended by Council Regulation (EC) No 535/97 and, secondly, it does not contravene the principle of the free movement of goods under Article 28 EC, matters which fall to be determined by the national court.

([1]) OJ C 86, 23.3.2013.

Judgment of the Court (Fifth Chamber) of 8 May 2014 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia –Italy) — Idrodinamica Spurgo Velox and Others v Acquedotto Pugliese SpA

(Case C-161/13) ([1])

(Public procurement — Water sector — Directive 92/13/EEC — Effective and rapid review procedures — Time-limits for bringing an action — Date from which time begins to run)

(2014/C 202/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicants: Idrodinamica Spurgo Velox, Giovanni Putignano e figli srl, Cogeir srl, Splendor Sud srl, Sceap srl

Defendant: Acquedotto Pugliese SpA

Intervening parties: Tundo srl, Giovanni XXIII Soc. coop. arl

Re:

Request for a preliminary ruling — Tribunale Amministrativo Regionale per la Puglia — Interpretation of Article 1, 2a, 2c and 2f of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Time-limit for bringing an action — Point at which time begins to run — National legislation under which the time-limit for bringing an action begins to run with effect from the date of the notification to the applicant of the decision definitively awarding the procurement contract — Where the applicant did not become aware, until after that notification, that the rules governing the award of public procurement contracts had been infringed

Operative part of the judgment

Article 1(1) and (3) and the last subparagraph of Article 2a(2) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as meaning that the time allowed for bringing an action for the annulment of the decision awarding a contract starts to run again where the contracting authority adopts a new decision, after the award decision has been adopted but before that contract is signed, which may affect the lawfulness of that award decision. That period starts to run from the communication of the earlier decision to the tenderers or, in the absence thereof, from when they became aware of that decision.

Where a tenderer becomes aware, after the expiry of the period for bringing an action laid down by national legislation, of an irregularity allegedly committed before the award decision was adopted, an action for the annulment of that decision may be brought only within that period, unless such a right is explicitly provided for by national law in accordance with Union law.

([1]) OJ C 189, 29.6.2013.

Action brought on 4 April 2014 — European Commission v Republic of Poland

(Case C-162/14)

(2014/C 202/11)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: A. Tokár and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— Declare that, by maintaining in force grounds for exclusion of economic operators from participation in tendering procedures, as contained in Article 24(1).1 and 1a of the Law governing public contracts (Prawo zamówień publicznych), which go beyond the substantive legal criteria of the exhaustive list of exclusions contained in Article 45 (2) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]), the Republic of Poland has failed to fulfil its obligations under Article 45(2) of that directive;

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

Pleas in law and main arguments

The grounds for excluding an economic operator from a tendering procedure by reason of his professional characteristics as laid down in Article 24(1).1 and 1a of the Law governing public contracts, that is to say, because of (i) the fact that that operator occasioned damage, confirmed by a decision having the force of law, by reason of the non-performance or improper performance of a contract, and (ii) the fact that the economic operator was a party to a contract which the contracting authority cancelled, terminated or renounced by reason of circumstances for which that economic operator bears responsibility, go beyond the scope of the grounds for exclusion set out in Article 45(2), in particular Article 45(2)(d), of Directive 2004/18/EC.

The interpretation of the latter ground was the subject-matter of the judgment of the Court of Justice in Case C-465/11 *Forposta and ABC Direct Contact*. The Court held in that judgment that the term 'grave professional misconduct' in Article 45 (2)(d) of Directive 2004/18/EC has to be construed as covering all wrongful conduct which has an impact on the professional credibility of the operator concerned. The Polish grounds for exclusion, however, are not limited solely to conduct on the part of economic operators which points to wrongful intent or negligence of a certain gravity on their part, but require the contracting authority automatically to exclude the operator concerned without carrying out a prior assessment of the wrongful conduct alleged against him.

([1]) OJ 2004 L 134, p. 114.

Action brought on 10 April 2014 — European Commission v Hungary

(Case C-179/14)

(2014/C 202/12)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: A. Tokár and E. Montaguti, agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should

1. Declare that Hungary has infringed Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ([1]) by adopting and maintaining in force the SZÉP card system governed by Government decree 55/2011 (IV. 12.), amended by Law CLVI of 2011, in so far as:

— Paragraph 13 of the decree on the SZÉP card, read in conjunction with Paragraph 2(2)(d) of Law XCVI of 1993, Paragraph 2(b) of Law CXXXII of 1997 and Paragraphs 1, 2(1) and (2), 55(1) and (3) and 64(1) of Law IV of 2006, precludes branches of companies from issuing SZÉP cards and thereby infringes Article 14(3) and Article 15(2)(b) of Directive 2006/123;

— Paragraph 13 of the decree on the SZÉP card, read in conjunction with Paragraphs 1, 2(1) and (2), 55(1) and (3) and 64(1) of Law IV of 2006, Paragraph 2(2)(d) of Law XCVI of 1993 and Paragraph 2(b) of Law CXXXII of 1997, does not recognise, for the purposes of the fulfilment of the conditions contained in Paragraph 13(a), (b) and (c) of the decree on the SZÉP card, the activity of groups of companies whose parent company is not a company incorporated under Hungarian law and whose constituent companies do not operate as companies under Hungarian law, and thereby infringes Article 15(1), (2)(b) and (3) of Directive 2006/123;

— Paragraph 13 of the decree on the SZÉP card, read in conjunction with Paragraphs 1, 2(1) and (2), 55(1) and (3) and 64(1) of Law IV of 2006, Paragraph 2(2)(d) of Law XCVI of 1993 and Paragraph 2(b) of Law CXXXII of 1997, retains the option for banks and other finance institutions to issue the SZÉP card since only those institutions are able to meet the conditions laid down by Paragraph 13 of the decree and thereby infringes Article 15(1), (2)(d) and (3) of Directive 2006/123;

— Paragraph 13 of the decree on the SZÉP card breaches Article 16 of Directive 2006/123 in that it makes the issue of the SZÉP card dependent on the existence of an establishment in Hungary.

2. In the alternative, declare that the SZÉP card system set up by Decree 55/2011 of 12 April 2011 breaches Articles 49 TFEU and 56 TFEU in so far as the terms of Directive 2006/123 mentioned in point 1 are not applicable to the provisions mentioned in that point.

3. Declare that the Erzsébet voucher system provided for by Law CLVI of 2011 and Law CIII of 2012 which establishes a monopoly in favour of public bodies for the issue of vouchers for cold meals which entered into force without any appropriate prior transition period or the necessary transitional measures, breaches Articles 49 and 56 TFEU in so far as Paragraphs 1, 5 and 477 of Law CLVI of 2011 and Paragraphs 2(1) and (2), 6 and 7 of Law CIII of 2012 lay down disproportionate restrictions.

4. Order Hungary to pay the costs.

Pleas in law and main arguments

In 2011 Hungary amended the legislation on the issue of vouchers for hot and cold meals, holidays and leisure granted by undertakings to workers, which are deemed to be non-salary allowances and therefore fall within a more advantageous tax and social security regime. That legislation entered into force on 1 January 2012 without an appropriate transitional period. Before those amendments the national legislation laid down no specific or special conditions as regards the issue of such meal vouchers or their form. Following the introduction of those amendments, however, a public body, the Magyar Nemzeti Üdülési Alapítvány (Hungarian National Leisure Foundation), acquired a monopoly position as regards the issue of paper vouchers for hot meals and paper or electronic vouchers for cold meals. Further, the legislation imposes especially strict conditions on the issue of vouchers for hot meals, holidays and leisure which can now only be issued electronically. The contested measures have led to the exclusion from the market of several traders who had operated on this market for many years, constitute a restriction on the entry into the market of new traders and prevent the free movement of services. Moreover, the SZÉP card system reserves the market *de facto* for three large banking groups set up under Hungarian law, while the issue of Erzsébet vouchers is only possible in the framework of a State monopoly. The fact that the income of the public body which enjoys that monopoly is intended to meet social expenditure is not sufficient justification for the restrictions introduced. Under the relevant provisions of the FEU Treaty and Directive 2006/123, it is only possible to introduce restrictions on freedom of establishment and the freedom to provide services if such restrictions are not discriminatory and are in the public interest, and provided that they meet the requirements of necessity and proportionality.

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

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 16 April 2014 — Skatteministeriet v DSV Road A/S

(Case C-187/14)

(2014/C 202/13)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendant: DSV Road A/S

Questions referred

1) Is Article 203(1) of the Customs Code ([1]) to be interpreted as meaning that there is removal from customs supervision in a situation such as that of the main proceedings, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

2) Is the Article 204 of the Customs Code ([2]) to be interpreted as meaning that customs debt arises in a situation such as that of the main proceedings, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

3) Is Article 859 of the implementing provisions ([3]) to be interpreted as meaning that, in the circumstances of the main proceedings, there is an infringement of obligations which has had no significant effect on the proper course of the customs procedure, if it is assumed that (a) each of the two generated transits in 2007 and 2008 respectively concerned the same goods, or (b) it cannot be documented that they were the same goods?

4) Can the first Member State into which the goods were imported refuse the taxable person designated by the Member State a deduction of the import VAT pursuant to Article 168(e) of the VAT Directive ([4]), where the import VAT is charged to a carrier of the goods in question who is not the importer and owner of the goods but has simply transported and been in charge of the customs dispatch of the consignment as part of its freight forwarding operations, which are subject to VAT?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
([3]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).
([4]) 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 Eparkhiako Dikastirio Lefkosias (District Court, Nicosia, Cyprus) lodged on 16 April 2014 — Bogdan Chain v Atlanco Ltd

(Case C-189/14)

(2014/C 202/14)

Language of the case: Greek

Referring court

Eparkhiako Dikastirio Lefkosias (District Court, Nicosia, Cyprus)

Parties to the main proceedings

Applicant: Bogdan Chain

Defendant: Atlanco Ltd

Questions referred

1) Should the fact that the scope of Article 13(1)(b) of Regulation (EC) No 883/2004 ([1]) and of Article 14(5)(b) of the implementing Regulation (EC) No 987/2009 ([2]) covers 'a person who normally pursues an activity as an employed person in two or more Member States' be interpreted as meaning that it also covers the situation where a person is employed, under an employment contract with only one employer who is established in a Member State of the European Union, with a view to working in two other Member States even if:

   i. the second Member State in which the person is to be employed has not yet been determined and is not foreseeable when an application is made for the issue of the A1 form [statement of applicable legislation] due to the specific nature of the work, i.e. the temporary employment of workers for short periods of time in various Member States?

   or

   ii. the duration of employment in the first and/or second Member State cannot yet be determined or is unforeseeable due to the specific nature of the work, i.e. the temporary employment of workers for short periods of time in various Member States?

2) If the answer to the questions stated under point 1 above is in the affirmative, is it possible to interpret Article 14(5)(b) of the implementing Regulation (EC) No 987/2009 in such a way that, for the purpose of applying Article 13(1)(b) of Regulation (EC) No 883/2004, the reference to 'a person who normally pursues an activity as an employed person in two or more Member States' also applies to a situation in which there are periods of inactivity between two jobs undertaken in different Member States, during which periods the employee is still covered by the same employment agreement?

3) If the answer to the questions stated under point 1 above is in the affirmative, should the fact that the competent Member State does not issue the A1 form preclude application of Article 13(1)(b) of Regulation (EC) No 883/2004?

4) Do Articles 16(5) and/or 20(1) or any other article of the implementing Regulation (EC) No 987/2009 require the Member State, based on a preliminary decision relating to the applicable law from the Member State of stay, to issue the A1 form on its own initiative without the need for the employer concerned to file an additional application to the competent 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]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

Request for a preliminary ruling from the Helsingin hovioikeus (Finland) lodged on 22 April 2014 — Valev Visnapuu v Kihlakunnansyyttäjä (Helsinki), Suomen Valtio — Tullihallitus

(Case C-198/14)

(2014/C 202/15)

Language of the case: Finnish

Referring court

Helsingin hovioikeus

Parties to the main proceedings

Applicant: Valev Visnapuu

Defendants: Kihlakunnansyyttäjä (Helsinki), Suomen Valtio — Tullihallitus

Questions referred

1. Is the permissibility of the Finnish system of beverage packaging duty, under which beverage packaging duty is levied if the packaging is not part of a return system, to be examined in the light of Article 110 TFEU instead of Article 34 TFEU? The return system in question must be a deposit-based system under which the packer of the alcoholic beverages or the importer alone or in accordance with the provisions laid down in the Law on Waste or in the corresponding legislation of the Åland Islands takes care of the reuse or recycling of beverage packagings so that the packaging is refilled or recovered as raw material.

2. If the answer to Question 1 is affirmative, is that system compatible with Articles 1(1), 7 and 15 of Directive 94/62/EC ([1]) when examined in combination with Article 110 TFEU?

3. If the answer to Question 1 is negative, is that system compatible with Articles 1(1), 7 and 15 of Directive 94/62/EC when examined in combination with Article 34 TFEU?

4. If the answer to Question 3 is negative, is the Finnish beverage packaging duty system to be regarded as authorised on the basis of Article 36 TFEU?

5. May the requirement that a person using alcoholic beverages for commercial or other business purposes needs a separate retail sale licence for his activity relating to imported alcoholic beverages, in a situation in which a Finnish buyer has purchased via the internet or another method of distance selling from a vendor in another Member State alcoholic beverages which the vendor transports to Finland, be regarded as concerning the existence of a monopoly or as part of the operation of a monopoly, so that the provisions of Article 34 TFEU are not therefore an impediment to it, but it is to be evaluated in the light of Article 37 TFEU?

6. If the answer to Question 5 is affirmative, is that licence requirement in such a case compatible with the conditions laid down for State monopolies of a commercial character in Article 37 TFEU?

7. If the answer to Question 5 is negative and Article 34 TFEU is applicable to the case, is the Finnish system, under which, where alcoholic beverages are ordered from abroad via the internet or another means of distance selling, their import for personal consumption is permitted only if the person ordering the goods or a person unconnected to the vendor transported the alcoholic beverages into Finland, and under which a licence in accordance with the Law on Alcohol is otherwise required for the import, a quantitative restriction on imports or a measure having equivalent effect contrary to Article 34 TFEU?

8. If the answer to the preceding question is affirmative, can the system be considered justified and proportionate in order to protect the health and life of humans?

([1]) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

Request for a preliminary ruling from the Cour administrative d'appel de Nantes (France) lodged on 13 February 2014 — Adiamix v Direction départementale des finances publiques — Pôle Gestion fiscale

(Case C-202/14)

(2014/C 202/16)

Language of the case: French

Referring court

Cour administrative d'appel de Nantes

Parties to the main proceedings

Appellant: Adiamix

Defendant: Direction départementale des finances publiques — Pôle Gestion fiscale

Question referred

The Court of Justice is requested to rule on the validity of European Commission Decision 2004/343/EC of 16 December 2003 on the exemption scheme established by Article 44 *septies* of the Code Général des Impôts concerning the takeover of firms in difficulty ([1]), with respect to classification of that scheme as an existing aid scheme.

([1]) Commission Decision of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty (OJ 2004 L 108, p. 38).

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 25 April 2014 — Hotel Sava Rogaška, gostinstvo, turizem in storitve, d.o.o. v The Republic of Slovenia — Ministrstvo za kmetijstvo in okolje

(Case C-207/14)

(2014/C 202/17)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Hotel Sava Rogaška, gostinstvo, turizem in storitve, d.o.o.

Defendant: The Republic of Slovenia — Ministrstvo za kmetijstvo in okolje

Questions referred

1. Is Article 8(2) of Directive 2009/54/EC ([1]) of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters to be interpreted in such as way that 'natural mineral water from one and the same spring' means:

   a) water from one and the same point of exit, but not water that is drawn from different exits even when such water originates in the same aquifer or body of groundwater within the meaning of the definitions of 'aquifer' and 'body of groundwater' given in Directive 2000/60/EC ([2]), or

   b) water from one and the same point of exit, but not water that is drawn from different exits even when such water originates in the same aquifer or body of groundwater within the meaning of the definitions of 'aquifer' and 'body of groundwater' given in Directive 2000/60/EC, although, in interpreting the expression, account should be taken of factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits (such as its chemical and microbiological composition), hydraulic connectivity between exits and the confinement of the water held by the aquifer, or

   c) water springing from the same aquifer or body of groundwater within the meaning of the definitions of 'aquifer' and 'body of groundwater' given in Directive 2000/60/EC irrespective of whether it reaches the surface at a number of different exits, or;

   d) water springing from the same aquifer or body of groundwater within the meaning of the definitions of 'aquifer' and 'body of groundwater' given in Directive 2000/60/EC irrespective of whether it reaches the surface at a number of different exits, although, in interpreting the expression, account should be taken of factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits (such as its chemical and microbiological composition), hydraulic connectivity between exits and the confinement of the water held by the aquifer?

2. If none of the suggested answers to question 1 should be correct, must the interpretation of the notion of 'natural mineral water from one and the same spring' take into account factors such as the distance between exits, the depth of the exits, the specific qualities of the water drawn from individual exits, hydraulic connectivity between exits and the confinement of the water held by the aquifer?

([1]) OJ 2009 L 164, p. 45.
([2]) OJ 2000 L 327, p. 1.

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 25 April 2014 — NLB Leasing d.o.o. v The Republic of Slovenia

(Case C-209/14)

(2014/C 202/18)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: NLB Leasing d.o.o.

Defendant: The Republic of Slovenia — Ministrstvo za finance

Questions referred

1. Having regard to circumstances such as those of the case in the main proceedings, on a proper construction of Article 90(1) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax, does the return of the property that is the object of a lease agreement (immovable property), as a result of the lessee's failure to perform its obligations in full, into the possession of the lessor for the purposes of its subsequent sale and performance of the other obligations under the lease agreement, once all the payment instalments under the lease have fallen due, constitute a case of 'cancellation, refusal or total or partial non-payment' after the supply has taken place, in consequence of which the basis of assessment is to be reduced accordingly?

2. On a proper construction of Articles 2, 14 and 24(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must the financial consideration relating to a purchase option be regarded as consideration for the performance of the agreement and as a supply of goods and, as such, subject to VAT, when it represents the greater part of the total amount due under a financial leasing agreement and is paid by the lessee to the lessor in such a way that, as a result of the failure in part to perform obligations, the lessor regains possession of the subject-matter of the lease agreement, sells it to a third party and pays the excess of the sale price to the lessee after deducting, in the final account, the sum relating to the purchase option, or must it be regarded as consideration for the service of the rent of, or for the use of, the property (and, as such, subject to VAT by law or at the option of the taxable persons), or must it rather be regarded as compensation for damage for the termination of the agreement, paid in order to make good the loss caused by the lessee's failure to perform and having no direct connection with any provision of services for consideration and, as such, not subject to VAT?

3. If the answer to the second question should be that the sum in question is to be regarded as consideration for the supply of goods and the performance of the agreement, does the principle of the neutrality of VAT preclude a lessor's having to pay output VAT twice, that is to say, once on the conclusion of a financial leasing agreement (including in respect of the purchase option, which represented the greater part of the contract value) and, as a result of the lessee's failure to fulfil its obligations in full, a second time, on the subsequent sale of the immovable property in question to a third party, even though the liability to pay VAT on the second supply has been passed on to the lessee in the final account?

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

Order of the President of the Court of 13 March 2014 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Polska Izba Informatyki i Telekomunikacji v Prezes Urzędu Komunikacji Elektronicznej, *in the presence of:* P4 Sp. z o.o., Krajowa Izba Gospodarcza Elektroniki i Telekomunikacji

(Case C-633/13) ([1])

(2014/C 202/19)

Language of the case: Polish

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

([1]) OJ C 71, 8. 3. 2014.

GENERAL COURT

Judgment of the General Court of 14 May 2014 — Donau Chemie v Commission

(Case T-406/09) ([1])

(Competition — Agreements, decisions and concerted practices — Market for calcium carbide and magnesium for the steel and gas industries in the EEA, with the exception of Ireland, Spain, Portugal and the United Kingdom — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Article 23 of Regulation (EC) No 1/2003 — 2006 Guidelines on the method of setting fines — Mitigating circumstances — Cooperation during the administrative procedure — Obligation to state reasons — Equal treatment — Proportionality — Ability to pay)

(2014/C 202/20)

Language of the case: German

Parties

Applicant: Donau Chemie AG (Vienna, Austria) (represented by: S. Polster, W. Brugger and M. Brodey, lawyers)

Defendant: European Commission (represented by: initially, N. von Lingen and M. Kellerbauer, acting as Agents, and by T. Eilmansberger, Professor, and subsequently by N. von Lingen and M. Kellerbauer)

Re:

Application for annulment of Article 2 of Commission Decision C(2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.396 – Calcium carbide and magnesium-based reagents for the steel and gas industries), in so far as it relates to the applicant, and, in the alternative, for reduction of the amount of the fine imposed on it by that decision.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Donau Chemie AG under Article 2(c) of Commission Decision C(2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.396 – Calcium carbide and magnesium-based reagents for the steel and gas industries) at EUR 4,35 million;*

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

3. *Orders Donau Chemie to bear 90 % of its own costs and to pay 90 % of the European Commission's costs, and the Commission to bear 10 % of its own costs and to pay 10 % of the costs incurred by Donau Chemie.*

([1]) OJ C 312, 19.12.2009.

Judgment of the General Court of 14 May 2014 — Reagens v Commission

(Case T-30/10) ([1])

(Competition — Agreements, decisions and concerted practices — European market for tin heat stabilisers — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Price fixing, market allocation and exchange of commercially sensitive information — Duration of the infringement — Fines — 2006 Guidelines on the method of setting fines — Basic amount — Mitigating circumstances — Ability to pay — Equal treatment — Proportionality — Unlimited jurisdiction — Appropriateness of the amount of the fine)

(2014/C 202/21)

Language of the case: English

Parties

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

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

Re:

Action 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, a reduction in the amount of the fine imposed on the applicant.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

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

([1]) OJ C 80, 27.3.2010.

Judgment of the General Court of 13 May 2014 — Peter McBride and Others v Commission

(Joined Cases T-458/10 to T-467/10 and T-471/10) ([1])

(Fisheries — Measures to conserve fishery resources — Sectoral restructuring — Requests to increase the Multiannual Guidance Programme objectives to improve safety on board — Ireland's request concerning various vessels — Decision adopted following the General Court's annulment of the initial decision concerning the same procedure — New refusal decision — Lack of competence of the Commission)

(2014/C 202/22)

Language of the case: English

Parties

Applicants: Peter McBride and Others (Downings, Ireland) (Case T-458/10); Hugh McBride (Downings) (T-459/10); Mullglen Ltd (Largy, Ireland) (T-460/10); Cathal Boyle (Fiafannon, Ireland) (Case T-461/10); Thomas Flaherty (Kilronan, Ireland) (Case T-462/10); Ocean Tawlers Ltd (Killybegs, Ireland) (Case T-463/10); Patrick Fitzpatrick (Killeany, Ireland) (Case T-464/10); Eamon McHugh (Killybegs) (Case T-465/10); Eugene Hannigan (Killybegs) (Case T-466/10); Larry Murphy (Castletownbere, Ireland) (Case T-467/10); Brendan Gill (Lifford, Ireland) (Case T-471/10) (represented initially by A. Collins SC, N. Travers, Barrister and D. Barry, Solicitor, and subsequently by N. Travers, D. Barry and E. Barrington, Barrister)

Defendant: European Commission (represented in Cases T-458/10 to T-467/10, initially by K. Banks, A. Bouquet and A. Szmytkowska, and subsequently by A. Bouquet and A. Szmytkowska, acting as Agents, assisted by B. Doherty, Barrister, and, in Case T-471/10, by A. Bouquet and A. Szmytkowska, assisted by B. Doherty)

Re:

Action for the annulment of Commission decisions C(2010) 4758, C(2010) 4748, C(2010) 4757, C(2010) 4751, C(2010) 4764, C(2010) 4750, C(2010) 4761, C(2010) 4767, C(2010) 4754, C(2010) 4753 and C(2010) 4752 of 13 July 2010 rejecting the request submitted by Ireland seeking to increase the Multiannual Guidance Programme IV objectives for the period from 1 January 1997 to 31 December 2001 to take into account improvements on safety relating to the vessels Peader Elaine II, Heather Jane II, Pacelli, Marie Dawn, Westward Isle, Golden Rose, Shauna Ann, Antartic, Niamh Eoghan, Menhaden and Brendelen, belonging to Peter McBride, Hugh McBride, Mullglen, Mr Boyle, Mr Flaherty, Ocean Trawlers, Mr Fitzpatrick, Mr McHugh, Mr Hannigan, Mr Murphy and Mr Gill, respectively, adopted following the annulment of Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase the MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 metres in length overall (OJ 2003 L 90, p. 48) as a result of the judgments of the Court of Justice in Joined Cases C-373/06 P, C-379/06 P and C-382/06 P *Flaherty and Others* v *Commission* [2008] ECR I-2649 and of the General Court in Joined Cases T-218/03 to T-240/03 *Boyle and Others* v *Commission* [2006] ECR II-1699.

Operative part of the judgment

The Court:

1. *Annuls Commission Decisions C(2010) 4758, C(2010) 4748, C(2010) 4757, C(2010) 4751, C(2010) 4764, C(2010) 4750, C(2010) 4761, C(2010) 4767, C(2010) 4754, C(2010) 4753 et C(2010) 4752 of 13 July 2010 rejecting the request submitted by Ireland seeking to increase the objectives of the Multiannual Guidance Programme IV in order to take into account improvements on safety relating to the applicants' vessels;*

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

([1]) OJ C 328, 4.12.2010.

Judgment of the General Court of 14 May 2014 — Adler Modemärkte v OHIM — Blufin (MARINE BLEU)

(Case T-160/12) ([1])

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

(2014/C 202/23)

Language of the case: German

Parties

Applicant: Adler Modemärkte AG (Haibach, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 February 2012 (case R 1955/2010-2) relating to opposition proceedings between Blufin SpA and Adler Modemärkte AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *orders Adler Modemärkte AG to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

3. *orders Blufin SpA to bear its own costs.*

([1]) OJ C 184, 23.6.2012.

Judgment of the General Court of 14 May 2014 — Germany v Commission

(Case T-198/12) ([1])

(Approximation of laws — Directive 2009/48/EC — Safety of toys — Limit values for nitrosamines, nitrosatable substances, lead, barium, arsenic, antimony and mercury in toys — Commission decision not to approve fully the maintenance of national provisions derogating therefrom — Time-limited approval — Proof of a higher level of protection for human health offered by the national provisions)

(2014/C 202/24)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and A. Wiedmann, acting as Agents)

Defendant: European Commission (represented by: M. Patakia and G. Wilms, acting as Agents)

Re:

Application for annulment in part of Commission Decision 2012/160/EU of 1 March 2012 concerning the national provisions notified by the German Federal Government maintaining the limit values for lead, barium, arsenic, antimony, mercury and nitrosamines and nitrosatable substances in toys beyond the entry into application of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys (OJ 2012 L 80, p. 19).

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the lawfulness of Commission Decision 2012/160/EU of 1 March 2012 concerning the national provisions notified by the German Federal Government maintaining the limit values for lead, barium, arsenic, antimony, mercury and nitrosamines and nitrosatable substances in toys beyond the entry into application of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys, in so far as it concerns barium;*

2. *Annuls the second paragraph of Article 1 of Decision 2012/160 in so far as it approved the national provisions setting the limit values for lead only until 21 July 2013;*

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

4. *Orders the European Commission to bear its own costs and to pay one half of the costs incurred by the Federal Republic of Germany.*

([1]) OJ C 200, 7.7.2012.

Judgment of the General Court of 20 May 2014 — Argo Group International Holdings v OHIM — Arisa Assurances (ARIS)

(Case T-247/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark ARIS — Earlier Community figurative mark ARISA ASSURANCES S.A. — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Coexistence of earlier marks on the market — Principle of American law known as the 'Morehouse defense' — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 202/25)

Language of the case: English

Parties

Applicant: Argo Group International Holdings Ltd (Hamilton, Bermuda, United Kingdom) (represented by: R. Hoy, S. Levine and N. Edbrooke, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Arisa Assurances SA (Luxembourg, Luxembourg) (represented by: H. Bock, lawyer)

Re:

Action against the decision of the Second Board of Appeal of OHIM of 9 March 2012 (Case R 193/2011-2), concerning opposition proceedings between Arisa Assurances SA and Argo Group International Holdings Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Argo Group International Holdings Ltd to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 15 May 2014 — Katjes Fassin v OHIM (Yoghurt-Gums)

(Case T-366/12) ([1])

(Community trade mark — Application for Community figurative mark Yoghurt-Gums — Absolute grounds for refusal — Distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2014/C 202/26)

Language of the case: German

Parties

Applicant: Katjes Fassin GmbH & Co. KG (Emmerich am Rhein, Germany) (represented by: T. Schmitz, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 June 2012 (Case R 523/2012-4) concerning registration of the figurative sign Yoghurt-Gums as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Katjes Fassin GmbH & Co. KG to pay the costs.*

([1]) OJ C 319, 20.10.2012.

Judgment of the General Court of 20 May 2014 — De Luca v Commission

(Case T-200/13 P) ([1])

(Appeal — Civil service — Officials — Appointment — Classification in grade — Appointment to a post in a higher function group following an open competition — Dismissal of the appeal at first instance after it was referred back by the General Court — Entry into force of the new Staff Regulations — Transitional provisions — Article 12(3) of Annex XIII to the Staff Regulations)

(2014/C 202/27)

Language of the case: French

Parties

Appellant: Patrizia De Luca (Brussels, Belgium) (represented by: initially S. Orlandi and J.-N. Louis, lawyers, then S. Orlandi)

Other parties to the proceedings: European Commission (represented by: J. Currall, Agent); and Council of the European Union (represented by: M. Bauer and A. Bisch, Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 30 January 2013 in Case F-20/06 RENV *De Luca* v *Commission*, not yet published, requesting that that judgment be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Patrizia De Luca and the European Commission to each bear their own costs in the two proceedings before the General Court and in the two proceedings before the Civil Service Tribunal;*

3. *Orders the Council of the European Union to bear its own costs in the two proceedings before the General Court and in the two proceedings before the Civil Service Tribunal.*

([1]) OJ C 171, 15.6.2013.

Order of the General Court of 6 May 2014 — Unión de Almacenistas de Hierros de España v Commission

(Case T-419/13) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to two Spanish competition proceedings — Implied refusal of access — Explicit decision adopted after the action was brought — No need to adjudicate)

(2014/C 202/28)

Language of the case: Spanish

Parties

Applicant: Unión de Almacenistas de Hierros de España (Madrid, Spain) (represented by: A. Creus Carreras, A. Valiente Martin and C. Maldonado Márquez, lawyers)

Defendant: European Commission (represented by: J. Baquero Cruz and F. Clotuche-Duvieusart, Agents)

Re:

Application for annulment of the Commission's implicit decision refusing to grant the applicant access to certain documents relating to correspondence exchanged between the Commission and the Comisión Nacional de la Competencia (CNC, Spanish national competition authority) with regard to two national proceedings initiated by the CNC.

Operative part of the order

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

2. *There is no longer any need to adjudicate on the applications to intervene.*

3. *The European Commission shall bear its own costs and those of Unión de Almacenistas of Hierros de España.*

4. *The Federal Republic of Germany and the Kingdom of Spain shall bear their own costs.*

([1]) OJ C 304, 19.10.2013.

Order of the President of the General Court of 6 May 2014 — Frucona Košice v Commission

(Case T-103/14 R)

(Application for interim measures — State aid — Alcohol and spirits — Cancellation of a tax debt in a collective bankruptcy procedure — Decision declaring the aid incompatible with the internal market and ordering its recovery — Application for suspension of operation — Lack of any urgency — Prima facie case not made out)

(2014/C 202/29)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: K. Walkerová and L. Armati, acting as Agents)

Re:

Application for suspension of the operation of Commission Decision C(2013) 6261 final of 16 October 2013 on State aid SA.18211 (C 25/2005) (ex NN 21/2005), implemented by the Slovak Republic for Frucona Košice a.s., in so far as it orders the Slovak Republic to recover the aid.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The application for interim measures is dismissed.*

Action brought on 27 March 2014 — Ben Ali v Council

(Case T-200/14)

(2014/C 202/30)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union

Form of order sought

— Adopt a measure of organisation of procedure under Article 64 of the General Court's Rules of Procedure, to ensure that the Commission disclose 'all documents relating to the adoption' of the contested regulation;

— Annul, firstly, Council Decision 2014/49/CFSP of 30 January 2014 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia and, secondly, Council Implementing Regulation (EU) No 81/2014 of 30 January 2014 implementing Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia;

— order the Council of the European Union to pay the applicant an overall sum of EUR 100 000 in compensation for all forms of damage;

— order the Council of the European Union to pay the applicant a sum of EUR 30 000 for legal expenses in support of the application and, in addition, in accordance with Article 91 of the Rules of Procedure for recoverable costs incurred;

— order the Council of the European Union to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are in essence identical or similar to those relied on in Case T-301/11 Ben Ali v Council. ([1])

([1]) OJ 2011, C 226, p. 29.

Action brought on 28 March 2014 — Aluwerk Hettstedt v ECHA

(Case T-207/14)

(2014/C 202/31)

Language of the case: English

Parties

Applicant: Aluwerk Hettstedt GmbH (Hettstedt, Germany) (represented by: M. Ahlhaus and J. Schrotz, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— Declare the decision No SME(2013) 4525 of 21 January 2014 of the European Chemicals Agency as well as invoice No 10046841 of 23 January 2014 to be void; and

— Order the defendant to bear all costs including the applicant's 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 the defendant's lack of competence

   — The defendant has not been competent to adopt the contested decision SME(2013) 4525. Neither Regulation (EC) 1907/2006 ([1]) nor Regulation (EC) 340/2008 ([2]) entitles the defendant to issue a separate decision as to whether a registrant complies with the SME criteria.

2. Second plea in law, alleging the violation of Regulation No 1 of 15 April 1958

— In its entire communication with the applicant, the defendant disregarded its obligation to address a person subject to the sovereignty of a Member State in the official language of that state. This breach of law has prevented the applicant from fulfilling the requirements demanded on him with regard to proving its status as a small enterprise.

3. Third plea in law, alleging that the contested decisions are unjustified and the administrative charge levied upon the applicant is disproportionate

— The contested decisions are wrong on the substance. The applicant was entitled to benefit from a fee reduction according to Regulation (EC) 340/2008. The defendant's invoice regarding the administrative charge is not justified because the administrative charge has been levied upon the applicant on the basis of an erroneous procedure. The administrative charge lacks an appropriate legal basis and is disproportionate.

([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

([2]) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

Action brought on 28 March 2014 — Richard Anton v ECHA

(Case T-208/14)

(2014/C 202/32)

Language of the case: English

Parties

Applicant: Richard Anton KG (Grâfelfing, Germany) (represented by: M. Ahlhaus and J. Schrotz, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— Declare the decision No SME(2013) 4524 of 21 January 2014 of the European Chemicals Agency as well as invoice No 10046845 of 23 January 2014 to be void; and

— Order the defendant to bear all costs including the applicant's 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 alleging the defendant's lack of competence

— The defendant has not been competent to adopt the contested decision SME(2013) 4524. Neither Regulation (EC) 1907/2006 ([1]) nor Regulation (EC) 340/2008 ([2]) entitles the defendant to issue a separate decision as to whether a registrant complies with the SME criteria.

2. Second plea in law, alleging the violation of Regulation No 1 of 15 April 1958

— In its entire communication with the applicant, the defendant disregarded its obligation to address a person subject to the sovereignty of a Member State in the official language of that state. This breach of law has prevented the applicant from fulfilling the requirements demanded on him with regard to proving its status as a small enterprise.

3. Third plea in law, alleging that the contested decisions are unjustified and the administrative charge levied upon the applicant is disproportionate

   — The contested decisions are wrong on the substance. The applicant was entitled to benefit from a fee reduction according to Regulation (EC) 340/2008. The defendant's invoice regarding the administrative charge is not justified because the administrative charge has been levied upon the applicant on the basis of an erroneous procedure. The administrative charge lacks an appropriate legal basis and is disproportionate.

([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

([2]) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

Action brought on 9 April 2014 — Gmina Kosakowo v Commission

(Case T-217/14)

(2014/C 202/33)

Language of the case: Polish

Parties

Applicant: Gmina Kosakowo (Municipality of Kosakowo) (Kosakowo, Poland) (represented by: M. Leśny, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the decision taken by the European Commission on 11 February 2014 in Case SA. 35388 by which Poland was ordered to recover from the Gdynia-Kosakowo airport improperly paid State aid;

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

Pleas in law and main arguments

In support of its action the applicant puts forward three pleas in law.

1. First plea in law:

   — Mistaken determination of the factual situation taken as the basis on which the contested decision was adopted;

2. Second plea in law:

   — Breach of Article 107(1) TFEU through the unfounded assumption that the Municipality of Kosakowo had handed over public aid in a manner contrary to that provision in a situation in which the assumption of shares by that entity in the company Port Lotniczy Gdynia-Kosakowo sp. z o.o. constituted the settlement of a transaction relating to a contract for the lease of land; in addition, improper conduct by the European Commission of the private investor test;

3. Third plea in law:

   — Breach of the following procedural provisions: of Article 107(1) TFEU, in conjunction with Article 5(1) of Council Regulation (EC) No 659/1999, through the improper conduct of the private investor test; of Article 7(5), in conjunction with Article 13(1), of Council Regulation (EC) No 659/1999 by reason of the mistaken determination of the amount of aid to be reimbursed, to which was also added expenditure for security and infrastructure; and also of the second paragraph of Article 296 TFEU because of the lack of proper reasoning for the contested decision, which lacks elements essential to enable its grounds to be determined.

Appeal brought on 15 April 2014 by the European Medicines Agency against the judgment of the Civil Service Tribunal of 5 February 2014 in Case F-29/13 Drakeford v EMA

(Case T-231/14 P)

(2014/C 202/34)

Language of the case: French

Parties

Appellant: European Medicines Agency (EMA) (represented by T. Jabłoński and N. Rampal Olmedo, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Other party to the proceedings: David Drakeford (Dublin, Ireland)

Form of order sought by the appellant

— Set aside the judgment of the Civil Service Tribunal in Case F-29/13 in so far as it annuls the decision of the EMA not to renew the respondent's contract;

— grant the form of order sought at first instance by the appellant: to dismiss the action as entirely unfounded;

— order the respondent to pay the costs of these appeal proceedings and of the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

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

1. First plea in law, alleging errors of law by the Civil Service Tribunal with regard to the interpretation of the first paragraph of Article 8 of the Conditions of Employment of Other Servants of the European Union, in so far as it held that the words 'any further renewal' should be interpreted as referring to any process that leads to temporary staff, within the meaning of Article 2(a) of the Conditions of Employment of Other Servants of the European Union, at the end of their engagement for a fixed period, continuing, in that capacity, their employment relationship with their employer, even if such renewal is accompanied by grade progression or a change in the duties performed.

2. Second plea in law, alleging error of law by the Civil Service Tribunal as regards the stating of the exception to the interpretation of the first paragraph of Article 8 of the Conditions of Employment of Other Servants of the European Union.

3. Third plea in law, alleging error of law on the part of the Civil Service Tribunal in so far as it used its unlimited jurisdiction.

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