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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 13 May 2014 — European Commission v Kingdom of Spain

(Case C-184/11) ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court finding a failure to fulfil obligations — Non-implementation — Article 260 TFEU — State aid — Recovery — Unlawful aid scheme incompatible with the internal market — Individual aid granted under that scheme — Pecuniary penalty)

(2014/C 212/02)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: C. Urraca Caviedes and B. Stromsky, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Failure of a Member State to fulfil obligations — Article 260 TFEU — Failure to comply with the judgment of the Court of 14 December 2006 in Joined Cases C-485/03 to C-490/03 *Commission* v *Spain* ([2006] ECR I-11887) — Application to impose a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, by the date on which the period prescribed in the reasoned opinion issued by the Commission on 26 June 2008 expired, all the measures necessary to comply with the judgment in Joined Cases C-485/03 to C-490/03 Commission v Spain EU:C:2006:777, the Kingdom of Spain has failed to fulfil its obligations under Article 260(1) TFEU;*

2. *Orders the Kingdom of Spain to pay to the European Commission, into the 'European Union own resources' account, a lump sum of EUR 30 million;*

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

([1]) OJ C 186, 25.6.2011.

Judgment of the Court (Eighth Chamber) of 15 May 2014 — Louis Vuitton Malletier v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Friis Group International ApS

(Case C-97/12 P) ([1])

(Appeal — Community trade mark — Invalidity proceedings — Figurative mark representing a locking device — No distinctive character — Partial invalidity — Regulation (EC) No 40/94 — Article 7(1)(b))

(2014/C 212/03)

Language of the case: English

Parties

Appellant: Louis Vuitton Malletier (represented by: P. Roncaglia, G. Lazzeretti, M. Boletto, E. Gavuzzi and N. Parrotta, avvocati)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), Friis Group International (represented by: C. Type Jardorf, advokat)

Re:

Appeal against the judgment of the General Court (Third Chamber) of 14 December 2011 in Case T-237/10 *Vuitton Malletier* v *OHIM and Friis Group International (Representation of a locking device)*, by which the General Court partially granted an action for annulment brought by the proprietor of the Community figurative mark representing a locking device, for goods in Classes 9, 14, 18 and 25, against Decision No R 1590/2008-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 24 February 2010, partially annulling the decision of the Cancellation Division which rejected the application for a declaration of invalidity of that mark

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Dismisses the cross-appeal;*

3. *Orders Louis Vuitton Malletier, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Friis Group International ApS each to bear its own costs.*

([1]) OJ C 126, 28.4.2012.

Judgment of the Court (Grand Chamber) of 13 May 2014 (request for a preliminary ruling from the Audiencia Nacional — Spain) — Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González

(Case C-131/12) ([1])

(Personal data — Protection of individuals with regard to the processing of such data — Directive 95/46/EC — Articles 2, 4, 12 and 14 — Material and territorial scope — Internet search engines — Processing of data contained on websites — Searching for, indexing and storage of such data — Responsibility of the operator of the search engine — Establishment on the territory of a Member State — Extent of that operator's obligations and of the data subject's rights — Charter of Fundamental Rights of the European Union — Articles 7 and 8)

(2014/C 212/04)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicants: Google Spain SL, Google Inc.

Defendants: Agencia Española de Protección de Datos (AEPD), Mario Costeja González

Re:

Request for a preliminary ruling — Audiencia Nacional (Spain) — Interpretation of Article 2(b) and (d), Article 4(1)(a) and (c), Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) and Article 8 of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1) — Concept of establishment on the territory of a Member State — Relevant criteria — Concept of 'use of equipment situated on the territory of a Member State' — Temporary storage of the information indexed by search engines — Rights to removal and blocking of data

Operative part of the judgment

1. *Article 2(b) and (d) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data are to be interpreted as meaning that, first, the activity of a search engine consisting in finding information published or placed on the internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to internet users according to a particular order of preference must be classified as 'processing of personal data' within the meaning of Article 2(b) when that information contains personal data and, second, the operator of the search engine must be regarded as the 'controller' in respect of that processing, within the meaning of Article 2(d).*

2. *Article 4(1)(a) of Directive 95/46 is to be interpreted as meaning that processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of a Member State, within the meaning of that provision, when the operator of a search engine sets up in a Member State a branch or subsidiary which is intended to promote and sell advertising space offered by that engine and which orientates its activity towards the inhabitants of that Member State.*

3. *Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 are to be interpreted as meaning that, in order to comply with the rights laid down in those provisions and in so far as the conditions laid down by those provisions are in fact satisfied, the operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person's name links to web pages, published by third parties and containing information relating to that person, also in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful.*

4. *Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 are to be interpreted as meaning that, when appraising the conditions for the application of those provisions, it should inter alia be examined whether the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results displayed following a search made on the basis of his name, without it being necessary in order to find such a right that the inclusion of the information in question in that list causes prejudice to the data subject. As the data subject may, in the light of his fundamental rights under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name. However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question.*

(1) OJ C 165, 9.6.2012.

Judgment of the Court (Second Chamber) of 15 May 2014 (request for a preliminary ruling from the Handelsgericht Wien — Austria) — Michael Timmel v Aviso Zeta AG

(Case C-359/12) (1)

(Reference for a preliminary ruling — Consumer protection — Directive 2003/71/EC — Article 14(2)(b) — Regulation (EC) No 809/2004 — Articles 22(2) and 29(1) — Base prospectus — Supplements to the prospectus — Final terms — Time and method of publication of required information — Conditions for publication in electronic form)

(2014/C 212/05)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Michael Timmel

Defendant: Aviso Zeta AG

Intervener: Lore Tinhofer

Re:

Request for a preliminary ruling — Handelsgericht Wien — Interpretation of Article 14(2)(b) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64) — Interpretation of Article 22(2) and Article 29(1)(1) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ 2004 L 149, p. 1) — Publication of information not known at the time of approval of the base prospectus — Scope of the obligation make the prospectus available to the public in a printed form — Conditions for publication of the prospectus in an electronic form — Public limited company having included in a prospectus entitled 'final terms' information which was not known at the time of approval of the base prospectus — Lack of lawful publication — Access to that prospectus subject to a registration procedure and costs

Operative part of the judgment

1. *Article 22(2) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements is to be interpreted as meaning that information required under Article 22(1) which, although not known at the time of publication of the base prospectus, nevertheless was known at the time of publication of a supplement to that prospectus must be published in that supplement if the information involves a significant new factor, material mistake or inaccuracy capable of affecting the assessment of the securities, within the meaning of Article 16(1) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, a matter which is for the referring court to determine.*

2. *The requirements of Article 22 of Regulation No 809/2004 are not satisfied by the publication of a base prospectus not including the information required under Article 22(1), in particular the information referred to in Annex V to the regulation, if that publication is not supplemented by publication of the final terms. In order that the information which must be contained in the base prospectus in accordance with Article 22(1) of Regulation No 809/2004 may be inserted in the final terms, it is necessary for the base prospectus to indicate the information that will be included in those final terms and for that information to comply with the conditions laid down in Article 22(4) of the regulation.*

3. *Article 29(1)(1) of Regulation No 809/2004 is to be interpreted as meaning that the requirement that a prospectus must be easily accessible on the website on which it is made available to the public is not fulfilled where there is an obligation to register on that website, entailing acceptance of a disclaimer and the obligation to provide an email address, where a charge is made for that electronic access or where consultation of parts of the prospectus free of charge is restricted to two documents per month.*

4. *Article 14(2)(b) of Directive 2003/71 is to be interpreted as requiring the base prospectus to be made available to the public both at the registered office of the issuer and at the offices of the financial intermediaries.*

([1]) OJ C 366, 24.11.2012.

Judgment of the Court (First Chamber) of 15 May 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Minister van Financiën v X BV

(Case C-480/12) ([1])

(Community Customs Code — Scope of Articles 203 and 204(1)(a) of Regulation (EEC) No 2913/92 — External transit procedure — Customs debt incurred through non-fulfilment of an obligation — Belated presentation of the goods at the office of destination — Sixth VAT Directive — Article 10(3) — Link between the incurring of customs debt and the incurring of VAT debt — Concept of taxable transactions)

(2014/C 212/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Minister van Financiën

Respondent: X BV

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden (Netherlands) — Interpretation of Articles 203 and 204 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), of Articles 356(1) and 859(2)(c) of 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), and of Article 7 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) — Exceeding of the time-limit laid down by the office of departure for presenting goods at the office of destination, involving the conditional creation of a customs debt on imports and not the automatic creation thereof — Common system of value added tax — Taxable transactions — Concept of imports

Operative part of the judgment

1. *Articles 203 and 204 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, read in conjunction with Article 859(2)(c) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, must be interpreted as meaning that merely exceeding the time-limit for presentation, set under Article 356(1) of Regulation No 2454/93, as amended by Regulation No 444/2002, does not lead to a customs debt being incurred for removal from customs supervision of the goods in question within the meaning of Article 203 of Regulation No 2913/92, as amended by Regulation No 648/2005, but to a customs debt being incurred on the basis of Article 204 of that regulation and that it is not necessary, for a customs debt to be incurred under Article 204 of that regulation, that the interested parties supply to the customs authorities information on the reasons for exceeding the time-limit set under Article 356 of Regulation No 2454/93, as amended by Article No 444/2002, or on the location of the goods during the time which elapsed between that time-limit and the time at which they were actually presented at the customs office of destination.*

2. *The first paragraph of Article 7(3) of the 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 2004/66/EC of 26 April 2004 must be interpreted as meaning that value added tax is due where the goods in question are not covered by the arrangements provided for in that article, even where a customs debt is incurred exclusively on the basis of Article 204 of Regulation No 2913/92, as amended by Regulation No 648/2005.*

(1) OJ C 26, 26.1.2013.

Judgment of the Court (Second Chamber) of 15 May 2014 (request for a preliminary ruling from the Raad van State (Netherlands)) — T.C. Briels and Others v Minister van Infrastructuur en Milieu

(Case C-521/12) (1)

(Environment — Directive 92/43/EEC — Article 6(3) and (4) — Conservation of natural habitats — Special areas of conservation — Assessment of the implications for a protected site of a plan or project — Authorisation for a plan or project on a protected site — Compensatory measures — Natura 2000 site Vlijmens Ven, Moerputten & Bossche Broek — Project on the route of the A2 's-Hertogenbosch-Eindhoven motorway)

(2014/C 212/07)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: T.C. Briels, M. Briels-Loermans, R.L.P. Buchholtz, Stichting A2-Platform Boxtel e.o. and Others, H.W.G. Cox, G.P. A. Damman, P.A.M. Goevaers and Others, J.H. van Haaren, L.S.P. Dijkman, R.A.H.M. Janssen, M.M. van Lanschot, J.E.A. M. Lelijveld and Others, A. Mes and Others, A.J.J. Michels, VOF Isphording and Others, M. Peijnenborg, S. Peijnenborg-van Oers, G. Oude Elferink, W. Punte, P.M. Punte-Cammaert, Stichting Reinier van Arkel, E. de Ridder, W.C.M.A.J.G. van Rijckevorsel, M. van Rijckevorsel-van Asch van Wijck, Vereniging tot Behoud van het Groene Hart van Brabant, Stichting Boom en Bosch, Stichting Overlast A2 Vught e.o., Streekraad Het Groene Woud en De Meijerij, A.C.M.W. Teulings, Stichting Bleijendijk, M. Tilman, Vereniging van Eigenaars Appartementengebouw De Heun I and Others, M.C.T. Veroude, E.J.A. M. Widlak, Van Roosmalen Sales BV and Others, M.A.A. van Kessel, Bricorama BV and Others

Defendant: Minister van Infrastructuur en Milieu

Re:

Request for a preliminary ruling — Raad van State — Interpretation of Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Authorisation of a plan or project on a protected site — Conditions — 'Concept of adverse effect on the integrity of the site concerned'

Operative part of the judgment

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site of Community importance, which has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorised as 'compensatory measures' within the meaning of Article 6(4) only if the conditions laid down therein are satisfied.

([1]) OJ C 55, 23.2.2013.

Judgment of the Court (Second Chamber) of 15 May 2014 — 1. garantovaná a.s. v European Commission

(Case C-90/13 P) ([1])

(Appeal — Competition — Regulation (EC) No 1/2003 — Agreements, decisions and concerted practices — Calculation of the amount of the fine — Total turnover in the preceding business year)

(2014/C 212/08)

Language of the case: English

Parties

Appellant: 1. garantovaná a.s. (represented by: K. Lasok QC, J. Holmes and B. Hartnett, Barristers, O. Geiss, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: T. Vecchi and N. Khan, acting as Agents)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 12 December 2012 in Case T-392/09 *1. garantovaná* v *Commission* by which the General Court dismissed an action for partial annulment of Commission Decision C (2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel industry), concerning a cartel on the markets for calcium carbide powder, calcium carbide granulates and magnesium granulates in a substantial part of the EEA, involving price fixing, market sharing and exchange of information, and, in the alternative, for reduction of the fine imposed on the appellant — Calculation of the fine — Upper limit of 10 % of turnover — Relevant turnover

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders 1. garantovaná a.s. to pay the costs.*

([1]) OJ C 114, 20.4.2013.

Judgment of the Court (Ninth Chamber) of 15 May 2014 (request for a preliminary ruling from the Kúria — Hungary) — Szatmári Malom Kft v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

(Case C-135/13) ([1])

(Agriculture — EAFRD — Regulation (EC) No 1698/2005 — Articles 20, 26 and 28 — Support for the modernisation of agricultural holdings and support for adding value to agricultural and forestry products — Eligibility conditions — Competence of the Member States — Support for the modernisation of existing mill capacity — Mills replaced with a single new mill, with no increase in capacity — Not included — Principle of equal treatment)

(2014/C 212/09)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Szatmári Malom Kft

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

Re:

Request for a preliminary ruling — Kúria — Interpretation of Art. 20(b)(iii), and Arts. 26(1)(a) and 28(1)(a) of Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) — Support targeting the competitiveness of the agricultural and forestry sector — Measures aimed at restructuring and developing physical potential and promoting innovation — Creation by a company, whose main activity is the manufacture of flour, of a new mill by pooling production capacity of its three existing mills whose closure is planned — Modernisation of agricultural holdings or adding value to agricultural products

Operative part of the judgment

1. *Article 26(1)(a) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) must be interpreted as meaning that the concept of improvement in the overall performance of the agricultural holding, as referred to in that provision, cannot cover an operation whereby an undertaking whose business is the operation of mills closes old mills in order to replace them with a new mill, but with no increase in existing capacity;*

2. *Articles 20(b)(iii) and 28(1)(a) of Regulation No 1698/2005 must be interpreted as meaning that an operation consisting in the closure of old mills and their replacement with a new mill, but with no increase in existing capacity, may improve the overall performance of the enterprise for the purposes of the latter provision;*

3. *Article 28(1)(a) of Regulation No 1698/2005 must be interpreted as not precluding, in principle, the adoption of national legislation, such as that at issue in the main proceedings, introducing support for the adding of value to agricultural products, which, as regards milling undertakings, can be granted only for operations intended to modernise the existing capacity of those mills and not for those involving the creation of new capacity. However, when considering a situation such as that at issue in the main proceedings, in which one or more milling facilities are closed in order to be replaced with a new milling facility, but with no increase in existing capacity, it is for the national court to ensure that such legislation is applied in such a way as to ensure observance of the principle of equal treatment.*

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Fourth Chamber) of 15 May 2014 (request for a preliminary ruling from the Finanzgericht München — Germany) — Data I/O GmbH v Hauptzollamt München

(Case C-297/13) ([1])

(Reference for a preliminary ruling — Tariff classification — Common Customs Tariff — Combined Nomenclature — Section XVI, note 2 — Headings 8422, 8456, 8473, 8501, 8504, 8543, 8544 and 8473 — Concepts of 'parts' and 'articles' — Parts and accessories (motors, power supplies, lasers, generators, cables and heat sealers) intended for programming systems — No precedence of heading 8473 over other headings of Chapters 84 or 85)

(2014/C 212/10)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Data I/O GmbH

Defendant: Hauptzollamt München

Re:

Request for a preliminary ruling — Finanzgericht München — Interpretation of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulations (EC) Nos 2031/2001 of 6 August 2001 (OJ 2001 L 279, p. 1), 1832/2002 of 1 August 2002 (OJ 2002 L 290, p. 1), 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1) and 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1) and, inter alia, note 2(a) and (b) to Section XVI — Classification of parts and accessories (motors, generators, lasers, cables and heat sealers) intended for programming systems under heading 8473 — Whether that heading takes precedence over other headings of Chapters 84 or 85

Operative part of the judgment

Note 2(a) to Section XVI of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2031/2001 of 6 August 2001, Commission Regulation (EC) No 1832/2002 of 1 August 2002, Commission Regulation (EC) No 1789/2003 of 11 September 2003 and Commission Regulation (EC) No 1810/2004 of 7 September 2004, must be interpreted as meaning that goods which may be classified under heading 8473 of the Combined Nomenclature, as parts of a machine under heading 8471 thereof, and under one of headings 8422, 8456, 8501, 8504, 8543 and 8544 thereof, as individual goods, are to be classified as individual goods under one of the latter headings, according to their individual characteristics.

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Seventh Chamber) of 15 May 2014 (request for a preliminary ruling from the Kúria — Hungary) — Almos Agrárkülkereskedelmi Kft v Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

(Case C-337/13) ([1])

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 90 — Reduction of the taxable amount — Extent of obligations of Member States — Direct effect)

(2014/C 212/11)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Almos Agrárkülkereskedelmi Kft

Defendant: Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

Re:

Request for a preliminary ruling — Kúria — Interpretation of Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Compatibility with the directive of national legislation which does not provide for the possibility of adjusting the taxable amount in the case of non-performance of a contract

Operative part of the judgment

1. *The provisions of Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding a national provision which does not provide for the reduction of the taxable amount for value added tax in the case of non-payment of the price if the derogation provided for in Article 90(2) is applied. However, that provision must then mention all the other situations in which, under Article 90(1), after a transaction has been concluded, part or all of the consideration has not been received by the taxable person, which is a matter for the national court to ascertain.*

2. *Taxable persons may rely on Article 90(1) of Directive 2006/112 before national courts against the Member State to obtain a reduction of their taxable amount for value added tax. While Member States may provide that the exercise of the right to a reduction of that taxable amount is conditional on compliance with certain formalities which serve to prove in particular that, after the transaction was concluded, part or all of the consideration was definitely not received by the taxable person and that the taxable person was able to rely on one of the situations referred to in Article 90(1) of Directive 2006/112, the measures thus adopted cannot exceed what is necessary for that proof, which is for the national court to ascertain.*

([1]) OJ C 304, 19.10.2013.

Appeal brought on 24 March 2014 by The Sunrider Corporation against the judgment of the General Court (Third Chamber) delivered on 23 January 2014 in Case T-221/12: The Sunrider Corporation v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-142/14 P)

(2014/C 212/12)

Language of the case: English

Parties

Appellant: The Sunrider Corporation (represented by: N. Dontas, K. Markakis, Δικηγόροι)

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

Form of order sought

The appellant claims that the Court should:

— declare the present appeal admissible;

— set aside partially the judgment under appeal issued by the General Court of the European Union (Third Chamber) on 23 January 2014 in Case T-221/12 insofar as it rejected the 2nd Plea In Law (Infringement of Article 75 second sentence and Article 76(1) second sentence of the CTM Regulation 207/2009 ([1])) and the 3rd Plea in Law (Infringement of Article 8(1)(b) of the CTM Regulation 207/2009) of the Appellant's Action dated 25 May 2012;

— refer the case back to the General Court for re-examination of the case as regards the 2nd and 3rd Pleas In Law of the Appellant's Action dated 25 May 2012 and for a fresh application of Article 8(1)(b) of the CTM Regulation 207/2009;

— order OHIM to pay the costs incurred by the appellant in the course of the present appeal proceedings before the Court of Justice of the European Union;

— order OHIM to pay the costs incurred by the appellant in the course of the proceedings at first instance before the General Court; and

— order OHIM to pay the costs necessarily incurred by the appellant in the course of the underlying administrative proceedings before the Fourth Board of Appeal of OHIM in case R2401/2010-4.

Pleas in law and main arguments

FIRST GROUND OF APPEAL: The General Court infringed Article 1(2) of Directive 2001/83/EC ([2]) and Article 2(1) of Regulation (EC) No 726/2004 ([3]) regarding the definition and scope of the concept 'medical'. The General Court overstepped its authority by creating new legal definitions, namely, products 'for medical use in the broad sense of the term', and disregarded the relevant legal definitions that have been enacted by the EU legislature.

SECOND GROUND OF APPEAL: The General Court breached the right of the Appellant to be heard, due to its unjustified reliance upon a 'well-known fact' that was crucial to the outcome of the dispute. The General Court breached the right of the Appellant to be heard by finding, in paragraph 77 of the Judgment Under Appeal that a certain fact falls within the concept 'well-known fact', without supporting its finding by reference to any piece of evidence included in the case file and without any justification as to why that fact was lawfully qualified as 'well-known'.

THIRD GROUND OF APPEAL: The General Court infringed Article 8(1)(b) of the CTM Regulation 207/2009 since it (a) carried out a limited examination and assessment as regards the similarity of herbal nutritional supplements to the goods literally mentioned in the Class Heading of Class 32 only, failing to examine in concreto whether there is any similarity of herbal nutritional supplements to the remaining goods falling within the Goods Included In Class 32, (b) distorted the content of the Contested Decision and substituted the finding and reasoning of the BOA as regards the 'relevant public' and (c) erred in law in the examination and assessment of the individual factors/criteria of similarity of the goods in question, in particular as regards (i) the interpretation and application of the term 'medical' as the main purpose of herbal nutritional supplements, (ii) the legal requirement that a 'large part' of manufacturers of the goods in question should be the same, (iii) the legal criterion/standard used in the comparison of the products, (iv) the dismissal of the 2nd Plea In Law of the Action as ineffective, (v) the failure to examine the factor of 'substitutability' and (vi) the failure to examine the nature of the goods under comparison.

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

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use
OJ L 311, p. 67

([3]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency
OJ L 136, p. 1

Request for a preliminary ruling from the Tribunalul Maramureș (Romania) lodged on 26 March 2014 — Cabinet Medical Veterinar Dr. Tomoiagă Andrei v Direcția Generală Regională a Finanțelor Publice Cluj-Napoca prin Administrația Județeană a Finanțelor Publice Maramureș

(Case C-144/14)

(2014/C 212/13)

Language of the case: Romanian

Referring court

Tribunalul Maramureș

Parties to the main proceedings

Applicant: Cabinet Medical Veterinar Dr. Tomoiagă Andrei

Defendant: Direcția Generală Regională a Finanțelor Publice Cluj-Napoca prin Administrația Județeană a Finanțelor Publice Maramureș

Joined as guarantor: Direcția Sanitar-Veterinară și pentru Siguranța Alimentelor Maramureș

Questions referred

1. Must Article 273 and point 18 of Article 287 of Directive 2006/112/EC ([1]) on the common system of value added tax be interpreted as meaning that the national tax authority was under an obligation to register a taxable person for VAT purposes and to find that person liable to pay the VAT, and the related ancillary debts, arising from the fact that the tax exemption threshold had been exceeded, with effect from the date on which the taxable person submitted tax declarations to the competent tax authority showing that the VAT exemption threshold had been exceeded?

2. If the answer to Question 1 is in the affirmative, does the principle of legal certainty preclude national practice on the basis of which the tax authority has established retroactively that a taxable person is liable to pay VAT because the supply of veterinary services is not exempt from VAT and the tax exemption threshold was exceeded, in a situation in which:

   — the tax authority did not, of its own motion, register the taxable person for VAT purposes and did not find that person liable to pay VAT from the moment when the taxable person submitted the tax declarations showing that the threshold had been exceeded, but did so later, after the Detailed Rules for the Implementation of the Tax Code had been amended by Government Decree No 1620/2009 to the effect that the exemption provided for under Article 141(1)(a) of the Tax Code does not apply to the supply of veterinary services, as established by the Court of Justice in Case 122/87 *Commission* v *Italy* EU:C:1988:256, and in relation to a period preceding that amendment;

   — through the tax declarations submitted by the taxable person, the tax authority had become aware, before the Detailed Rules for the Implementation of the Tax Code were amended by Government Decree No 1620/2009 in the manner described above, that the exemption threshold had been exceeded;

   — before the publication of Government Decree No 1620/2009, the tax authority did not adopt in its area of competence — which also covers the taxable person in the main proceedings — any administrative tax measures designed to establish that taxable persons which are veterinary practices had failed to register for the purposes of VAT incurred as a consequence of the VAT payment exemption threshold being exceeded and, consequently, intended to establish the liability of those persons for VAT;

   — during the period preceding the adoption and entry into force of Government Decree No 1620/2009, the judgment of the Court of Justice in Case 122/87 *Commission* v *Italy* EU:C:1988:256 had not been published in any form in the Romanian language?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p. 1, Special Edition 9, vol. 3, p. 7)

Action brought on 4 April 2014 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-161/14)

(2014/C 212/14)

Language of the case: English

Parties

Applicant: European Commission (represented by: C. Soulay, M. Clausen, agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

(1) declare that

— by applying a reduced VAT rate to supplies of services of installing 'energy-saving materials' and to supplies of 'energy-saving materials' by a person who installs those materials in residential accommodation, to the extent that those supplies cannot be considered as 'provision, construction, renovation and alteration of housing, as part of a social policy' for the purposes of Category (10) of Annex III to the VAT Directive ([1]),

— by applying a reduced VAT rate to supplies of services of installing 'energy-saving materials' and to supplies of 'energy-saving materials' by a person who installs those materials in residential accommodation, to the extent that those supplies fall outside the purview of renovation and repairing of private dwellings for the purposes of Category (10a) of Annex III to the VAT Directive,

— by applying a reduced VAT rate to supplies of services of installing 'energy-saving materials' and to supplies of 'energy-saving materials' by a person who installs those materials in residential accommodation, to the extent that those supplies, even falling in the purview of renovation and repairing of private dwellings for the purposes of Category (10a) of Annex III to the VAT Directive, include materials which account for a significant amount of the value of the services supplied, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 98, read in conjunction with Annex III, of the VAT Directive;

(2) order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

Under article 96 of the VAT directive, the standard rate of VAT fixed by each Member State, subject to a minimum rate of 15 %, is applicable to all supplies of goods and services. A rate other than the standard rate may be applied only in so far as that is permitted by other provisions of the directive. Article 98 provides that Member States may apply one or two reduced rates to the supplies of goods and services listed in Annex III to the directive.

The Commission considers that the system of reduced rates applying to the supplies of energy-saving materials and to the installation thereof, laid down in the VAT Act 1994, section 29A, as specified in Schedule 7A to that Act, exceeds the possibilities offered to Member States by Categories (10) and (10a) of Annex III to the VAT Directive, which respectively cover 'provision, construction, renovation and alteration of housing, as part of a social policy' and 'renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied'.

The UK reduced rate scheme as described in Schedule 7A, Part 2, Group 2 to the VAT Act 1994 cannot be directly linked to housing matters as part of a social policy, and it therefore goes beyond the scope allowed by category (10) of Annex III to the VAT Directive.

Schedule 7A, Part 2, Group 2 to the VAT Act 1994, by applying a reduced rate to the supply of services of installing 'energy-saving materials' and to the supply of 'energy-saving materials' by the person installing them in residential accommodation, where those supplies include the provision, construction and alteration of private dwellings and without regard to those materials' proportional value to the total value of the service supplied, goes beyond the requirement laid down in Category (10a), namely that a reduced rate may only be applied to renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied.

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

Request for a preliminary ruling from the Inalta Curte de Casație și Justiție (Romania) lodged on 7 April 2014 — ING Pensii Societate de Administrare a unui Fond de Pensii Administrat Privat SA v Consiliul Concurenței

(Case C-172/14)

(2014/C 212/15)

Language of the case: Romanian

Referring court

Inalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: ING Pensii Societate de Administrare a unui Fond de Pensii Administrat Privat SA

Defendant: Consiliul Concurenței

Question referred

In relation to a practice by virtue of which clients are shared out, is the specific and definitive number of those clients relevant in deciding whether the condition of a significant distortion of competition for the purposes of Article 101(1)(c) TFEU is fulfilled?

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 9 April 2014 — Saudaçor — Sociedade Gestora de Recursos e Equipamentos de Saúde dos Açores S. A. v Fazenda Pública

(Case C-174/14)

(2014/C 212/16)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo (Portugal)

Parties to the main proceedings

Appellant: Saudaçor — Sociedade Gestora de Recursos e Equipamentos de Saúde dos Açores S.A.

Respondent: Fazenda Pública

Questions referred

1. May a national court give substance to the concept of body governed by public law within the meaning of the first paragraph of Article 13(1) of Council Directive 2006/112/EC ([1]) of 28 November 2006, by reference to the legislative concept of body governed by public law laid down in Article 1(9) of Directive 2004/18/EC ([2]) of the European Parliament and of the Council of 31 March 2004?

2. Is an entity established as a limited company, with exclusively public capital and 100 % owned by the Autonomous Region of the Azores, and whose object is the exercise of consultancy and management activities in matters relating to the Regional Health System, with the purpose of developing and reorganising it, through the performance of programme agreements concluded with the Autonomous Region of the Azores, which holds, by delegation, the public-authority powers conferred in those matters on the Autonomous Region, which was originally responsible for providing the public health service, covered by the concept of a body governed by public law acting as a public authority for the purpose of the first paragraph of Article 13(1) of Council Directive 2006/112/EC of 28 November 2006?

3. In the light of the provisions of that directive, may the consideration received by that company, which consists in the making available of the financial resources necessary for the performance of those programme agreements, be regarded as payment for the services provided, for the purposes of liability to VAT?

4. If so, does that company satisfy the requirements necessary in order to be entitled to rely upon the rule governing not being regarded as a taxable person laid down in Article 13(1) of Council Directive 2006/112/EC of 28 November 2006?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(2) 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).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 April 2014 — Criminal proceedings against G

(Case C-181/14)

(2014/C 212/17)

Language of the case: German

Referring court

Bundesgerichtshof

Party to the main proceedings

G

Question referred

Is Article 1(2)(b) of Directive 2001/83/EC (1) of 6 November 2001, as amended by Directive 2004/27/EC (2) of 31 March 2004, to be interpreted as meaning that substances or combinations of substances, within the meaning of that provision, which merely modify — that is, do not restore or correct — human physiological functions are to be regarded as medicinal products only if they are of therapeutic benefit or at any rate bring about a modification of bodily functions along positive lines? Consequently, do substances or combinations of substances which are consumed solely for their — intoxication-inducing — psychoactive effects, and in the process also have an effect which at least poses a risk to health, fall under the definition of 'medicinal product' contained in the directive?

(1) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).
(2) Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC (OJ 2004 L 136, p. 34).

Appeal brought on 14 April 2014 by ArcelorMittal Tubular Products Ostrava a.s. and others against the judgment of the General Court (Second Chamber) delivered on 29 January 2014 in Case T-528/09: Hubei Xinyegang Steel Co. Ltd v Council of the European Union

(Case C-186/14 P)

(2014/C 212/18)

Language of the case: English

Parties

Appellants: ArcelorMittal Tubular Products Ostrava a.s., ArcelorMittal Tubular Products Roman SA, Benteler Deutschland GmbH, formerly Benteler Stahl//Rohr GmbH, Ovako Tube & Ring AB, Rohrwerk Maxhütte GmbH, TMK-Artrom SA, Silcotub SA, Dalmine SpA, Tubos Reunidos, SA, Vallourec Oil and Gas France, formerly Vallourec Mannesmann Oil & Gas France, Vallourec Tubes France, formerly V & M France, Vallourec Deutschland GmbH, formerly V & M Deutschland GmbH, voestalpine Tubulars GmbH, Železiarne Podbrezová a.s. (represented by: Dr G. Berrisch, Rechtsanwalt, B. Byrne, Solicitor)

Other parties to the proceedings: Hubei Xinyegang Steel Co. Ltd, Council of the European Union, European Commission

Form of order sought

The Appellants claim that the Court should:

— set aside the judgment of the General Court of 29 January 2014 in Case T-528/09;

— dismiss the first part of the third plea at first instance;

— refer the case back to the General Court as to the remainder of the action;

— order Hubei Xinyegang Steel Co. Ltd to pay the Appellants' costs of this Appeal and of the procedure in Case T-528/09 in the General Court.

Pleas in law and main arguments

The Appellants submit that the General Court committed three errors of law.

First, the General Court misinterpreted Article 3(7) of the Basic Anti-Dumping Regulation ([1]) by holding that the institutions were not entitled to take into account that the situation of unusually high demand would likely come to an end and that in a situation of 'normal' demand, the true injurious effects of the dumped imports will be revealed and that the institutions had attributed the effects of a contraction in demand to the dumped imports.

Second, the General Court misapplied Article 3(9) of the Basic Anti-Dumping Regulation and violated Article 6(1) of the Basic Anti-Dumping Regulation in annulling the Contested Regulation ([2]) on the ground that the Commission's predictions in the Provisional Regulation of the likely development of volumes and prices of dumped imports allegedly were not fully in line with the post-investigation period data.

Third, the General Court erroneously concluded that the institutions' findings were vitiated by a manifest error of appraisal and the General Court failed to respect the boundaries of judicial review.

([1]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, p. 1; replaced by Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), OJ (2009) L343, p. 51

([2]) Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China, OJ L 262, p. 19

Appeal brought on 15 April 2014 by Council of the European Union against the judgment of the General Court (Second Chamber) delivered on 29 January 2014 in Case T-528/09: Hubei Xinyegang Steel Co. Ltd v Council of the European Union

(Case C-193/14 P)

(2014/C 212/19)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: J.-P. Hix, Agent, B. O'Connor, Solicitor, S. Gubel, avocat)

Other parties to the proceedings: Hubei Xinyegang Steel Co. Ltd, European Commission, ArcelorMittal Tubular Products Ostrava a.s., ArcelorMittal Tubular Products Roman SA, Benteler Deutschland GmbH, formerly Benteler Stahl//Rohr GmbH, Ovako Tube & Ring AB, Rohrwerk Maxhütte GmbH, Dalmine SpA, Silcotub SA, TMK-Artrom SA, Tubos Reunidos, SA, Vallourec Oil and Gas France, formerly Vallourec Mannesmann Oil & Gas France, Vallourec Tubes France, formerly V & M France, Vallourec Deutschland GmbH, formerly V & M Deutschland GmbH, voestalpine Tubulars GmbH, Železiarne Podbrezová a.s.

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union (Second Chamber) of 26 January 2014 in Case C-528/09 'Hubei Xinyegang Steel Co. Ltd v Council of the European Union';

— reject the first limb of the third plea in law put forward by the applicants at first instance as unfounded in law;

— refer the case back to the General Court for reconsideration for the remaining pleas in law at first instance to the extent that the facts have not been established by the General Court;

— order Hubei to pay the Council's costs at first instance and on appeal.

Pleas in law and main arguments

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

— first, the General Court infringed Article 3(5) of the basic A-D Regulation ([1]) and distorted the clear sense of the evidence before it, insofar as it made a selective and incomplete appraisal of the factors required by law to determine that the Union industry was in a vulnerable situation at the end of the IP;

— second, the General Court misinterpreted and then misapplied Article 3(7) of the basic A-D Regulation in relation to the foreseen collapse in demand;

— third, the General Court misinterpreted Article 3(9) of the basic A-D Regulation as to the threat of injury's analysis;

— fourth, the General Court exceeded its jurisdiction, insofar as it substituted its own assessment of the economic factors under consideration to that of the Union institutions.

([1]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, p. 1; replaced by Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), OJ L 343, p. 51

Action brought on 24 April 2014 — European Commission v Portuguese Republic

(Case C-205/14)

(2014/C 212/20)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra Andrade and F. Wilman, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to ensure the operational and financial independence of the body responsible for coordinating the allocation of slots, the Portuguese Republic has failed to fulfil its obligations under Article 4(2)(b) of Regulation (EEC) No 95/93; ([1])

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

In Portugal, the body responsible for coordinating the allocation of slots is the ANA, a private commercial company which manages airports, and therefore does not satisfy the requirements relating to independence laid down in Regulation No 95/93.

Since the Divisão de Coordenação Nacional de Slots forms an integral part of the ANA and is entirely dependant on the ANA, there is neither a situation of operational independence nor one of financial independence, contrary to what is required under EU law.

(1) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ 1993 L 14, p. 1).

Action brought on 24 April 2014 — European Commission v Republic of Estonia

(Case C-206/14)

(2014/C 212/21)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by: L. Pignataro-Nolin and E. Randvere, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to transpose Article 4(1)(e), the second subparagraph of Article 4(1) and the second sentence of the second subparagraph of Article 4(2) of Directive 2003/4/EC (1) of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, (2) the Republic of Estonia has failed to fulfil its obligations under that directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The application seeks a declaration that the Republic of Estonia has failed to fulfil its obligations under Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, by failing altogether and/or properly to adopt the legal provisions necessary for transposing the directive.

(1) OJ 2003 L 41, p. 26.
(2) OJ 1990 L 158, p. 56.

Appeal brought on 7 May 2014 by LG Display Co. Ltd, LG Display Taiwan Co., Ltd against the judgment of the General Court (Sixth Chamber) delivered on 27/02/2014 in Case T-128/11: LG Display Co. Ltd, LG Display Taiwan Co., Ltd v European Commission

(Case C-227/14 P)

(2014/C 212/22)

Language of the case: English

Parties

Appellants: LG Display Co. Ltd, LG Display Taiwan Co., Ltd (represented by: A. Winckler, avocat, F.-C. Laprévote, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— partially set aside the General Court's judgment in Case T-128/11 insofar as it dismisses its request to partially annul the Commission's decision of 8 December 2010 in Case COMP/39309;

— based on the elements available to it, partially annul the Commission's decision and reduce the amount of the fines set forth therein — to assist in that regard, LG Display submits in Annex A.2. a table with the fine calculation in different scenarios. LG Display respectfully submits in this regard that the Court of Justice possesses sufficient information to exercise its full jurisdiction;

— order the Commission to pay LG Display's legal and other costs and expenses in relation to this matter; and

— take any other measures that the Court of Justice considers appropriate.

Pleas in law and main arguments

By its first plea, LG Display disputes the General Court's conclusion that the Commission was entitled to include LG Display's sales to its parent companies LGE and Philips in the value of sales to calculate LG Display's fine. This plea is divided into two limbs. First, the General Court erred in law, failed to provide adequate reasoning, manifestly distorted the evidence, violated LG Display's rights of defence, and failed to exercise its full jurisdiction, by holding that the Commission may include internal sales in the value of sales for the purpose of calculating the fine based merely on the fact that such sales were made on a market affected by the cartel in which LG Display was active. Second, the General Court erred in law, failed to provide adequate reasoning, manifestly distorted the evidence, and violated LG Display's rights of defence by upholding the Commission's finding that internal sales were indeed affected by the cartel.

By its second plea, LG Display disputes the General Court's conclusion that the Commission correctly refused to grant LG Display partial immunity from fines for the year 2005. This plea is divided into two limbs. First, the General Court committed an error of substantive law and failed to state adequate reasons when granting the full immunity applicant a privileged position in respect of partial immunity. Second, the General Court manifestly distorted the evidence and committed an error of substantive law by refusing to grant LG Display partial immunity from fines for the period as of August 26, 2005, after which date the Commission did not have evidence provided by the immunity applicant proving LG Display's continued participation in the cartel.

Appeal brought on 8 May 2014 by InnoLux Corp., formerly Chimei InnoLux Corp. against the judgment of the General Court (Sixth Chamber) delivered on 27/02/2014 in Case T-91/11: InnoLux Corp., formerly Chimei InnoLux Corp. v European Commission

(Case C-231/14 P)

(2014/C 212/23)

Language of the case: English

Parties

Appellant: InnoLux Corp., formerly Chimei InnoLux Corp. (represented by: J.-F. Bellis, avocat, R. Burton, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in so far as it upholds the fine imposed by the Contested Decision on InnoLux based on the value of intra-group deliveries of LCD panels within the appellant's factories in China and Taiwan;

— annul the Commission's decision in so far as it imposes a fine on InnoLux based on the value of intra-group deliveries of LCD panels within the appellant's factories in China and Taiwan;

— accordingly reduce the fine imposed on InnoLux to €173 million; and

— order the Commission to bear all of the costs of these proceedings, including the proceedings before the General Court.

Pleas in law and main arguments

1. First plea: the General Court erred in law by ruling that intra-group deliveries of LCD panels within the appellant's factories in China and Taiwan come within the scope of Article 101 TFEU and Article 53 EEA by the mere fact that computer monitors into which the LCD panels are incorporated as components in the factories in question are sold in the EEA by the appellant.

   This plea is based on the following grounds:

   a. The finding of infringement in the Contested Decision only covers deliveries in the EEA of LCD panels, whether sold to third parties or supplied intra-group, and makes no distinction between intra-group deliveries by vertically-integrated cartel participants who form a single undertaking with their related purchaser and those who do not;

   b. The use of the concept of so-called 'direct EEA sales through transformed products' is inconsistent with the rationale underlying *Europa Carton* to treat intra-group deliveries in exactly the same way as sales to third parties;

   c. It is inconsistent with the *Wood Pulp I* implementation doctrine to apply Article 101 TFEU and Article 53 EEA to deliveries of LCD panels that take place outside the EEA;

   d. The concept of so-called 'direct EEA sales through transformed products' leads to the unlawful exclusion from the scope of Article 101 TFEU and Article 53 EEA of transactions concerning LCD panels which take place and restrict competition within the EEA, on the basis of a reasoning which was expressly rejected by this Court in *Commercial Solvents*;

   e. The extra-territorial application of EU competition law resulting from the use of the concept of so-called 'EEA direct sales through transformed products' gives rise to a risk of double jeopardy for undertakings and jurisdictional conflict with other competition authorities.

2. Second plea: the General Court erred in law by ruling that the applicability of the category of so-called 'direct EEA sales through transformed products' to the intra-group deliveries of LCD panels of each of the addressees of the Commission's decision was assessed by the Commission *'on the basis of the same objective criteria'*, while rejecting as inadmissible all pleas raised by the appellant contesting the relevance, objectivity and coherence of the criterion used, namely whether they formed a single undertaking with their related purchasers.

   This plea is based on the following grounds:

   a. Whether or not the vertically-integrated addressees of the Contested Decision form a single undertaking with their related purchasers is not an '*objective difference*' justifying the differential treatment of their respective intra-group deliveries;

   b. The principle of legality cannot be invoked to dismiss the appellant's plea to have its intra-group deliveries of LCD panels treated on the basis of the same method as that applied to the intra-group deliveries of LCD panels of LG Display and AUO since that method is perfectly legal.

Request for a preliminary ruling from the Augstākā tiesa (Republic of Latvia) lodged on 12 May 2014 — SIA 'Ostas celtnieks' v Talsu novada pašvaldība, Iepirkumu uzraudzības birojs

(Case C-234/14)

(2014/C 212/24)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: SIA 'Ostas celtnieks'

Defendants: Talsu novada pašvaldība, Iepirkumu uzraudzības birojs

Question referred

Must the provisions of Directive 2004/18/EC ([1]) 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 be interpreted as meaning that, in order to reduce the risk of non-performance of the contract, they do not preclude the specifications from containing the condition that, in the event of the contract being awarded to a tenderer which relies on the capacities of other contractors, that tenderer must, before the contract is awarded, conclude with those undertakings a cooperation agreement (which includes the particular items set out in the specifications), or set up a partnership with them?

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

Action brought on 12 May 2014 — European Commission v Ireland

(Case C-236/14)

(2014/C 212/25)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Hetsch, K. Herrmann, L. Armati, agents)

Defendant: Ireland

The applicant claims that the Court should:

— Declare that by failing to adopt provisions transposing the definitions laid down in Article 2, letters (f), (h), (m), (n) and (o), and the requirements laid down in Article 3(2) and (4), Article 5, Article 13(1), letters (a) to (e), Article 15(6), letter (e), Article 16(1), (3), (5), (6), (7), second sentence, and (8), Article 17 (1) to (5), Article 17(6) regarding bioliquids, Article 17(8), Article 18(1) and (3) regarding biolquids, Article 18(7), Article 19(1) and (3), Article 21(1), second sentence, and Annexes II to V and VII of Directive 2009/28/EC ([1]) of the European Parliament and the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 27(1) of that Directive;

— Impose a penalty payment on Ireland pursuant to Article 260(3) TFEU in the amount of EUR 25 447,50 per day, with effect from the date of the judgment of the Court and payable to the account of the Union's own resources, for failure to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure; and

— order Ireland to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 5 December 2010.

([1]) OJ L 140, p. 16

GENERAL COURT

Judgment of the General Court of 21 May 2014 — Toshiba v Commission

(Case T-519/09) ([1])

(Competition — Agreements, decisions and concerted practices — Power transformers market — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Market-sharing agreement — Proof of distancing from the cartel — Restriction of competition — Effect on trade — Barriers to entry — Fines — Basic amount — Reference year — Section 18 of the 2006 Guidelines on the method of setting fines — Use of a notional market share in the EEA market)

(2014/C 212/26)

Language of the case: English

Parties

Applicant: Toshiba Corp. (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, A. Schulz, J. Jourdan and P. Berghe, lawyers)

Defendant: European Commission (represented initially by J. Bourke and K. Mojzesowicz, and subsequently by K. Mojzesowicz and F. Ronkes Agerbeek, acting as Agents)

Re:

Application for annulment of Commission Decision of 7 October 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/39.129 — Power Transformers), and, in the alternative, for a reduction in the amount of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Toshiba Corp. to pay the costs.*

([1]) OJ C 51, 27.2.2010.

Judgment of the General Court of 21 May 2014 — Catinis v Commission

(Case T-447/11) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an OLAF investigation concerning the implementation of a project for the modernisation of infrastructure in Syria — Access refused — Exception concerning the protection of the purpose of inspections, investigations and audits)

(2014/C 212/27)

Language of the case: English

Parties

Applicant: Lian Catinis (Damascus, Syria) (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented by: J.-P. Keppenne and F. Clotuche Duvieusart, acting as Agents)

Re:

Application for annulment of the decision of the European Anti-Fraud Office (OLAF) of 10 June 2011 refusing, first, to grant the purported request to close OLAF's investigation concerning a project for the modernisation of infrastructure in Syria and, second, to grant access to certain documents in the file relating to that investigation.

Operative part of the judgment

The Court:

1) *Dismisses the action.*

2) *Orders Mr Lian Catinis to pay the costs.*

(1) OJ C 298, 8.10. 011.

Judgment of the General Court of 23 May 2014 — European Dynamics Luxembourg v ECB

(Case T-553/11) (1)

(Public service contracts — Tender procedure — Provision of services relating to IT infrastructure and applications for the ECB — Rejection of the application — Action for annulment — Act open to challenge — Admissibility — Criteria for selecting candidates — Compliance of an application with the conditions laid down in the call for applications — Obligation to state reasons — Failure to exercise the power to ask for clarification in relation to an application — Manifest errors of assessment — Misuse of powers — Action for damages)

(2014/C 212/28)

Language of the case: English

Parties

Applicant: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Central Bank (ECB) (represented by: F. von Lindeiner and P. Pfeifhofer, acting as Agents)

Re:

Application (i) for annulment of the decision of the ECB to reject the application of a temporary grouping of undertakings including the applicant to participate in a negotiated tendering procedure concerning information technology services, of the decision of the Procurement Review Body of the ECB to reject the appeal against that decision, and of all related decisions of the ECB and (ii) for damages.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders European Dynamics Luxembourg SA to bear its own costs and to pay those incurred by the European Central Bank (ECB).*

(1) OJ C 6, 7.1.2012.

Judgment of the General Court of 21 May 2014 — Eni v OHIM — Emi (IP) (ENI)

(Case T-599/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark ENI — Earlier Community figurative mark EMI — Likelihood of confusion — Similarity of the goods and services — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Partial refusal of registration)

(2014/C 212/29)

Language of the case: English

Parties

Applicant: Eni SpA (Rome, Italy) (represented by: D. De Simone and G. Orsoni, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Emi (IP) Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 September 2011 (Case R 2439/2010-1), relating to opposition proceedings between Emi (IP) Ltd and Eni SpA.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Eni SpA to pay the costs.*

([1]) OJ C 32, 4.2.2012.

Judgment of the General Court of 22 May 2014 — Guangdong Kito Ceramics and Others v Council

(Case T-633/11) ([1])

(Dumping — Imports of ceramic tiles originating in China — Definitive anti-dumping duty — Non-cooperation — Necessary information — Time-limits provided — Facts available — Article 18(1) and (3) of Regulation (EC) No 1225/2009)

(2014/C 212/30)

Language of the case: English

Parties

Applicants: Guangdong Kito Ceramics Co. Ltd (Foshan, China); Jingdezhen Kito Ceramic Co. Ltd (Jingdezhen, China); Jingdezhen Lehua Ceramic Sanitary Ware Co. Ltd (Jingdezhen); Zhaoqing Lehua Ceramic Sanitary Ware Co. Ltd (Sihui, China) (represented by: M. Sánchez Rydelski, lawyer)

Defendant: Council of the European Union (represented by: J.-P. Hix, Agent, and initially by G. Berrisch, lawyer, and N. Chesaites, Barrister, and subsequently by D. Geradin, lawyer)

Interveners in support of the defendant: European Commission (represented by: J.-F. Brakeland, M. França and A. Stobiecka-Kuik, Agents); Cerame-Unie AISBL, (Brussels, Belgium); Asociación Española de Fabricantes de Azulejos y Pavimentos Cerámicos (ASCER) (Castellón de la Plana, Spain); Confindustria Ceramica (Sassuolo, Italy); Casalgrande Padana SpA (Casalgrande, Italy); and Etruria Design Srl (Modena, Italy) (represented by V. Akritidis and Y. Melin, lawyers)

Re:

Application for annulment of Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ 2011 L 238, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicants to bear their own costs and to pay those incurred by the Council of the European Union;*

3. *Orders the European Commission to bear its own costs;*

4. *Orders Cerame-Unie AISBL, Asociación Española de Fabricantes de Azulejos y Pavimentos Cerámicos (ASCER), Confindustria Ceramica, Casalgrande Padana SpA and Etruria Design Srl to bear their own costs.*

(1) OJ C 32, 4.2.2012.

Judgment of the General Court of 21 May 2014 — Mocová v Commission

(Case T-347/12 P) (1)

(Appeal — Civil service — Members of the temporary staff — Fixed term contract — Decision not to renew — Rejection of the complaint — Obligation to state reasons — Ground given in the decision rejecting the complaint)

(2014/C 212/31)

Language of the case: French

Parties

Appellant: Dana Mocová (Prague, Czech Republic) (represented by: D. de Abreu Caldas, S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Other party to the proceedings: European Commission (represented by: J. Currall and D. Martin, acting as Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 13 June 2012 in Case F-41/11 *Mocová* v *Commission* II-0000, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Ms Dana Mocová to bear her own costs and to pay those incurred by the European Commission in the course of the present proceedings.*

(1) OJ C 86, 23.3.2013.

Judgment of the General Court of 21 May 2014 — Commission v Macchia

(Case T-368/12 P) ([1])

(Appeal — Civil service — Temporary staff — Fixed-term contract — Decision of non-renewal — Jurisdiction of the Civil Service Tribunal — First paragraph of Article 8 of the CEOS — Duty to have regard for the welfare of officials — Concept of 'interests of the service' — Prohibition on ruling ultra petita — Principle of the right to be heard)

(2014/C 212/32)

Language of the case: French

Parties

Appellant: European Commission (represented by: J. Currall and D. Martin, Agents)

Other party to the proceedings: Luigi Macchia (Varese, Italy) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 13 June 2012 in Case F-63/11 *Macchia* v *Commission*, not yet published in the ECR, and seeking that that judgment be set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 13 June 2012 in Case F-63/11 Macchia v Commission, in so far as it annulled the decision of the Director General of the European Anti-Fraud Office (OLAF) of 12 August 2010 rejecting the request for an extension of Luigi Macchia's contract as a member of the temporary staff and, consequently, rejected as premature the request for Mr Macchia to be reintegrated within OLAF and the application for compensation in respect of the material harm suffered;*

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

3. *Refers the case back to the Civil Service Tribunal;*

4. *Reserves the costs.*

([1]) OJ C 311, 13.10.2012.

Judgment of the General Court of 22 May 2014 — BG v Ombudsman

(Case T-406/12 P) ([1])

(Appeal — Civil service — Officials — Disciplinary measures — Penalty of removal from post without loss of entitlement to a retirement pension — Preliminary investigation pending before a national court when the decision ordering removal from the post was adopted — Equal treatment — Prohibition on dismissal during maternity leave)

(2014/C 212/33)

Language of the case: French

Parties

Appellant: BG (Strasbourg, France) (represented by: L. Levi and A. Blot, lawyers)

Other party to the proceedings: European Ombudsman (represented by: J. Sant'Anna, Agent, and D. Waelbroeck and A. Duron, lawyers)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 17 July 2012 in Case F-54/11 *BG* v *Ombudsman*, not yet published in the ECR, and seeking that that judgment be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders BG to bear her own costs and to pay those incurred by the European Ombudsman in the present proceedings.*

(1) OJ C 156, 1.6.2013.

Judgment of the General Court of 21 May 2014 — Bateaux mouches v OHIM

(Case T-553/12) (1)

(Community trade mark — Application for figurative Community trade mark BATEUAX-MOUCHES — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 — No distinctive character acquired through use — Article 7(3) of Regulation No 207/2009)

(2014/C 212/34)

Language of the case: French

Parties

Applicant: Compagnie des bateaux mouches SA (Paris, France) (represented by: G. Barbaut, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 October 2012 (Case R 1709/2011-2) concerning an application for registration of the figurative sign BATEAUX-MOUCHES as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Compagnie des bateaux mouches SA to pay the costs.*

(1) OJ C 55, 23.2.2013.

Judgment of the General Court of 21 May 2014 — Melt Water v OHIM (NUEVA)

(Case T-61/13) ([1])

(Community trade mark — Application for a Community figurative mark NUEVA — Article 60 of Regulation (EC) No 207/2009 — Failure to comply with the obligation to pay the appeal fee within the period prescribed — Ambiguity in a language version — Uniform interpretation — Unforeseeable circumstances or force majeure — Excusable error — Obligations of care and diligence)

(2014/C 212/35)

Language of the case: Lithuanian

Parties

Applicant: Research and Production Company 'Melt Water' UAB (Klaipėda, Lithuania) (represented by: V. Viešūnaitė and J. Stucka, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 December 2012 (Case R 1794/2012-4) relating to an application for registration of the figurative sign NUEVA as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and to pay those incurred by Research and Production Company 'Melt Water' UAB.*

([1]) OJ C 108, 13.4.2013.

Judgment of the General Court of 22 May 2014 — Walcher Meßtechnik v OHIM (HIPERDRIVE)

(Case T-95/13) ([1])

(Community trade mark — Application for Community word mark HIPERDRIVE — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2014/C 212/36)

Language of the case: German

Parties

Applicant: Walcher Meßtechnik GmbH (Kirchzarten, Germany) (represented by: S. Walter, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 13 December 2012 (Case R 1779/2012-1) concerning an application for registration of the word sign HIPERDRIVE as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Walcher Meßtechnik GmbH to pay the costs.*

([1]) OJ C 108, 13.4.2013.

Judgment of the General Court of 22 May 2014 — NIIT Insurance Technologies v OHIM (EXACT)

(Case T-228/13) ([1])

(Community trade mark — Application for Community word mark EXACT — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Obligation to state reasons — Equal treatment — Article 56 TFEU)

(2014/C 212/37)

Language of the case: German

Parties

Applicant: NIIT Insurance Technologies Ltd (London, United Kingdom) (represented by: M. Wirtz, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 February 2013 (Case R 1307/2012-4) concerning an application for registration of the word sign EXACT as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders NIIT Insurance Technologies Ltd to pay the costs.*

([1]) OJ C 189, 29.6.2013.

Order of the General Court of 12 May 2014 — Marcuccio v Commission

(Case T-207/12 P P) ([1])

(Appeal — Civil Service — Officials — Act following a request to place a document on the file compiled for the purposes of examining the application for recognition of an incident suffered by the appellant — Absence of act having adverse effect — preparatory act — Informative measure — Article 94(a) of the Rules of Procedure of the European Union Civil Service Tribunal — Appeal clearly inadmissible in part and clearly unfounded in part)

(2014/C 212/38)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party/parties to the proceedings: European Commission (represented by: C. Berardis-Kayser, J. Currall and G. Gattinara, Agents, and by A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal (First Chamber) of 29 February 2012 in Case F-3/11 *Marcuccio* v *Commission*, not published in the ECR, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Luigi Marcuccio is ordered to bear his own costs and to pay those incurred by the European Commission on the appeal.*

([1]) OJ C 194, 30.6.2012.

Order of the General Court of 7 May 2014 — Spain Doce 13 v OHIM — Ovejero Jiménez and Becerra Guibert (VICTORIA DELEF)

(Case T-359/13) ([1])

(Community trade mark — Registration refused in part — No need to adjudicate)

(2014/C 212/39)

Language of the case: Spanish

Parties

Applicant: Spain Doce 13, SL (Crevillente, Spain) (represented by: S. Rizzo, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Gregorio Ovejero Jiménez (Alicante, Spain) and María Luisa Cristina Becerra Guibert (Alicante) (represented by: M. Veiga Serrano, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 10 April 2013 (Case R 1046/2012-5) concerning opposition proceedings between Gregorio Ovejero Jiménez and María Luisa Cristina Becerra Guibert, on the one hand, and Spain Doce 13, on the other.

Operative part of the order

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

2. *The applicant is ordered to bear its own costs and pay one half of the defendant's costs.*

3. *The interveners are ordered to bear their own costs and pay one half of the defendant's costs.*

([1]) OJ C 252, 31.8.2013.

Order of the General Court of 7 May 2014 — Sharp v OHIM (BIG PAD)

(Case T-567/13) ([1])

(Community trademark — Application for Community figurative mark BIG PAD — Absolute ground for refusal — Descriptive nature — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2014/C 212/40)

Language of the case: English

Parties

Applicant: Sharp KK (Osaka, Japan) (represented by: G. Macias Bonilla, G. Marín Raigal, P. López Ronda and E. Armero, lawyers)

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

Re:

Action against the decision of the Second Board of Appeal of OHIM of 5 August 2013 (Case R 2131/2012-2) concerning an application for registration of the figurative sign BIG PAD as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Sharp KK is ordered to pay to pay the costs.*

([1]) OJ C 24, 25.1.2014.

Action brought on 31 March 2014 — Mo Industries v OHIM (Splendid)

(Case T-203/14)

(2014/C 212/41)

Language of the case: English

Parties

Applicant: Mo Industries LLC (Los Angeles, United States) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 January 2014 given in Case R 1542/2013-1;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark containing the verbal element 'Splendid' for goods in Classes 18 and 25 — Community trade mark application No 11 613 131

Decision of the Examiner: Refused the application

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 27 March 2014 — Schroeder v Council and Commission

(Case T-205/14)

(2014/C 212/42)

Language of the case: German

Parties

Applicant: I. Schroeder KG (GmbH & Co.) (Hamburg, Germany) (represented by: K. Landry, lawyer)

Defendants: Council of the European Union and European Commission

Form of order sought

— Order the defendants to pay compensation to the applicant in the amount of EUR 345 644 together with interest at the rate of 8 % per annum from the date of delivery of the judgment, or to declare that the applicant is entitled to compensation from the defendants;

— Order the defendants to pay the costs.

Pleas in law and main arguments

The applicant seeks compensation on account of the adoption of Regulation (EC) No 1355/2008, ([1]) which was declared invalid by judgment of the Court of Justice of 22 March 2012 in Case C-338/10 *GLS*.

The applicant submits that although the anti-dumping duties wrongly collected on the basis of that regulation have been refunded by the national customs authorities, it suffered financial loss as a result of the fact that it was compelled by the withdrawal of liquidity to obtain additional bank loans at the usual market rates of interest. The applicant therefore seeks reimbursement of the difference between the interest it paid on its bank loans and the lower amount of interest that it would have had to pay if no anti-dumping duties had been collected. The applicant submits in that regard that, by unlawfully adopting Regulation No 1355/2008, the defendants committed a sufficiently serious breach of their duty of due care and proper administration, resulting in a loss to the applicant for which compensation is not otherwise available, since there is no provision under the relevant national rules on import duties for interest to be paid on the amount of any difference in favour of the person liable to pay import duties, from the time of payment.

([1]) Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ 2008 L 350, p. 35).

Action brought on 27 March 2014 — Hüpeden v Council and Commission

(Case T-206/14)

(2014/C 212/43)

Language of the case: German

Parties

Applicant: Hüpeden & Co. (GmbH & Co.) KG (Hamburg, Germany) (represented by: K. Landry, lawyer)

Defendants: Council of the European Union and European Commission

Form of order sought

— Order the defendants to pay compensation to the applicant in the amount of EUR 118 762,57 together with interest at the rate of 8 % per annum from the date of delivery of the judgment, or to declare that the applicant is entitled to compensation from the defendants;

— Order the defendants to pay the costs.

Pleas in law and main arguments

The applicant seeks compensation on account of the adoption of Regulation (EC) No 1355/2008, ([1]) which was declared invalid by judgment of the Court of Justice of 22 March 2012 in Case C-338/10 *GLS*.

The applicant submits that although the anti-dumping duties wrongly collected on the basis of that regulation have been refunded by the national customs authorities, it suffered financial loss as a result of the fact that it was compelled by the withdrawal of liquidity to obtain additional bank loans at the usual market rates of interest, as well as short-term fixed-rate loans. The applicant therefore seeks reimbursement of the difference between the interest it paid on its bank loans and the lower amount of interest that it would have had to pay if no anti-dumping duties had been collected. The applicant submits in that regard that, by unlawfully adopting Regulation No 1355/2008, the defendants committed a sufficiently serious breach of their duty of due care and proper administration, resulting in a loss to the applicant for which compensation is not otherwise available, since there is no provision under the relevant national rules on import duties for interest to be paid on the amount of any difference in favour of the person liable to pay import duties, from the time of payment.

([1]) Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ 2008 L 350, p. 35).

Action brought on 15 April 2014 — Commission v McCarron Poultry

(Case T-226/14)

(2014/C 212/44)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Van der Hout, lawyer, and L. Cappelletti and F. Moro, agents)

Defendant: McCarron Poultry Ltd (Killacorn Emyvale, Ireland)

Form of order sought

The applicant claims that the Court should:

— Order the defendant to pay the European Commission the sum due of EUR 976 663,34, corresponding to the principal amount of EUR 900 662,25 plus the amount of EUR 76 001,09 as late payment interest calculated at a rate of 2,50 % for the period between 01.12.2010 and 15.04.2014;

— Order the defendant to pay the European Commission the sum of EUR 61,690 per day by way of interest from 16.04.2014 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

The present application is presented under Article 272 TFEU seeking a decision of the General Court ordering the defendant to reimburse the European Commission the principal amount of EUR 900 662,25, plus interest, in relation to contract No NNE5/1999/20229 for 'Community Activities in the Field of the specific programme for RTD and demonstration on "Energy, Environment and Sustainable Development — Part B: Energy program"'.

In support of its application, the European Commission raises a single plea in law: the Commission contends that the defendant has breached its contractual obligations by failing to reimburse to the Commission the difference between the Union's financial contribution due to defendant and the total amount of funding already received by it. The financial contribution due to the defendant is less than the total amount paid by the applicant by means of advance and intermediate payments. The Commission contends therefore that, under the contract, the defendant is liable for the sum due.

Action brought on 11 April 2014 — EGBA and RGA v Commission

(Case T-238/14)

(2014/C 212/45)

Language of the case: English

Parties

Applicants: European Gaming and Betting Association (EGBA) (Brussels, Belgium) and The Remote Gambling Association (RGA) (London, United Kingdom) (represented by: S. Brankin, Solicitor, T. De Meese, E. Wijckmans and M. Mudrony, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Order the annulment of the Commission Decision of 19 June 2013 on State aid No SA.30753 (C 34/10) (ex N 140/10) which France is planning to implement for horse racing companies (OJ L 14, 18/01/2014, p. 17); and

— Order the Commission to bear the costs of the applicants in the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Contested Decision infringes essential procedural requirements contained in or arising from Article 108(2), the principle of good administration and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the Contested Decision infringes Article 107(3)(c) TFEU and the principle of good administration since:

   — the measure is not necessary and therefore has no proper common interest objective;

   — the measure includes costs with no common interest justification;

   — the measure is not an appropriate instrument for achieving the common interest objective;

   — the measure distorts competition and has an adverse effect on trade; and

   — the Commission failed to take the overall context into account for the assessment of the measure.

3. Third plea in law, alleging alleging that the Commission, at various points in the contested measure, failed to adequately state its reasons.

Action brought on 20 April 2014 — Monard v Commission

(Case T-239/14)

(2014/C 212/46)

Language of the case: English

Parties

Applicant: Eva Monard (Kessel-Lo, Belgium) (represented by: R. Antonini, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission No Ref. Ares(2014) 321920 (No SG.B.4/RH/rc-sg.dsg2.b.4(2014) 285433), taken on 10 February by the Secretary General pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001 in relation to the confirmatory application by Eva Monard for access to documents under Regulation (EC) No 1049/2001 (GESTDEM 4641/2011);

— Order the European Commission to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission was obliged to grant access to the Documents to the applicant, pursuant to Article 1 of the Treaty on European Union ('TEU'), Articles 15 and 298 of the Treaty on the Functioning of the European Union ('TFEU'), the fundamental right of access to documents, Article 6(1) of the TEU juncto Article 42 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007 (the 'Charter') and Article 2(1) 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 ('Regulation No 1049/2001'). This is also confirmed by the application of Article 4(3) of Regulation No 1049/2001 a contrario. By failing to do so and by (incorrectly) relying on the exceptions laid down in Article 4(1), a), third indent and Article 4(2), second and third indents of Regulation No 1049/2001, the Commission misapplied the relevant provisions and misused its powers. The Commission also failed to apply in a correct fashion Article 4(6) and Article 4(7) and misused its powers under those provisions.

2. Second plea in law, alleging that the Commission violated Article 1 TEU, Articles 15 and 298 TFEU, the fundamental right of access to documents, Article 6(1) of the TEU juncto Article 42 of the Charter and Article 8(1) and Article 8(2) of Regulation No 1049/2001 by failing to handle the applicant's confirmatory application promptly and by extending the time limit for responding to this confirmatory application in a case that was not exceptional. As such, the Commission misused its powers and misapplied the relevant provisions by unduly postponing the issuance of a decision on the applicant's confirmatory application.

Action brought on 22 April 2014 — Promarc Technics v OHIM — PIS (Part of doors)

(Case T-251/14)

(2014/C 212/47)

Language of the case: Polish

Parties

Applicant: Promarc Technics s.c. Tomasz Pokrywa, Rafał Natorski (Zabierzów, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: Petrycki i Sorys sp.j. (PIS) (Jasło, Poland)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 January 2014 in Case R 1464/2012-3;

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

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: Design No 1608365-0001

Proprietor of the Community design: The applicant

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

Grounds of the application for a declaration of invalidity: It was alleged that the registered Community design lacks novelty and individual character

Decision of the Invalidity Division: Design declared invalid

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Articles 4 to 9 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

Action brought on 5 May 2014 — Hipp v OHIM — Nestlé Nutrition (Praebiotik)

(Case T-315/14)

(2014/C 212/48)

Language in which the application was lodged: German

Parties

Applicant: Hipp & Co. (Sachseln, Switzerland) (represented by: M. Kinkeldey, A. Wagner and S. Brandstätter, lawyers)

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

Other party to the proceedings before the Board of Appeal: Nestlé Nutrition GmbH (Frankfurt am Main, 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 26 February 2014 in Cases R 1171/2012-4 and R 1326/2012-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: the word mark 'Praebiotik' for goods in Classes 5, 29 and 32 — Community trade mark No 383 919

Proprietor of the Community trade mark: the applicant

Party applying for revocation of the Community trade mark: Nestlé Nutrition GmbH

Decision of the Cancellation Division: the application for cancellation was granted in part

Decision of the Board of Appeal: the contested decision was partially annulled to the effect that the disputed mark was declared to be revoked in its entirety. The appeal of Hipp & Co. was dismissed.

Pleas in law:

— Infringement of Article 75 of Regulation No 207/2009

— Infringement of Article 51(1)(b) of Regulation No 207/2009

— Infringement of Article 78 of Regulation No 207/2009

Action brought on 30 April 2014 — Drogenhilfe Köln Projekt v OHIM (Rauschbrille)

(Case T-319/14)

(2014/C 212/49)

Language of the case: German

Parties

Applicant: Drogenhilfe Köln Projekt gGmbH (Cologne, Germany) (represented by V. Schoene, lawyer)

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

Form of order sought

The applicant claims that the Court should annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 29 January 2014 in Case R 1356/2013-1 and refer the case back to OHIM for reconsideration

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Rauschbrille' for goods and services in Classes 9, 41 and 44

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 5 May 2014 — Sephora v OHIM — Mayfield Trading (Representation of two vertical lines)

(Case T-320/14)

(2014/C 212/50)

Language in which the application was lodged: French

Parties

Applicant: Sephora (Boulogne Billancourt, France) (represented by: H. Delabarre, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mayfield Trading Ltd (Las Vegas, United States of America)

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 of 24 February 2014 in Case R 1577/2013-4;

— uphold the opposition and reject the application for registration of the Community trade mark No 10 214 773 lodged on 24 August 2011 by the company Mayfield Trading Ltd, for the goods in Class 3 *'Perfumery goods; depilatory wax; essential oils; soaps; cosmetics; cosmetic creams; cosmetics kits (filled); depilatories; depilatory water; depilatory gel; hair lotions; dentifrices'* and the services in Classes 35 *'Sale of soaps, perfumery, creams, essential oils, cosmetics, depilatory waxes, depilatory water, depilatory gel and other related goods'* and 44 *'Hygienic and beauty care for human beings or animals; hair removal and beauty treatment'*;

— order OHIM to pay the costs including those incurred before the Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Mayfield Trading Ltd

Community trade mark concerned: Figurative mark representing two vertical lines for goods and services in Classes 3, 35 and 44 — Community trade mark application No 10 214 773

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

Mark or sign cited in opposition: National and international figurative mark representing a vertical line for goods in Class 3

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Breach of Article 75 and Article 8(1)(b) of Regulation No 207/2009

Action brought on 12 May 2014 — Volkswagen v OHIM (STREET)

(Case T-321/14)

(2014/C 212/51)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by U. Sander, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 March 2014 in Case R 2025/2013-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'STREET' for goods in Classes 12, 28 and 35

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 13 May 2014 — Jannatian v Council

(Case T-328/14)

(2014/C 212/52)

Language of the case: English

Parties

Applicant: Mahmoud Jannatian (Tehran, Iran) (represented by: I. Smith Monnerville and S. Monnerville, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul insofar as they concern the applicant: (i) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran repealing Common Position 2007/140/CFSP (OJ L 195, p. 39); (ii) Council Decision 2010/644/CFSP of 25 October 2010 concerning restrictive measures against Iran and repealing concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 281, p. 81); (iii) Council Regulation (EU) No. 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No. 423/2007 (OJ L 281, p. 1); (iv) (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Council Regulation (EU) No. 961/2010 (OJ L 88, p. 1); (v) Council Implementing Regulation (EU) No. 350/2012 of 23 April 2012 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 110, p. 17); (vi) Council Implementing Regulation (EU) No. 709/2012 of 2 August 2012 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ l.208, p. 2); (vii) Council Implementing Regulation (EU) No. 945/2012 of 15 October 2012 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 282, p. 16); (viii) Council Implementing Regulation (EU) No. 1264/2012 of 21 December 2012 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 356, p. 55); (ix) Council Implementing Regulation (EU) No. 522/2013 of 6 June 2013 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 156, p. 3); (x) Council Implementing Regulation (EU) No. 1203/2013 of 26 November 2013 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 316, p. 1); and (xi) Council Implementing Regulation (EU) No. 397/2014 of 16 April 2014 implementing (EU) Regulation No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ L 356, p. 1);

— Order the Council to pay damages for the losses incurred due to the applicant's wrongful listing in the amount of 40 000 Euros;

— Order the Council to pay all of the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging lack of authority of the Council

   — The applicant submits that pursuant to Article 215 of the Treaty on the Functioning of the European Union, restrictive measures can only be adopted by a joint initiative of the Commission and the High Representative. The Contested Decisions and Regulations were adopted by the Council acting alone. They are thus vitiated by lack of authority.

2. Second plea in law, alleging violation to the obligation to state the reasons

   — The applicant submits that the reason stated for his listing in Annex II are too imprecise to meet the requirements set by the case law as regards the obligation to state the reasons. In order to comply with the obligation to state the grounds, the Council should have established the concrete and specific elements characterizing the existence of an effective support provided by the applicant to the Government of Iran or to Iran's proliferation-sensitive nuclear activities. The Contested Decisions and Regulations are thus vitiated by a failure to state the grounds.

3. Third plea in law, alleging an infringement of the applicant's fundamental rights

   — The applicant submits that, first, insofar as, they fail to state the grounds, the Contested Decisions and Regulations thus infringe the applicant's rights of defence. Second, the illegality of the Contested Decisions and Regulations affects these proceedings since on the one hand it hampers the possibility for the applicant to present a defence and, on the other hand, the Court's ability to carry out the review of the lawfulness of the Contested Decisions and Regulations is impaired. It follows that the rights of the applicant to an effective judicial remedy are violated. Third, insofar as the applicant has been deprived of his rights of defence and since the Court's ability to carry out the review of the lawfulness of the Contested Decisions and Regulations relating to fund freezing measures — which are by their very nature 'particularly oppressive' — is undermined, the applicant was imposed an unjustified restriction of his right to property.

4. Fourth plea in law, alleging lack of evidence against the Applicant

   — The applicant submits that the Council failed to adduce the elements of evidence and information it relied on when it adopted the Contested Decisions and Regulations.

5. Fifth plea in law, alleging factual inaccuracy

   — The applicant submits that contrary to what is stated in the contested Decisions and Regulations, the applicant was no longer Deputy Head of the Atomic Energy Organization at the respective dates of his listing among the persons and entities falling within the ambit of restrictive measures. The Council therefore erred in fact when it listed the applicant for the sole reason that, at the date of the various Contested Decisions and Regulations, he was the Deputy Head of the Atomic Energy Organization.

6. Sixth plea in law, alleging error of law

   — The applicant submits that subparagraph b) of Article 20 is not meant to apply *per se* to individuals who hold managerial positions in an entity listed in Annex VIII. In addition, Article 20 b) provides for this listing of individuals '*that are engaged in, directly associated with, or providing support for, Iran's proliferation-sensitive nuclear activities*'. By listing the applicant in Annex II without adducing any evidence that the applicant was providing an active and effective support to Iranian nuclear activities at the time of his listing in Annex II, the Council erred in law.

7. Seventh plea in law, alleging manifest error in the assessment of the facts and violation of the proportionality principle

   — The applicant submits that in the case at hand no objective of general interest might justify that such stringent measures be imposed on individuals having held even for a brief period a managing position with the AEOI. Furthermore, even if the measures were considered as being justified by an objective of general interest, they would still be open to criticism by failing to respect a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

Action brought on 19 May 2014 — UNIC v Commission

(Case T-338/14)

(2014/C 212/53)

Language of the case: Italian

Parties

Applicant: Unione Nazionale Industria Conciaria (UNIC) (Milan, Italy) (represented by: A. Fratini, lawyer, and M. Bottino, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Uphold the action and, accordingly, annul the contested decision;

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

Pleas in law and main arguments

The present action has been brought against the European Commission's decision of 19 March 2014 rejecting the request for initiation of a withdrawal procedure in respect of the preferential tariff arrangements granted to India, Pakistan and Ethiopia with regard to the raw hides and semi-manufactured leather goods referred to in Sections S-8a, S-8b and S-12a of [the GSP Sections, as set out in Annex V to] Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ 2012 L 303, p. 1).

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

1. First plea in law, alleging infringement of Article 296 TFEU and of Article 41 of the Charter of Fundamental Rights of the European Union.

   — The applicant claims, in this regard, that the contested decision does not comply with the obligation, as interpreted by the case-law of the Court of Justice, to provide a clear, precise and unequivocal statement of reasons.

2. Second plea in law, alleging a manifest error of assessment.

   — The applicant claims, in this regard, that there has been a manifest error of assessment regarding (i) whether the temporary withdrawal of preferential arrangements is a sufficient response to the raw material supply problem and (ii) the existence of preconditions for the temporary withdrawal, pursuant to Article 19(1)(d) of Regulation No 978/2012, of the general preferential arrangements granted to India, Ethiopia and Pakistan.

3. Third plea in law, alleging failure to respect the right to good administration as described in Article 41(1) of the Charter of Fundamental Rights of the European Union.

   — The applicant claims, in this regard, that there has been a failure to verify whether the conditions listed in Article 19(1)(d) of Regulation No 978/2012 for initiating the procedure for withdrawing generalised tariff preferences have been satisfied.

Appeal brought on 19 May 2014 by CR against the judgment of the Civil Service Tribunal of 12 March 2014 in Case F-128/12, CR v Parliament

(Case T-342/14 P)

(2014/C 212/54)

Language of the case: French

Parties

Appellant: CR (Malling, France) (represented by A. Salerno, lawyer)

Other party to the proceedings: European Parliament and Council of the European Union

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 12 March 2014;

— itself settle the dispute between the appellant and the European Parliament, by annulling the decision which the appellant challenged before the Civil Service Tribunal, in so far as that decision requires him to reimburse all the sums which he unlawfully received in respect of family allowances; or

— in the alternative, refer the case back to the Civil Service Tribunal;

— order the European Parliament to pay all the costs of both sets of proceedings.

Pleas in law and main arguments

The appellant contests the rejection of the objection of illegality brought against the last sentence of the second paragraph of Article 85 of the Staff Regulations of Officials. In support of the appeal, the appellant relies on two pleas in law.

1. First plea in law, alleging infringement of the principle of legal certainty.

2. Second plea in law, alleging a failure to respond to the appellant's arguments as regards the disproportionate nature of the absence of any limitation period should the appointing authority be able to establish that the person concerned deliberately misled the administration with a view to obtaining payment of the sum in question.

Action brought on 23 May 2014 — Italy v Commission

(Case T-353/14)

(2014/C 212/55)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato, and G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the notice of open competition EPSO/AD/276/14 Administrators (AD 5) for drawing up a reserve list of 137 candidates to fill vacant posts for Administrators (AD 5), published in volume C 74 A of the *Official Journal of the European Union* on 13 March 2014;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments raised are those set out in Case T-275/13 *Italy* v *Commission* (OJ 2014 C 74 A, p. 4).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 1 February 2014 — ZZ v EIB

(Case F-9/14)

(2014/C 212/56)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: L. Isola and G. Isola, lawyers)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Application for annulment of the applicant's staff report for 2012 in so far as it does not classify his performance as 'exceptional' or 'very good' and does not propose that he be promoted to Function D and in so far as it sets his objectives for 2013, annulment of the guidelines for that report and, lastly, an order that the EIB pay compensation for the material and non-material damage that the applicant claims he has sustained.

Form of order sought

— Annul:

— the decision adopted on 18 December 2012 by the Appeals Committee, referring all documents back to that body and establishing the criteria which must be used by the Committee when adopting a new decision;

— the guidelines established by the Human Resources division in 'Note to Staff No 722 PERSONNEL/S&D/D&P/2012-198' of 5 December 2012 and the corresponding 'Guidelines to the 2012 annual staff appraisal exercise', including the section in which they provide that the final evaluation must be summarised in a certain way but do not identify the criteria which must be used by the appraiser;

— In the alternative, annul:

— the whole of the staff report for 2012, including the part containing the appraisal, the part in which performance is not summarised as 'exceptional' or 'very good' and in which no proposal is made to promote the applicant to Function D and, lastly, the part in which objectives are set for 2013;

— all connected, consequent and prior measures, including the promotions referred to in the note from the Director of Human Resources of May 2012 entitled '2011 staff appraisal exercise, award of promotions and titles';

— In any event, order the EIB to pay compensation for the material and non-material damage (within the period specified), and to pay the costs of the proceedings together with interest and monetary revaluation of those costs and of the sums awarded.

Action brought on 21 April 2014 — ZZ v Council

(Case F-38/14)

(2014/C 212/57)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Civil Service — Action for annulment of the decision of the Secretary-General of the Council to impose the sanction of removal from post with 15 % reduction of invalidity allowance until retirement age

Form of order sought

— Declare the present action admissible;

— Annul the contested decision and, so far as necessary, the decision rejecting the complaint;

— Order the Council of the European Union to pay the costs.

Action brought on 6 May 2014 — ZZ v Commission

(Case F-42/14)

(2014/C 212/58)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to impose on the applicant a penalty of relegation of three steps for an infringement of the rule prohibiting cumulative periods for national and statutory family allowances.

Form of order sought

— annul the decision adopted by the appointing authority on 24 June 2013 imposing on the applicant the penalty of relegation of three steps;

— where necessary, annul the decision adopted by the appointing authority on 24 January 2014 and sent to the applicant on 27 January 2014, rejecting the latter's complaint;

— order the defendant to pay the costs.

Action brought on 16 May 2014 — ZZ v Council

(Case F-44/14)

(2014/C 212/59)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision of the Council not to promote the applicant to grade AD 13 and, secondly, the grant of damages and interest for the non-material harm allegedly suffered.

Form of order sought

— Annul the decision not to promote her to grade AD 13 as is evident from the list published on 26 September 2013 and the Appointing Authority's response to the complaint dated 7 February 2014;

— Grant an amount of EUR 10 000 on the basis of the non-material harm suffered;

— Order the Council to pay the costs incurred by the applicant during the proceedings.

Action brought on 19 May 2014 — ZZ v Commission

(Case F-45/14)

(2014/C 212/60)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. de Abreu Caldas, M. de Abreu Caldas, J.-N. Louis, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision concerning the transfer of the applicant's pension rights to the European Union pension scheme applying the new GIP on Articles 11 and 12 of Annex VIII to the Staff Regulations

Form of order sought

— Annul the decision of 25 September 2013 calculating the bonus to his pension rights acquired before his entry into service in the Commission;

— Order the Commission to pay the costs.

Action brought on 20 May 2014 — ZZ v Commission

(Case F-46/14)

(2014/C 212/61)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision concerning the transfer of the applicant's pension rights to the European Union pension scheme applying the new GIP on Articles 11 and 12 of Annex VIII to the Staff Regulations

Form of order sought

— Annul the decision of 8 November 2013 calculating the bonus to his pension rights acquired before his entry into service in the Commission;

— Order the Commission to pay the costs.

Action brought on 20 May 2014 — ZZ and ZZ v Commission

(Case F-47/14)

(2014/C 212/62)

Language of the case: French

Parties

Applicant: ZZ and ZZ (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions concerning the transfer of the applicants' pension rights to the European Union pension scheme applying the new GIP on Articles 11 and 12 of Annex VIII to the Staff Regulations and an order that the Commission compensate the applicants for the loss caused to them as a result of the delayed handling of their requests to transfer their pension rights, arising due to the application of the GIP on Article 11 of Annex VIII to the Staff Regulations of 3 March 2011 rather than that of 28 April 2004.

Form of order sought

— Declare Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations unlawful and inapplicable;

— Annul the decisions of 15 and 24 October 2013 calculating the bonus to the pension rights acquired by the applicants before their entry into service, in the transfer thereof into the EU institutions pension scheme by application of the general implementing provisions on Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— Order the Commission to compensate the applicants for the loss caused to them as a result of the delayed handling of their requests to transfer their pension rights, arising due to the application of the GIP on Article 11 of Annex VIII to the Staff Regulations of 3 March 2011 rather than that of 28 April 2004;

— Order the Commission to pay the costs.

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