Official Journal of the European Union

C 65

English edition

Information and Notices

Volume 58

23 February 2015

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(2015/C 065/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Opinion of the Court (Full Court) of 18 December 2014 — European Commission

(Opinion 2/13) [1]

(Opinion pursuant to Article 218(11) TFEU — Draft international agreement — Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties)

(2015/C 065/02)

Language of the procedure: all official languages

Requested by

European Commission (represented by: L. Romero Requena, H. Krämer, C. Ladenburger and B. Smulders, acting as Agents)

Operative part

The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.

[1] OJ C 260, 7.9.2013.

Judgment of the Court (Grand Chamber) of 18 December 2014 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-81/13) [1]

(Actions for annulment — Coordination of social security systems — EEC-Turkey Association Agreement — Council decision on the position to be taken on behalf of the European Union within the Association Council — Choice of legal basis — Article 48 TFEU — Article 79(2)(b) TFEU — Article 217 TFEU)

(2015/C 065/03)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: M. Holt, C. Murrell, E. Jenkinson and S. Behzadi Spencer, Agents, and A. Dashwood QC)

Intervener in support of the applicant: Ireland (represented by: L. Williams, Agent, and N. Travers, BL)

Defendant: Council of the European Union (represented by: E. Finnegan and M. Chavrier, Agents)

Intervener in support of the defendant: European Commission (represented by: A. Aresu, J. Enegren and S. Pardo Quintillán, Agents)

Operative part of the judgment

The Court:

1) *Dismisses the action;*

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

3) *Orders Ireland and the European Commission to bear their own costs.*

([1]) OJ C 114, 20.4.2013.

Judgment of the Court (Second Chamber) of 18 December 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v X

(Case C-87/13) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Tax legislation — Income tax — Non-resident taxpayer — Deductibility of costs relating to a historic building occupied by its owner — Costs not deductible in respect of a historic building solely on the ground that it is not listed in the State of taxation, whereas it is listed in the State of residence)

(2015/C 065/04)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: X

Operative part of the judgment

Article 49 TFEU must be interpreted as not precluding legislation of a Member State under which, on the ground of protection of the national cultural and historical heritage, costs relating to listed historic buildings may be deducted solely by owners of historic buildings situated in its territory, provided that that possibility is available to owners of historic buildings which may form part of the cultural and historical heritage of that Member State despite being located in the territory of another Member State.

([1]) OJ C 141, 18.5.2013.

Judgment of the Court (First Chamber) of 18 December 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Schoenimport 'Italmoda' Mariano Previti vof (C-131/13), Turbu.com BV (C-163/13), Turbu.com Mobile Phone's BV (C-164/13) v Staatssecretaris van Financiën

(Joined Cases C-131/13, C-163/13 and C-164/13) ([1])

(References for a preliminary ruling — VAT — Sixth Directive — Transitional arrangements for trade between Member States — Goods dispatched or transported within the Community — Tax evasion carried out in the Member State of arrival — Evasion taken into account in the Member State of dispatch — Refusal of the benefit of rights to deduction, exemption or refund — Absence of provisions in national law)

(2015/C 065/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Staatssecretaris van Financiën (C-131/13), Turbu.com BV (C-163/13), Turbu.com Mobile Phone's BV (C-164/13)

Defendants: Schoenimport 'Italmoda' Mariano Previti vof (C-131/13), Staatssecretaris van Financiën (C-163/13 and C-164/13)

Operative part of the judgment

1) *The questions referred for a preliminary ruling by the Hoge Raad der Nederlanden in Cases C-163/13 and C-164/13 are inadmissible;*

2) *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 95/7/EC of 10 April 1995, must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of value added tax, even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in evasion of value added tax committed in the context of a chain of supplies.*

3) *Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of value added tax, that person was participating in evasion of value added tax committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.*

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Second Chamber) of 18 December 2014 (request for a preliminary ruling from the Raad van State — Netherlands) — Staatssecretaris van Economische Zaken, Staatssecretaris van Financiën v Q

(Case C-133/13) ([1])

(Reference for a preliminary ruling — Free movement of capital — Tax legislation — Gift tax — Exemption in respect of an 'estate' — No exemption in respect of property situated in the territory of another Member State)

(2015/C 065/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Staatssecretaris van Economische Zaken, Staatssecretaris van Financiën

Defendant: Q

Operative part of the judgment

Article 63 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which an exemption from gift tax relating to certain properties that are protected on account of their forming part of the national cultural and historical heritage is limited to those properties situated in the territory of that Member State, provided that that exemption is not excluded in the case of properties that may form part of the cultural and historical heritage of that Member State despite being located in the territory of another State.

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Grand Chamber) of 18 December 2014 (request for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) United Kingdom) — The Queen, on the application of Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez v Secretary of State for the Home Department

(Case C-202/13) ([1])

(Citizenship of the European Union — Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of a Member State — Right of entry — Third-country national who is a family member of a Union citizen and in possession of a residence card issued by a Member State — National legislation requiring an entry permit to be obtained prior to entry into national territory — Article 35 of Directive 2004/38/EC — Article 1 of the Protocol (No 20) on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland)

(2015/C 065/07)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Claimants: Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez

Defendant: Secretary of State for the Home Department

Operative part of the judgment

Both Article 35 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC and Article 1 of the Protocol (No 20) on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland must be interpreted as not permitting a Member State to require, in pursuit of an objective of general prevention, family members of a citizen of the European Union who are not nationals of a Member State and who hold a valid residence card, issued under Article 10 of Directive 2004/38 by the authorities of another Member State, to be in possession, pursuant to national law, of an entry permit, such as the EEA (European Economic Area) family permit, in order to be able to enter its territory.

(1) OJ C 189, 29.6.2013.

Judgment of the Court (Fifth Chamber) of 18 December 2014 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel — Belgium) — LVP NV v Belgische Staat

(Case C-306/13) (1)

(Reference for a preliminary ruling — Common organisation of the markets — Bananas — System of importation — Applicable tariff rates)

(2015/C 065/08)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: LVP NV

Defendant: Belgische Staat

Operative part of the judgment

The provisions of the General Agreement on Tariffs and Trade of 1994, as set out in Annex 1 A of the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), are not such as to create rights which individuals might rely on directly before a national court in order to oppose the application of the customs tariff rate of EUR 176 per tonne, laid down in Article 1(1) of Council Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rates for bananas.

(1) OJ C 252, 31.8.2013.

Judgment of the Court (Fourth Chamber) of 18 December 2014 (request for a preliminary ruling from the Retten i Kolding, Civilretten) — FOA, acting on behalf of Karsten Kaltoft v Kommunernes Landsforening (KL), acting on behalf of Billund Kommune

(Case C-354/13) ([1])

Reference for a preliminary ruling — Social policy — Dismissal — Ground — Obesity of the worker — General principle of non-discrimination on the grounds of obesity — Lack — Directive 2000/78/EC — Equal treatment in employment and occupation — Prohibition of all discrimination on the basis of a disability — Existence of a 'disability'

(2015/C 065/09)

Language of the case: Danish

Referring court

Retten i Kolding, Civilretten

Parties to the main proceedings

Applicant: FOA, acting on behalf of Karsten Kaltoft

Defendant: Kommunernes Landsforening (KL), acting on behalf of Billund Kommune

Operative part of the judgment

1) *EU law must be interpreted as not laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation;*

2) *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the obesity of a worker can constitute a 'disability' within the meaning of that directive where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. It is for the national court to determine whether, in the main proceedings, those conditions are met.*

([1]) OJ C 252, 31.8.2013.

Judgment of the Court (Grand Chamber) of 18 December 2014 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — International Stem Cell Corporation v Comptroller General of Patents, Designs and Trade Marks

(Case C-364/13) ([1])

(Reference for a preliminary ruling — Directive 98/44/EC — Article 6(2)(c) — Legal protection of biotechnological inventions — Parthenogenetic activation of oocytes — Production of human embryonic stem cells — Patentability — Exclusion of 'uses of human embryos for industrial or commercial purposes' — Concepts of 'human embryo' and 'organism capable of commencing the process of development of a human being')

(2015/C 065/10)

Language of the case: English

Referring court

High Court of Justice (Chancery)

Parties to the main proceedings

Applicant: International Stem Cell Corporation

Defendant: Comptroller General of Patents, Designs and Trade Marks

Operative part of the judgment

Article 6(2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions must be interpreted as meaning that an unfertilised human ovum whose division and further development have been stimulated by parthenogenesis does not constitute a 'human embryo', within the meaning of that provision, if, in the light of current scientific knowledge, it does not, in itself, have the inherent capacity of developing into a human being, this being a matter for the national court to determine.

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Third Chamber) of 18 December 2014 (requests for a preliminary ruling from the Amtsgericht Düsseldorf and the Amtsgericht Karlsruhe — Germany) — Sophia Marie Nicole Sanders represented by Marianne Sanders v David Verhaegen (C-400/13), Barbara Huber v Manfred Huber (C-408/13)

(Joined Cases C-400/13 and C-408/13) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Cooperation in civil matters — Regulation No 4/2009 — Article 3 — Jurisdiction to rule on an action relating to a maintenance obligation in respect of a person resident in another Member State — National legislation establishing a centralisation of jurisdiction)

(2015/C 065/11)

Language of the case: German

Referring courts

Amtsgericht Düsseldorf, Amtsgericht Karlsruhe

Parties to the main proceedings

Applicants: Sophia Marie Nicole Sanders represented by Marianne Sanders (C-400/13), Barbara Huber (C-408/13)

Defendants: David Verhaegen (C-400/13), Manfred Huber (C-408/13)

Operative part of the judgment

Article 3(b) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as precluding national legislation such as that at issue in the main proceedings which establishes a centralisation of judicial jurisdiction in matters relating to cross-border maintenance obligations in favour of a first instance court which has jurisdiction for the seat of the appeal court, except where that rule helps to achieve the objective of a proper administration of justice and protects the interests of maintenance creditors while promoting the effective recovery of such claims, which is, however, a matter for the referring courts to verify.

([1]) OJ C 274, 21.9.2013.

Judgment of the Court (First Chamber) of 18 December 2014 — European Commission v Parker Hannifin Manufacturing Srl, formerly Parker ITR Srl, Parker-Hannifin Corp.

(Case C-434/13 P) ([1])

(Appeals — Agreements, decisions and concerted practices — European market for marine hoses — Succession of legal entities — Attributability of unlawful conduct — Reduction of the fine by the General Court — Unlimited jurisdiction)

(2015/C 065/12)

Language of the case: English

Parties

Appellant: European Commission (represented by: S. Noë, V. Bottka and R. Sauer, Agents)

Other parties to the proceedings: Parker Hannifin Manufacturing Srl, formerly Parker ITR Srl, Parker-Hannifin Corp. (represented by: F. Amato, F. Marchini Càmia and B. Amory, avocats)

Operative part of the judgment

The Court:

1) *Sets aside paragraphs 1, 2 and 3 of the operative part of the judgment of the General Court of the European Union in Parker ITR and Parker-Hannifin v Commission (T-146/09, EU:T:2013:258);*

2) *Refers the case back to the General Court of the European Union for a ruling on the merits of the action;*

3) *Reserves the costs.*

([1]) OJ C 313, 26.10.2013.

Judgment of the Court (Fourth Chamber) of 18 December 2014 (request for a preliminary ruling from the Tribunal d'instance d'Orléans — France) — CA Consumer Finance v Ingrid Bakkaus, Charline Bonato, née Savary, Florian Bonato

(Case C-449/13) ([1])

(Reference for a preliminary ruling — Consumer protection — Consumer credit — Directive 2008/48/EC — Pre-contractual information duties — Obligation to check the borrower's creditworthiness — Burden of proof — Methods of proof)

(2015/C 065/13)

Language of the case: French

Referring court

Tribunal d'instance d'Orléans

Parties to the main proceedings

Applicant: CA Consumer Finance

Defendants: Ingrid Bakkaus, Charline Bonato, née Savary, Florian Bonato

Operative part of the judgment

(1) *The provisions of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted to the effect that:*

— *first, they preclude national rules according to which the burden of proving the non-performance of the obligations laid down in Articles 5 and 8 of Directive 2008/48 lies with the consumer; and*

— *secondly, they preclude a court from having to find that, as a result of a standard term, a consumer has acknowledged that the creditor's pre-contractual obligations have been fully and correctly performed, with that term thereby resulting in a reversal of the burden of proving the performance of those obligations such as to undermine the effectiveness of the rights conferred by Directive 2008/48.*

(2) *Article 8(1) of Directive 2008/48 must be interpreted to the effect that, first, it does not preclude the consumer's creditworthiness assessment from being carried out solely on the basis of information supplied by the consumer, provided that that information is sufficient and that mere declarations by the consumer are also accompanied by supporting evidence and, secondly, that it does not require the creditor to carry out systematic checks of the veracity of the information supplied by the consumer.*

(3) *Article 5(6) of Directive 2008/48 must be interpreted to the effect that, although it does not preclude a creditor from providing the consumer with adequate explanations before assessing the financial situation and the needs of that consumer, it may be that the assessment of the consumer's creditworthiness means that the adequate explanations provided need to be adapted, and that those explanations must be communicated to the consumer in good time before the credit agreement is signed, without this, however, requiring a specific document to be drawn up.*

([1]) OJ C 313, 26.10.2013.

Judgment of the Court (Tenth Chamber) of 18 December 2014 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — Generali-Providencia Biztosító Zrt v Közbeszerzési Hatóság Közbeszerzési Döntőbizottság

(Case C-470/13) ([1])

(Reference for a preliminary ruling — Public procurement — Contracts falling below the threshold laid down in Directive 2004/18/EC — Articles 49 TFEU and 56 TFEU — Applicability — Certain cross-border interest — Grounds for exclusion from a tendering procedure — Exclusion of an economic operator having committed an infringement of national competition rules, established by a judgment given not more than five years ago — Lawfulness — Proportionality)

(2015/C 065/14)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Generali-Providencia Biztosító Zrt

Defendant: Közbeszerzési Hatóság Közbeszerzési Döntőbizottság

Operative part of the judgment

Articles 49 TFEU and 56 TFEU do not preclude the application of national legislation excluding the participation in a tendering procedure of an economic operator who has committed an infringement of competition law, established by a judicial decision having the force of res judicata, for which a fine was imposed.

([1]) OJ C 367, 14.12.2013.

Judgment of the Court (First Chamber) of 18 December 2014 (request for a preliminary ruling from the Bundessozialgericht — Germany) — Walter Larcher v Deutsche Rentenversicherung Bayern Süd

(Case C-523/13) ([1])

(Reference for a preliminary ruling — Social security for migrant workers — Article 45 TFEU — Article 3 (1) of Regulation (EEC) No 1408/71 — Old-age benefits — Principle of non-discrimination — Worker who, prior to retirement, has participated, in a Member State, in a part-time work scheme for older employees — Consideration for entitlement to an old-age pension in another Member State)

(2015/C 065/15)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Appellant: Walter Larcher

Respondent: Deutsche Rentenversicherung Bayern Süd

Operative part of the judgment

1. *The principle of equal treatment laid down in Article 3(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, precludes legislation of a Member State under which entitlement to an old-age pension following participation in a part-time work scheme for older employees is conditional on that scheme having taken place exclusively under the laws of that Member State;*

2. *The principle of equal treatment laid down in Article 3(1) of Regulation No 1408/71, as amended and updated by Regulation (EC) No 118/97, as amended by Regulation No 1992/2006, must be interpreted as meaning that, for the purposes of the recognition in a Member State of participation in a part-time work scheme for older employees which took place in accordance with the legislation of another Member State, it is necessary to undertake a comparative examination of the conditions for the application of such schemes under the legislation of those two Member States, in order to determine on a case-by-case basis whether the differences identified are liable to compromise attainment of the social policy objectives pursued by the legislation at issue in the former Member State.*

([1]) OJ C 24, 25.1.2014.

Judgment of the Court (Grand Chamber) of 18 December 2014 (request for a preliminary ruling from the Cour constitutionnelle — Belgium) — Mohamed M'Bodj v État belge

(Case C-542/13) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 19(2) — Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or subsidiary protection status — Person eligible for subsidiary protection — Article 15(b) — Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin — Article 3 — More favourable standards — Applicant suffering from a serious illness — No appropriate treatment available in the country of origin — Article 28 — Social protection — Article 29 — Health care)

(2015/C 065/16)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicant: Mohamed M'Bodj

Defendant: État belge

Operative part of the judgment

Articles 28 and 29 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read in conjunction with Articles 2(e), 3, 15, and 18 of that directive, are to be interpreted as not requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation such as that at issue in the main proceedings, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country.

([1]) OJ C 367, 14.12.2013.

Judgment of the Court (Sixth Chamber) of 18 December 2014 (request for a preliminary ruling from the Commissione tributaria provinciale di Cagliari — Italy) — Società Edilizia Turistica Alberghiera Residenziale (SETAR) v Comune di Quartu S. Elena

(Case C-551/13) ([1])

(Reference for a preliminary ruling — Directive 2008/98/EC — Article 15 — Waste management — Possibility for the waste producer to carry out the waste treatment independently — National transposition law adopted, but not yet in force — Expiry of the transposition period — Direct effect)

(2015/C 065/17)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Cagliari

Parties to the main proceedings

Applicant: Società Edilizia Turistica Alberghiera Residenziale (SETAR)

Defendant: Comune di Quartu S. Elena

Operative part of the judgment

EU law and Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which transposes into national law a provision of that directive, but the entry into force of which is deferred pending the adoption of a subsequent internal measure, if that entry into force takes place after the end of the transposition period prescribed by the directive.

Article 15(1) of Directive 2008/98, read in conjunction with Articles 4 and 13 of that directive, must be interpreted as not precluding national legislation under which no provision is made permitting a waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste, provided that that legislation meets the requirements entailed by the principle of proportionality.

([1]) OJ C 377, 21.12.2013.

Judgment of the Court (Grand Chamber) of 18 December 2014 (request for a preliminary ruling from the Cour du travail de Bruxelles — Belgium) — Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v Moussa Abdida

(Case C-562/13) ([1])

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Articles 19(2) and 47 — Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or subsidiary protection status — Person eligible for subsidiary protection — Article 15 (b) — Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin — Article 3 — More favourable standards — Applicant suffering from a serious illness — No appropriate treatment available in the country of origin — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 13 — Judicial remedy with suspensive effect — Article 14 — Safeguards pending return — Basic needs)

(2015/C 065/18)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Applicant: Centre public d'action sociale d'Ottignies-Louvain-la-Neuve

Defendant: Moussa Abdida

Operative part of the judgment

Articles 5 and 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, taken in conjunction with Articles 19 (2) and 47 of the Charter of Fundamental Rights of the European Union and Article 14(1)(b) of that directive, are to be interpreted as precluding national legislation which:

— *does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his state of health, and*

— *does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.*

(1) OJ C 9, 11.1.2014.

Judgment of the Court (Fifth Chamber) of 18 December 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Azienda Ospedaliero-Universitaria di Careggi-Firenze v Data Medical Service Srl

(Case C-568/13) (1)

(Reference for a preliminary ruling — Public service contracts — Directive 92/50/EEC — Articles 1(c) and 37 — Directive 2004/18/EC — First subparagraph of Article 1(8) and Article 55 — Concepts of 'service provider' and 'economic operator' — Public university hospital — Entity with legal personality and business and organisational autonomy — Principally non-profit-making activity — Institutional purpose of offering health services — Possibility of offering similar services on the market — Admission to participate in a tendering procedure for the award of a public contract)

(2015/C 065/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Azienda Ospedaliero-Universitaria di Careggi-Firenze

Defendant: Data Medical Service Srl

Operative part of the judgment

1) *Article 1(c) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts precludes national legislation which excludes a public hospital, such as that at issue in the main proceedings, from participation in tendering procedures for the award of public contracts as a result of its status as a public economic entity, if and in so far as that entity is authorised to operate on the market in accordance with its institutional and statutory objectives;*

2) *The provisions of Directive 92/50, and in particular the general principles of freedom of competition, non-discrimination and proportionality which underlie that directive, must be interpreted as not precluding national legislation which allows a public hospital, such as that at issue in the main proceedings, participating in a tendering procedure to submit a tender which cannot be matched by any competitors as a result of the public funding which it receives. However, in the course of the examination of the abnormally low character of a tender on the basis of Article 37 of that directive, the contracting authority may take into consideration the existence of public funding which such an entity receives in the light of the option to reject that tender.*

(1) OJ C 52, 22.2.2014.

Judgment of the Court (Third Chamber) of 18 December 2014 (request for a preliminary ruling from the Raad van State — Netherlands) — Somalische Vereniging Amsterdam en Omgeving (Somvao) v Staatssecretaris van Veiligheid en Justitie

(Case C-599/13) ([1])

(Reference for a preliminary ruling — Protection of the European Union's financial interests — Regulation (EC, Euratom) No 2988/95 — Article 4 — General budget of the European Union — Regulation (EC, Euratom) No 1605/2002 — Article 53b(2) — Decision 2004/904/EC — European Refugee Fund for the period 2005-2010 — Article 25(2) — Legal basis of the obligation to recover funds in the event of an irregularity)

(2015/C 065/20)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Somalische Vereniging Amsterdam en Omgeving (Somvao)

Defendant: Staatssecretaris van Veiligheid en Justitie

Operative part of the judgment

Article 53(2)(c) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006, must be interpreted as meaning that, failing a legal basis in national law, that provision provides a legal basis for a decision of the national authorities to alter, to the detriment of the beneficiary, the amount of the grant paid out of the European Refugee Fund, where management is shared between the Commission and the Member States, and to order the recovery from the beneficiary of part of that amount. It is for the national court to determine whether, taking into account the conduct of both the beneficiary of the funds and of the national administrative authorities, the principles of legal certainty and legitimate expectations, as understood in EU law, have been observed as regards the demand for repayment.

([1]) OJ C 24, 25.1.2014.

Judgment of the Court (Seventh Chamber) of 18 December 2014 — Commission v Republic of Poland

(Case C-639/13) ([1])

Failure to fulfil obligations — Directive 2006/112/EC — VAT — Reduced rate — Articles designed for fire protection

(2015/C 065/21)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and M. Owsiany-Hornung, acting as Agents)

Defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. *Holds that by applying a reduced rate of value added tax to supplies of goods designed for fire protection, set out in Annex No 3 to the Law of 11 March 2004 concerning tax on goods and services, the Republic of Poland failed to fulfil its obligations under Articles 96 to 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Annex III to that directive.*

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

(1) OJ C 45, 15.2.2014.

Judgment of the Court (First Chamber) of 18 December 2014 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-640/13) (1)

(Failure of a Member State to fulfil obligations — Recovery of taxes unduly paid under EU law — National legislation — Retroactive curtailment of the limitation period for the applicable remedies — Principle of effectiveness — Principle of the protection of legitimate expectations)

(2015/C 065/22)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal and W. Roels, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: J. Beeko, Agent)

Operative part of the judgment

The Court:

1. *Declares that by adopting a provision, such as section 107 of the Finance Act 2007, which curtailed, retroactively and without notice or transitional arrangements, the right of taxpayers to recover taxes levied in breach of EU law the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under Article 4(3) TEU;*

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

(1) OJ C 78, 15.3.2014.

Order of the Court of 11 December 2014 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Viseu — Portugal) — Agrocaramulo — Empreendimentos Agro-Pecuários do Caramulo SA v Instituto de Financiamento da Agficultura e Pescas, IP (IFAP)

(Case C-70/14) (1)

(Reference for a preliminary ruling — Regulation (EEC) No 3846/87 — Agriculture — Common organisation of the markets — Export refunds — Poultrymeat — 'Cull hens' — Agricultural product nomenclature for export refunds — Classification)

(2015/C 065/23)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Viseu

Parties to the main proceedings

Applicant: Agrocaramulo — Empreendimentos Agro-Pecuários do Caramulo SA

Defendant: Instituto de Financiamento da Agricultura e Pescas, IP (IFAP)

Operative part of the order

Annex I to Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds, as most recently amended by Commission Regulation (EC) No 2091/2005 of 15 December 2005, must be interpreted as meaning that laying hens put down at the end of their laying period, when their skeleton is completely ossified, known as 'cull hens', do not fall within the description 'others' under product headings 0207 12 10 9900 and 0207 12 90 9190 set out in that annex.

(1) OJ C 135, 5.5.2014.

Order of the Court (Fifth Chamber) of 11 December 2014 — Federación Nacional de Empresarios de Minas de Carbón (Carbunión) v Council of the European Union, European Commission

(Case C-99/14 P) (1)

(Appeals — State aid — Decision 2010/787/EU — Aid to facilitate the closure of uncompetitive coal mines — Conditions for considering that aid compatible with the internal market — Article 181 of the Rules of Procedure of the Court)

(2015/C 065/24)

Language of the case: English

Parties

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

Other parties to the proceedings: Council of the European Union (represented by: F. Florindo Gijón and P. Mahnič Bruni, acting as Agents), European Commission (represented by: L. Flynn, É. Gippini Fournier and C. Urraca Caviedes, acting as Agents)

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders La Federación Nacional de Empresarios de Minas de Carbón (Carbunión) to pay the costs.*

(1) OJ C 112, 14.4.2014.

Appeal brought on 30 July 2014 by Compagnie des bateaux mouches SA against the judgment of the General Court (Eighth Chamber) delivered on 21 May 2014 in Case T-553/12 Compagnie des bateaux mouches SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-368/14 P)

(2015/C 065/25)

Language of the case: French

Parties

Appellant: Compagnie des bateaux mouches SA (represented by: E. Piwnica, lawyer)

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

By order of the Court (Sixth Chamber) of 11 December 2014, the Court dismissed the appeal and ordered the Compagnie des bateaux mouches SA to bear its own costs.

Request for a preliminary ruling from the Landgericht Münster (Germany) lodged on 12 November 2014 — Klausner Holz Niedersachsen GmbH v Land Nordrhein-Westfalen

(Case C-505/14)

(2015/C 065/26)

Language of the case: German

Referring court

Landgericht Münster

Parties to the main proceedings

Applicant: Klausner Holz Niedersachsen GmbH

Defendant: Land Nordrhein-Westfalen

Question referred

In civil proceedings concerning the performance of a civil-law contract granting aid, does EU law, in particular Articles 107 TFEU and 108 TFEU (or Articles 87 TEC and 88 TEC) and the principle of effectiveness, require that a final declaratory judgment under civil law which has been delivered in the same case and which confirms that the civil-law contract remains in force, without any consideration of the law on aid, be disregarded if under national law the performance of the contract cannot otherwise be prevented?

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 13 November 2014 — P v M

(Case C-507/14)

(2015/C 065/27)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: P

Defendant: M

Question referred

'Where a case concerning parental responsibility is brought in one Member State and another case, in which the same cause of action is at issue, has been brought at an earlier point in time in a different Member State and which has since been stayed at the request of the applicant in that case, without having been served on the relevant defendant and without the latter having been informed of its existence or having participated in that case in any way, and which was still stayed at the time the defendant in the earlier case brought the subsequent proceedings, can it be deemed, in the light of Article 16(1)(a) of Council Regulation (EC) No 2201/2003 ([1]) of 27 November 2003 and for the purposes of Article 19(2) of that regulation, that the court before which the earlier proceedings were stayed was the first court to be seised?'

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 — (OJ 2003 L 338, p. 1).

Action brought on 14 November 2014 — European Commission v Republic of Cyprus

(Case C-515/14)

(2015/C 065/28)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: E. Tserepa-Lacombe and D. Martin, acting as Agents)

Defendant: Republic of Cyprus

Form of order sought

— declare that the Republic of Cyprus has failed to fulfil its obligations under Articles 45 and 48 of the Treaty on the Functioning of the European Union and Article 4(3) of the Treaty on European Union because it has not repealed with retroactive effect, from 1 May 2004, the age criterion which is contained in Article 27 of the Law on Pensions (Law 97 (I)97) and which renders that article incompatible with the foregoing provisions, since it deters workers from leaving their State in order to take up work in another Member State, an institution of the European Union or another international body and as it results in unequal treatment between migrant workers, including those who work in the institutions of the European Union or another international body, on the one hand, and State officials who have engaged in activity only in Cyprus, on the other;

— order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

The European Commission requests the Court to declare that the Republic of Cyprus has failed to fulfil its obligations under Articles 45 and 48 of the Treaty on the Functioning of the European Union and Article 4(3) of the Treaty on European Union because it has not repealed with retroactive effect, from 1 May 2004, the age criterion which is contained in Article 27 of Law 97(I)97 and which renders that article incompatible with the foregoing provisions, since it deters workers from leaving their State in order to take up work in another Member State, an institution of the European Union or another international body and as it results in unequal treatment between migrant workers, including those who work in the institutions of the European Union, and State officials who have engaged in activity only in Cyprus. The Cypriot legislation, and specifically Article 27 of the Law on Pensions (Law 97(I)97), introduces a difference in treatment between officials of the national administration and officials who work in another Member State in international bodies or in the European Union, since only workers who have engaged in activity exclusively in Cyprus can, in the event of release from the State service, make use of Articles 24 and 25 of the Law on Pensions and retain their pension rights even if they do not fulfil the age criterion of 45 or 48 years. On the other hand, workers who have exercised their right to freedom of movement do not have the possibility of relying on those articles, with the consequence of loss of their pension rights.

Furthermore, the article of the Law on Pensions that is at issue impedes the free movement of workers because it denies the worker the possibility of relying on aggregation of all insurance periods and does not guarantee the migrant worker a unified career for social security purposes. Application of the Law on Pensions means that an official who resigns voluntarily from the State service of Cyprus in order to work in another Member State in international bodies, and who does not fulfil the age criterion of having reached 45 or 48 years as the case may be, receives only the lump sum and loses the pension rights, pursuant to Article 27(1)(b) of the Law on Pensions, even if he has completed the minimum period of insurance of five years.

In addition, Law 31(I)/2012 which provides only for the possibility of transfer of pension rights to and from the pension scheme of officials of the European Union does not contain any provision relating to the pension rights of State officials who leave the State service of Cyprus in order to take up duties with the European Union but ultimately choose not to transfer their pension rights pursuant to Article 11 of Annex VIII to the Staff Regulations of Officials of the European Communities. Those officials will lose their pension rights if they have resigned voluntarily from the State service of Cyprus and do not fulfil the age criterion.

Moreover, the Law on the Pension Benefits of State Officials in the Broader Public Sector including Local Authorities (Provisions of General Application) of 2011 (Law 113(I)/2011) applies only to State officials who are new entrants appointed to a post for the first time on or after 1 October 2011, the date upon which that Law entered into force, with the result that the age discrimination continues to apply in respect of those who are governed by the Law on Pensions (Law 97 (I)97).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 19 November 2014 — Sparkasse Allgäu v Finanzamt Kempten

(Case C-522/14)

(2015/C 065/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Sparkasse Allgäu

Defendant: Finanzamt Kempten

Question referred

Does the freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union, ex Article 43 [of the Treaty establishing] the European Communities) preclude a provision in a Member State under which a credit institution established in its national territory must, on the death of a domestic testator, also notify the tax office responsible for the administration of inheritance tax in the national territory of those of the testator's assets which are held or managed in a dependent branch of the credit institution in another Member State, where there is no similar notification obligation in the other Member State and credit institutions in that State are subject to banking secrecy any breach of which constitutes a criminal offence?

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 24 November 2014 — YARA Brunsbüttel GmbH v Hauptzollamt Itzehoe

(Case C-529/14)

(2015/C 065/30)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: YARA Brunsbüttel GmbH

Defendant: Hauptzollamt Itzehoe

Questions referred

1. Does Article 1 of Directive 2003/96/EC ([1]) preclude national tax relief for energy products used for thermal exhaust air treatment or does the directive not apply to such energy products pursuant to the second indent of Article 2(4)(b) of Directive 2003/96/EC because use for thermal exhaust air treatment is a purpose other than as motor fuels or as heating fuels and this therefore constitutes dual use of energy products within the meaning of that provision?

2. Is tax relief possible, if appropriate, for energy products used for thermal exhaust air treatment only if, in the thermal exhaust air treatment process, they also go into a product resulting from the treatment of exhaust air as a raw material, basic material or auxiliary material?

3. Is tax relief precluded for energy products used for thermal exhaust air treatment if the thermal energy released in the treatment of exhaust air is also partly used for heating and/or drying purposes? Is such relief also precluded, as appropriate, if less energy is required for heating and/or drying than the energy which is available in the exhaust air and released in its thermal treatment?

([1]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 24 November 2014 — Toorank Productions BV v Staatssecretaris van Financiën

(Case C-532/14)

(2015/C 065/31)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Toorank Productions BV

Defendant: Staatssecretaris van Financiën

Question referred

Should heading 2206 of the CN be interpreted as meaning that a beverage with an alcoholic strength by volume of 13,4 % vol, obtained by mixing a purified, alcoholic beverage (base) known as 'Ferm Fruit', obtained by fermentation from apple concentrate, with sugar, aromatic substances, colouring and flavouring agents, thickening agents, preservatives and distilled alcohol — in the sense that that alcohol does not exceed, either in volume or in percentage, 49 per cent of the alcohol occurring in the beverage, whereas 51 per cent thereof consists of alcohol obtained by fermentation — should be classified under that heading? If not, should subheading 2208 70 of the CN be interpreted as meaning that a beverage such as that should be classified as liqueur under that subheading?

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 24 November 2014 — Toorank Productions BV v Staatssecretaris van Financiën

(Case C-533/14)

(2015/C 065/32)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Toorank Productions BV

Defendant: Staatssecretaris van Financiën

Questions referred

1. Should heading 2206 of the CN be interpreted as meaning that a beverage known as 'Ferm Fruit', obtained by fermentation from apple concentrate, which is also used as a beverage base for the production of a variety of other beverages, which has an alcoholic strength by volume of 16 % vol, which, as a result of purification (including ultrafiltration) is neutral with regard to colour, smell and taste, and to which no distilled alcohol has been added, must be classified under that heading? If not, should heading 2208 of the CN be interpreted as meaning that such a beverage must be classified under that heading?

2. Should heading 2206 of the CN be interpreted as meaning that a beverage with an alcoholic strength by volume of 14 % vol, obtained by mixing the beverage (base) described in question 1 above with sugar, aromatic substances, colouring and flavouring agents, thickening agents and preservatives, and which does not contain any distilled alcohol, must be classified under that heading? If not, should heading 2208 of the CN be interpreted as meaning that such a beverage must be classified under that heading?

Appeal brought on 1 December 2014 by Holcim (Romania) SA against the judgment of the General Court (Eighth Chamber) delivered on 18 September 2014 in Case T-317/12: Holcim (Romania) SA v European Commission

(Case C-556/14 P)

(2015/C 065/33)

Language of the case: English

Parties

Appellant: Holcim (Romania) SA (represented by: L. Arnauts, lawyer)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment delivered by the General Court (Eighth Chamber) on 18 September 2014 in case T-317/12, Holcim (Romania) SA v European Commission;

— order the European Commission to pay the costs of the proceedings before the General Court in Case T-317/12 and the costs of the proceedings before the Court of Justice;

— refer the case back to the General Court.

Alternatively, grant the forms of order sought by the Applicant as requested before the General Court:

— on the grounds of articles 256, 268 and 340 TFEU, find the EU liable for the conduct of the European Commission, with regard to the damage suffered by the applicant following the theft of 1 000 000 allowances;

— order the EU to pay to the applicant the market value of the stolen allowances, which would not have been recovered on the day of the final judgment, at the market price on the day of the theft, plus interest at the rate of 8 % per annum as from 16 November 2010;

— consequently, order the European Union to pay to the applicant a sum of 1 € on a provisional basis;

— order the parties to agree on the amount of damages and/or the claimant to prove the final extent of his damage, within 3 months following the interlocutory judgment;

— declare the judgment enforceable.

And in any case:

— order the EU to pay the costs;

— declare the judgment enforceable.

Pleas in law and main arguments

In Regulation 2216/2004 of 21 December 2004 'for a standardized and secured system of registries pursuant to Directive 2003/87/EC ([1]) of the European Parliament and of the Council and Decision No 280/2004/EC ([2]) of the European Parliament and of the Council' ([3]), the European Commission has set up a standardized system of national registries (EU-ETS) to track and secure the issue, acquisition, transfer and cancellation of European Union Allowances (EUAs) (allowances to emit a certain amount of greenhouse gas within the framework of the international agreements regarding their reduction). The national registries are connected and supervised by a central administrator at the European Commission, called Community Independent Transaction Log (CITL).

Several national registries of the EU-ETS have been attacked by cybercriminals. On November 16, 2010, the EU-ETS accounts of Holcim (Romania) were illegally accessed. By a series of operations carried out by unauthorized persons, 1 600 000 EUAs were transferred to two foreign accounts, of which only 600 000 were recovered thanks to the intervention of the Romanian National Registry (NEPA). This represents a loss of approximately 15 000 000 € since, due to the position of the European Commission, Holcim (Romania) was not able to recover the remaining stolen allowances.

The European Commission consistently refused (i) to block the stolen allowances, although they each have an individual number and are easily trackable at any time within the EU-ETS and (ii) to disclose in which accounts and/or national registries they are located, with a view to permitting Holcim to institute legal proceedings in the Member State(s) concerned. The European Commission also ordered the national registries to take the same position, on the basis of a duty of confidentiality.

The claim for damages against the European Union, pursuant to Article 21 of the Protocol on the Statute of the Court of Justice, and Articles 256, 268 and 340 TFEU, which was dismissed by the General Court in its Judgment of 18 September 2014, is based:

First Plea: on the liability of the European Union for unlawful decisions of the European Commission, consisting in:

i. a misinterpretation of Article 10 (1) of Regulation 2216/2004 of 21 December 2004 'for a standardized and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council',

ii. a breach of Article 20 of Directive 2003/87/EC of the European Parliament and of the Council 'establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC' and

iii. breaches of several general principles of law (the principle of proportionality and of protection of legitimate expectations, the duty of care and the right to an effective judicial protection with regard to property rights), when deciding not to disclose or allow disclosure of the location of stolen European Emission Allowances (EUAs) in the framework of the European Union Emissions Trading Scheme (EU-ETS).

Second plea: on the liability of the European Union for unlawful implementation of Articles 19 and 20 of Directive 2003/87 and Regulation 2216/2004 of the European Commission with regard to the security, confidentiality and functioning of the EU-ETS.

Third plea: on the liability of the European Union for lawful acts affecting a particular circle of economic operators in a disproportionate manner in comparison with others (unusual damage) and exceeding the limits of the economic risks inherent in operating in the sector concerned (special damage), without the legislative measure that gave rise to the alleged damage being justified by a general economic interest.

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, p. 32.
(2) Decision 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol, OJ L 49, p. 1.
(3) OJ L 386, p. 1.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 5 December 2014 — Caner Genc v Udlændingenævnet

(Case C-561/14)

(2015/C 065/34)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Caner Genc

Defendant: Udlændingenævnet (Immigration Appeals Board)

Questions referred

1. Must the standstill clause in Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, attached to the Agreement of 12 September 1963 between the European Economic Community and Turkey establishing an Association between the European Economic Community and Turkey, and/or the standstill clause in Article 41(1) of the Additional Protocol of 23 November 1970, as confirmed by Council Regulation (EEC) No 2760/72 (1) of 19 December 1972, be interpreted as meaning that new and more stringent conditions on access to family reunification for family members who are not economically active, including minor children of economically active Turkish nationals who are resident and have a residence permit in a Member State, are covered by the standstill requirement having regard to:

   — the Court of Justice's interpretation of the standstill clauses in particular in its judgments in *Derin*, C-325/05, EU:C:2007:442; *Dülger*, C-451/11, EU:C:2012:504; *Ziebell*, C-371/08, EU:C:2011:809 (Grand Chamber) and *Demirkan*, C-221/11, EU:C:2013:583 (Grand Chamber),

   — the aim and content of the Ankara Agreement, as interpreted in particular in the *Ziebell* and *Demirkan* judgments, and having regard to

      — the fact that the Agreement and the protocols and decisions, etc. attached thereto do not contain provisions on family reunification, and

      — the fact that family reunification within the then Community and the present European Union has always been governed by secondary law, at present the Free Movement Directive (Directive 2004/38/EC)? (2)

2. In answering Question 1, the Court is asked to indicate whether any derived right to family reunification for family members of economically active Turkish nationals who reside and have a residence permit in a Member State applies to family members of Turkish workers under Article 13 of Decision No 1/80, or whether it applies only to family members of Turkish self-employed persons pursuant to Article 41(1) of the Additional Protocol?

3. If the answer to Question 1, read in conjunction with Question 2, is in the affirmative, the Court is asked to indicate whether the standstill clause in Article 13(1) of Decision No 1/80 must be interpreted as meaning that new restrictions, which are 'justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it' (beyond what is stated in Article 14 of Decision No 1/80) are lawful?

4. If the answer to Question 3 is in the affirmative, the Court is asked to indicate:

(a) What guidelines should be used to carry out the restriction test and proportionality assessment. The Court is asked inter alia to indicate whether the same principles must be followed as those laid down in its case-law on family reunification in connection with the free movement of EU citizens, which are based on the Free Movement Directive (Directive 2004/38) and the provisions of the Treaty, or whether another assessment must be applied?

(b) If an assessment other than that which stems from the Court's case-law on family reunification in connection with the freedom of movement of EU citizens must be applied, the Court is asked to indicate whether the proportionality assessment carried out in relation to Article 8 of the European Convention of Human Rights on respect for family life and the case-law of the European Court of Human Rights should be adopted as the point of reference and, if not, what principles must be followed?

(c) Irrespective of which assessment method is to be applied:

Can a rule such as Paragraph 9(13) of the Danish Udlændingeloven (Law on aliens) — under which it is a condition for family reunification between a person who is a third-country national and has a residence permit and is resident in Denmark, and his minor child, where the child and the child's other parent is resident in the country of origin or another country, that the child has, or has the possibility of establishing, such ties with Denmark that there is a basis for successful integration in Denmark — be regarded as 'justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it'?

([1]) Council Regulation (EEC) No 2760/72 of 19 December 1972 concluding the additional protocol and the financial protocol signed on 23 November 1970 and annexed to the Agreement establishing an Association between the European Economic Community and Turkey and relating to the measures to be taken for their implementation
(OJ 1972 L 293, p. 1).

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

Appeal brought on 11 December 2014 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (Sixth Chamber) delivered on 2 October 2014 in Case T-340/07 RENV: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-575/14 P)

(2015/C 065/35)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: M. Sfyri, I. Ampazis, Lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court under appeal.

— order the Commission to make good damage suffered by the Appellant as a result of the Commission's failure to comply with contractual obligations in the context of the performance of the EDC-53007 EEBO/27873 contract relating to the project entitled 'e-Content Exposure and Business Opportunities'. More particularly, order the Commission to pay the amount of 172 588,62 EUR, representing all the costs incurred by the Appellant concerning all the work which was engaged by the Appellant before the termination of the contract of 16 May 2003 and delivered by the Appellant in compliance to its contractual obligations. Subsidiarily, in case the Court of Justice considers that the Appellant had to cease any work as of 16 May 2003, order the Commission to pay at least the amount of 127 076,48 EUR, representing all the costs incurred or engaged to by the Appellant lawfully and in strict compliance to the terms of its contract, until such date.

— order the Commission to pay the Appellant's legal and other costs and expenses incurred in connection with the initial procedure and the current Appeal, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The Appellant founds its Appeal on the fact that the General Court distorted the clear sense of the evidence before it, by interpreting incorrectly Annex II 'General Conditions' of the EDC-53007 EEBO/27873 contract, by undermining the probative value of the submitted cost statement and, consequently, by assessing incorrectly that the documents produced by the Appellant were not appropriate and sufficient to prove that the costs stated in them actually incurred for the implementation of the project.

Appeal brought on 18 December 2014 by Dimosia Epikhirisi Ilektrismou AE (DEI) against the judgment delivered by the General Court (Fourth Chamber) on 8 October 2014 in Case T-542/11 Alouminion v Commission

(Case C-590/14 P)

(2015/C 065/36)

Language of the case: Greek

Parties

Appellant: Dimosia Epikhirisi Ilektrismou AE (DEI) (represented by: E. Bourtzalas, E. Salaka, K. Sinodinos, K. Tagaras and A. Ikonomou, dikigori)

Other party to the proceedings: Alouminion AE

Form of order sought

— uphold the appeal;

— set aside the judgment under appeal;

— order the defendant to pay all the costs, that is to say, the costs at first instance and those of the present appeal.

Pleas in law and main arguments

The appellant submits that the judgment under appeal must be set aside for the following reasons:

1. Error of law in interpreting Article 108(3) TFEU and Article 1(c) and (b) of Regulation No 659/99, inasmuch as it was held that the extension of aid does not *ipso facto* constitute new aid, but that classification as such requires alteration of the aid's substance.

2. Error of law, manifest error of assessment and distortion of the facts as regards the ruling that application of the preferential tariff during the period at issue constitutes the extension of existing aid.

3. Manifest error of law and fact and manifest error of assessment as regards the ruling that the legal and contractual basis for the aid remained unchanged.

4. Infringement of the duty to state reasons as regards the failure of the judgment under appeal to explain whether the conditions for classification as new aid are cumulative and whether classification of aid as new requires the existence of legislative intervention.

5. Infringement of the General Court's obligation to rule on the relevant submissions put forward and of the duty to state reasons.

Order of the President of the Court of 8 December 2014 — European Commission v Council of the European Union

(Case C-453/12) ([1])

(2015/C 065/37)

Language of the case: French

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

([1]) OJ C 379, 8.12.2012.

GENERAL COURT

Judgment of the General Court of 14 January 2015 — Abdulrahim v Council and Commission

(Case T-127/09 RENV) ([1])

(Referral back after setting aside of order — Common foreign and security policy — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Freezing of funds and economic resources of a person named in a list drawn up by a body of the United Nations — Naming of that person in the list in Annex I to Regulation (EC) No 881/2002 — Action for annulment — Admissibility — Period allowed for commencing proceedings — Exceeded — Excusable error — Fundamental rights — Rights of the defence — Right to effective judicial protection — Right to respect for property — Right to respect for private and family life)

(2015/C 065/38)

Language of the case: English

Parties

Applicant: Abdulbasit Abdulrahim (London, United Kingdom) (represented by: P. Moser QC, E. Grieves, Barrister, H. Miller and R. Graham, Solicitors)

Defendants: Council of the European Union (represented by: E. Finnegan and G. Étienne, Agents); and European Commission (represented by E. Paasivirta and G. Valero Jordana, Agents)

Re:

Application initially for (i) partial annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), as amended by Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Regulation No 881/2002 (OJ 2008 L 345, p. 60), or of Regulation No 1330/2008, in so far as it concerns the applicant, and (ii) compensation for the damage allegedly caused by those acts.

Operative part of the judgment

The Court:

1. *Annuls Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, in so far as it concerns Mr Abdulbasit Abdulrahim;*

2. *Orders the Council of the European Union and the European Commission to bear their own costs and to pay both the costs incurred by Mr Abdulrahim in respect of the action for annulment and the sums advanced by the General Court by way of legal aid.*

([1]) OJ C 167, 18.7.2009.

Judgment of the General Court of 14 January 2015 — Veloss International and Attimedia v Parliament

(Case T-667/11) ([1])

(Public service contracts — Supply of Greek translation services for the Parliament — Rejection of a tenderer's bid — Obligation to state reasons — Non-contractual liability)

(2015/C 065/39)

Language of the case: English

Parties

Applicants: Veloss International (Brussels, Belgium) and Attimedia SA (Brussels) (represented by: N. Korogiannakis, lawyer)

Defendant: European Parliament (represented by: P. López-Carceller, L. Darie and P. Biström, Agents)

Re:

Application, first, for the annulment of the decision of the European Parliament to select, in second place, the tender submitted by the applicants in response to the call for tenders No EL/2011/EU 'Translation into Greek' (OJ 2011, S 56-090374), communicated to the applicants by letter of 18 October 2011, and all related decisions taken by the Parliament, and second, for damages for the loss allegedly suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Parliament of 18 October 2011 to select, in second position, the tender submitted by Veloss International SA and Attimedia SA in call for tenders EL/2011/EU for the provision of Greek translation services;*

2. *Dismisses the remainder of the action;*

3. *Orders the Parliament to pay the costs.*

([1]) OJ C 58, 25.2.2012.

Judgment of the General Court of 15 January 2015 — France v Commission

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

(State aid — Aid for rescuing and restructuring firms in difficulty — Restructuring aid planned by the French authorities for SeaFrance SA — Capital increase and loans granted by the SNCF to SeaFrance — Decision declaring the aid to be incompatible with the internal market — Concept of State aid — Criterion of private investor — Guidelines on State aid for rescuing and restructuring firms in difficulty)

(2015/C 065/40)

Language of the case: French

Parties

Applicant: French Republic (represented by: initially E. Belliard, G. de Bergues and J. Gstalter, then G. de Bergues, D. Colas and J. Bousin, Agents)

Defendant: European Commission (represented by: V. Di Bucci, B. Stromsky and T. Maxian Rusche, Agents)

Re:

Application for annulment of Commission Decision 2012/397/EU of 24 October 2011 on State aid SA 32600 (2011/C) — France — Restructuring aid to SeaFrance SA granted by the SNCF (OJ 2012, L 195, p. 1).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the French Republic to pay the costs.*

(1) OJ C 80, 17.3.2012.

Judgment of the General Court of 15 January 2015 — Ziegler v Commission

(Joined Cases T-539/12 and T-150/13) (1)

(Non-contractual liability — Competition — International removal services market in Belgium — Removals of officials and other staff of the EU — Decision finding an infringement of Article 101 TFEU — Cover quotes — Scope of liability of an institution — Principle of res judicata — Due diligence — Causal link)

(2015/C 065/41)

Language of the case: French

Parties

Applicants: Ziegler SA (Brussels, Belgium); and Ziegler Relocation SA (Brussels, Belgium) (represented by: J.-F. Bellis, M. Favart and A. Bailleux, lawyers)

Defendant: European Commission (represented by: J. Baquero Cruz and A. Bouquet, acting as Agents)

Re:

Action seeking compensation for damage allegedly caused by the adoption of Commission Decision C (2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services), and for damage allegedly caused by the continuation of the practice of 'cover quotes' after the adoption of Decision C (2008) 926, between 11 March 2008 and 1 January 2014.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Ziegler SA to bear its own costs and to pay those incurred by the European Commission in Case T-539/12;*

3. *Orders Ziegler Relocation SA to bear its own costs and to pay those incurred by the European Commission in Case T-150/13.*

(1) OJ C 55, 23.2.2013.

Judgment of the General Court of 16 January 2015 — Trentea v FRA

(Case T-107/13 P) ([1])

(Appeal — Civil service — Members of the temporary staff — Recruitment — Rejection of the appellant's application and appointment of another candidate — Plea in law raised for the first time at the hearing — Distortion of the clear sense of the evidence — Duty to state reasons — Order as to costs disputed)

(2015/C 065/42)

Language of the case: English

Parties

Appellant: Cornelia Trentea (Barcelona, Spain) (represented by: L. Levi and M. Vandenbussche, lawyers)

Other party to the proceedings: The European Union Agency for Fundamental Rights (FRA) (represented by: M. Kjærum, acting as Agent, and B. Wägenbaur, lawyer)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 December 2012 in *Trentea* v *FRA* (F-112/10, ECR-SC, EU:F:2012:179) and seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Declares that Ms Cornelia Trentea is to bear her own costs and orders her to pay the costs incurred by the European Union Agency for Fundamental Rights in the present proceedings.*

([1]) OJ C 129, 4.5.2013.

Order of the General Court of 14 January 2015 — dm-drogerie markt v OHIM — V-Contact Kereskedelmi és Szolgáltató (CAMEA)

(Case T-195/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark CAMEA — Earlier international word mark BALEA — Relative ground for refusal — No likelihood of confusion — No similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 065/43)

Language of the case: Hungarian

Parties

Applicant: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany) (represented by: B. Beinert, O. Bludovsky and T. Strack, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: V-Contact Kereskedelmi és Szolgáltató Kft (Szada, Hungary) (represented by: A. Krajnyák, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 January 2013 (Case R 452/2012-1) relating to opposition proceedings between dm-drogerie markt GmbH & Co. KG and V-Contact Kereskedelmi és Szolgáltató Kft.

Operative part of the order

The Court:

1. *dismisses the action.*

2. *orders dm-drogerie markt GmbH & Co. KG to pay the costs.*

(1) OJ C 171, 15.6.2013.

Judgment of the General Court of 15 January 2015 — MEM v OHIM (MONACO)

(Case T-197/13) (1)

(Community trade mark — International registration designating the European Community — Word mark MONACO — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 151(1) and Article 154(1) of Regulation (EC) No 207/2009 — Article 7(1)(b) and (c) and Article 7(2) of Regulation No 207/2009 — partial refusal of protection)

(2015/C 065/44)

Language of the case: French

Parties

Applicant: Marques de l'État de Monaco (MEM) (Monaco, Monaco) (represented by: S. Arnaud, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 January 2013 (Case R 113/2012-4) concerning the international registration designating the European Community of the word mark MONACO.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Marques de l'État de Monaco (MEM) to pay the costs.*

(1) OJ C 156, 1.6.2013.

Judgment of the General Court of 14 January 2015 — Gossio v Council

(Case T-406/13) (1)

(Common Foreign and Security Policy — Specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire — Freezing of funds — Misuse of power — Manifest error of assessment — Fundamental Rights)

(2015/C 065/45)

Language of the case: French

Parties

Applicant: Marcel Gossio (Abidjan, Ivory Coast) (represented by: S. Zokou, lawyer)

Defendant: Council of the European Union (represented by: B. Driessen and G. Étienne, acting as Agents)

Re:

Application for annulment, first, of Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2005 L 95, p. 1), Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire (OJ 2010 L 285, p. 28), and Council Implementing Decision 2012/144/CFSP of 8 March 2012 implementing Decision 2010/656 (OJ 2012 L 71, p. 50) insofar as they concern the applicant, and, second, of the Council's decision of 17 May 2013 to maintain the restrictive measures relating to the applicant.

Operative part of the judgment

The Court:

1. *annuls Council Implementing Decision 2014/271/CFSP of 12 May 2014 implementing Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire and Council Implementing Regulation (EU) No 479/2014 of 12 May 2014 implementing Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire in so far as they relate to the applicant;*

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

3. *orders each party to bear its own costs.*

([1]) OJ C 313, 26.10.2013.

Judgment of the General Court of 14 January 2015 — Melt Water v OHIM *(MELT WATER Original)*

(Case T-69/14) ([1])

(Community trade mark — Application for Community figurative mark MELT WATER Original — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2015/C 065/46)

Language of the case: Lithuanian

Parties

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

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 26 November 2013 (Case R 494/2013-5), concerning an application for registration of the figurative sign MELT WATER Original as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Research and Production Company 'Melt Water' UAB to pay the costs.*

([1]) OJ C 112, 14.4.2014.

Judgment of the General Court of 14 January 2015 — Melt Water v OHIM (Shape of a transparent cylindrical bottle)

(Case T-70/14) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a transparent cylindrical bottle — Absolute grounds for refusal — Lack of distinctive character — Article 7 (1)(b) of Regulation (EC) No 207/2009)

(2015/C 065/47)

Language of the case: Lithuanian

Parties

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

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 26 November 2013 (Case R 481/2013-5), concerning an application for registration of a three-dimensional sign comprising the shape of a transparent cylindrical bottle as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Research and Production Company 'Melt Water' UAB to pay the costs.*

([1]) OJ C 112, 14.4.2014.

Order of the General Court of 22 December 2014 — Al Assad v Council

(Case T-407/13) ([1])

(Actions for annulment — Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Inclusion of an individual on the lists of targeted persons — Personal connections with members of the regime — Rights of the defence — Fair hearing — Obligation to state reasons — Burden of proof — Right to effective judicial protection — Proportionality — Right to property — Right to privacy — Principle of res judicata — Inadmissibility — Manifest inadmissibility — Action devoid of legal foundation)

(2015/C 065/48)

Language of the case: French

Parties

Applicant: Bouchra Al Assad (Damascus, Syria) (represented by: G. Karouni and C. Dumont, lawyers)

Defendant: Council of the European Union (represented by: G. Étienne and M.-M. Joséphidès, acting as Agents)

Re:

Application for partial annulment of, first, Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2013 L 111, p. 1, corrigendum OJ 2013 L 127, p. 27), secondly, Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), thirdly, Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2013 L 335, p. 3), fourthly, Council Decision 2013/760/CFSP of 13 December 2013 amending Decision 2013/255 (OJ 2013 L 335, p. 50), fifthly, Council Implementing Regulation (EU) No 578/2014 of 28 May 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2014 L 160, p. 11), and sixthly, Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255 (OJ 2014 L 160, p. 37) in so far as the applicant's name has been maintained on the lists of persons and entities to which those restrictive measures apply.

Operative part of the order

1. *The action is dismissed as inadmissible in so far as it seeks annulment of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria.*

2. *The action is dismissed as manifestly inadmissible in so far as it seeks annulment of Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, Council Decision 2013/760/CFSP of 13 December 2013 amending Decision 2013/255, and Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255.*

3. *The action is dismissed as in part manifestly inadmissible and in part manifestly lacking any foundation in law in so far as it seeks annulment of Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, and Council Implementing Regulation (EU) No 578/2014 of 28 May 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.*

4. *Bouchra Al Assad is ordered to pay the costs.*

(1) OJ C 344, 23.11.2013.

Action brought on 19 November 2014 — ANKO v Commission

(Case T-768/14)

(2015/C 065/49)

Language of the case: Greek

Parties

Applicant: ANKO Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the sum of EUR 377 733,93, which the Commission paid to the applicant in respect of the POCEMON project, constitutes eligible costs and that accordingly the applicant is under no obligation to repay that sum as unduly paid; and

— order the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

This action concerns the liability of the Commission under the agreement No 216088 for the performance of the project 'Point Of CarE MONitoring and Diagnostics for Autoimmune Diseases' (POCEMON), under Article 272 TFEU. In particular, the applicant maintains that, although it performed its contractual obligations, the Commission, contrary to the terms of that agreement, the principle of good faith, the prohibition of abuse of rights and the principle of proportionality, sought the recovery of sums paid to ANKO as not being eligible costs.

For that reason, the applicant maintains, first, that the Commission relies on wholly unfounded and in any event unproven grounds in order to reject almost all the costs incurred by ANKO as being ineligible and to seek the repayment of the sum paid to ANKO in respect of the POCEMON project. The applicant maintains, second, that the Commission, in rejecting 98,68 % of the contribution it is obliged to pay, because that allegedly did not correspond to eligible costs, which the applicant incurred for the requirements of the project, infringes the principles of the prohibition of abuse of rights and of proportionality.

Action brought on 21 November 2014 — ANKO v Commission

(Case T-771/14)

(2015/C 065/50)

Language of the case: Greek

Parties

Applicant: ANKO Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the sum of EUR 296 149,77, which the Commission paid to the applicant in respect of the DOC@HAND project, constitutes eligible costs and that accordingly the applicant is under no obligation to repay that sum as unduly paid; and

— order the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

This action concerns the liability of the Commission under the agreement No 508015 for the performance of the DOC@HAND project, under Article 272 TFEU. In particular, the applicant maintains that, although it performed its contractual obligations, the Commission, contrary to the terms of that agreement, the principle of good faith, the prohibition of abuse of rights and the principle of proportionality, sought the recovery of sums paid to ANKO as not being eligible costs.

For that reason, the applicant maintains, *first*, that the Commission relies on wholly unfounded and in any event unproven grounds in order to reject almost all the costs incurred by ANKO as being ineligible and to seek the repayment of the sum paid to ANKO in respect of the DOC@HAND project. The applicant maintains, *second*, that the Commission, in rejecting 99,59 % of the contribution it is obliged to pay, because that allegedly did not correspond to eligible costs, which the applicant incurred for the requirements of the project, infringes the principles of the prohibition of abuse of rights and of proportionality.

Action brought on 28 November 2014 — Romania v Commission

(Case T-784/14)

(2015/C 065/51)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: R. Radu, R. Haţieganu and A. Buzoianu, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision, adopted by letter BUDG/B3/MV D(2014) 3 079 038 of 19 September 2014, in which the Commission asks Romania to make available to the EU budget the gross amount of EUR 14 883,79, corresponding to losses of traditional own resources;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission lacked competence to adopt the contested decision

   — There is no provision of EU legislation which confers on the Commission the power to compel a Member State to pay a sum of money corresponding to a loss of EU traditional own resources which occurred following the remission of customs duties decided by another Member State which was responsible for the valuation, collection and payment of those duties, as traditional own resources, to the EU budget.

2. Second plea in law, alleging that the contested decision contained an inadequate and insufficient statement of reasons

   — The contested decision does not contain a sufficient and adequate statement of reasons as required under Article 296 TFEU. First, the contested decision does not state the legal basis for its adoption; nor can that basis be inferred from the other elements of the Commission's letter. Second, the Commission did not set out, in the contested decision, the legal reasoning which led to Romania being obliged to pay compensation for damage resulting from a loss of EU traditional own resources owing to the remission of certain customs debts notified by another Member State.

3. Third plea in law, alleging — in the event that the Court finds that the Commission acted within the limits of the powers conferred upon it by the Treaties — that the Commission failed to observe the principle of sound administration and breached Romania's rights of the defence

   — The Commission breached its duty to exercise due diligence and the duty of sound administration in so far as it did not carefully examine all the relevant information available to it and ask for other necessary information before adopting the contested decision. The Commission did not establish a direct causal link between the acts imputed to Romania and the loss of EU traditional own resources. Nor did the Commission justify the sum asked of Romania by reference to the amount of customs duty corresponding to the value of the transit in question, on the sufficient basis of the value remitted by the Federal Republic of Germany.

   — The Commission's actions were unforeseeable and did not allow Romania to exercise its rights of the defence.

4. Fourth plea in law, alleging a failure to observe the principles of legal certainty and legitimate expectations

   — The legal rules on the basis of which the Commission, through the contested decision, imposed the obligation to make payment were not identified or specified in that decision. Nor was their application foreseeable for Romania. It was not possible for the Romanian State to foresee or to be aware, prior to receiving the Commission's letter, of the obligation to make available to that institution the sum of money requested, corresponding to the loss of EU traditional own resources. By the same token, by adopting the contested decision and obliging Romania to make payment, four years after the occurrence of the events in question and in spite of the conclusions reached by the Commission in the dialogue between that institution and the Romanian authorities during that four-year period, the Commission breached Romania's legitimate expectations that there would be no financial obligations regarding the payment of the customs debts in question and, accordingly, no obligations in respect of the EU budget.

Action brought on 28 November 2014 — MPF Holdings v Commission

(Case T-788/14)

(2015/C 065/52)

Language of the case: English

Parties

Applicant: MPF Holdings Ltd (St Helier, Jersey) (represented by: D. Piccinin and E. Whiteford, Barristers, and E. Gibson-Bolton, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; and

— order the Commission to pay the costs.

Pleas in law and main arguments

By its action the applicant seeks the annulment of the Commission's Decision C(2014) 5083 final of 23 July 2014 in case SA.35980 (2014/N-2) — United Kingdom, Electricity Market Reform — Capacity Market.

In support of the action, the applicant relies on one single plea in law alleging that the Commission unlawfully deprived MPF of its right to participate in the formal investigation procedure by failing to open a formal investigation under Article 108(2) TFEU and Article 4(4) of the Procedural Regulation, notwithstanding that the capacity market gives rise to doubts as to its compatibility with the internal market. The applicant submits that:

— the discriminatory availability of long contract durations cannot be justified by reference to the legitimate objective of procuring the necessary amount of generation capacity;

— the Commission failed adequately to investigate the likely effects of the discriminatory availability of long contract durations on the efficiency of the capacity market and on the owners of existing plants;

— the Commission failed adequately to investigate the United Kingdom Government's purported justification for discriminatory contract durations, namely that independent generators that rely on project finance require long term contracts;

— the Commission failed to justify or adequately to investigate the likely effects of the discriminatory price-taker/price-maker distinction.

Action brought on 5 December 2014 — AATC Trading/OHIM — El Corte Inglés (ALAÏA PARIS)

(Case T-794/14)

(2015/C 065/53)

Language in which the application was lodged: French

Parties

Applicant: AATC Trading AG (Steinhausen, Switzerland) (represented by: P. Lê Dai, lawyer)

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

Other party to the proceedings before the Board of Appeal: El Corte Inglés, SA (Madrid, Spain)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word element 'ALAÏA PARIS' No 3 485 166

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of OHIM of 11 September 2014 in Case R 1411/2013-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Article 57(2) of Regulation No 207/2009;

— Infringement of Rule 22 of Regulation No 2868/95.

Action brought on 4 December 2014 — Ogrodnik v OHIM — Aviário Tropical (Tropical)

(Case T-804/14)

(2015/C 065/54)

Language in which the application was lodged: English

Parties

Applicant: Tadeusz Ogrodnik (Chorzów, Poland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal: Aviário Tropical, SA (Loures, Portugal)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: figurative mark in black and white containing the word element 'Tropical' — Community trade mark No 3 435 773

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 22 September 2014 in Case R 1948/2013-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and the other party to proceedings, should it intervene, to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) in conjunction with 53(1)(a) and Article 75 of Regulation No 207/2009.

Action brought on 12 December 2014 — Portugal v Commission

(Case T-810/14)

(2015/C 065/55)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, J. Arsénio de Oliveira and S. Nunes de Almeida, Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare invalid the notice of assessment submitted by the General Secretariat of the European Commission by letter 2014D/14507 of 6 October 2014.

— Order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging appropriation of the powers of the European Union jurisdictional area by the Commission, thereby constituting a lack of competence.

2. Second plea in law, alleging infringement of the Treaties or of any rule of law relating to their application, as the act is based on an artificial division of the effects of the judgment of the Court of Justice in Case C-292/1.

3. Third plea in law, alleging breach of *res judicata*, as the act was carried out in breach of the Treaties or of any rule of law relating to their application.

4. Fourth plea in law, alleging breach of the principles of legal certainty, the stability of legal relations and legitimate expectations, recognised by EU law.

5. Fifth plea in law, alleging breach of the principle of the prohibition against double penalties, which precludes obtaining, through a new individual legal act, what could not be obtained previously by means of annulment judgments.

6. Sixth plea in law, alleging infringement of the division of powers between the Commission and the Member States, constituting a lack of competence, in that the Commission tried to restrict the right of Member States to determine a reasonable period for a provision to come into effect.

Action brought on 16 December 2014 — Liu v OHIM — DSN Marketing (Cases for portable computers)

(Case T-813/14)

(2015/C 065/56)

Language in which the application was lodged: English

Parties

Applicant: Min Liu (Guangzhou, China) (represented by: R. Bailly and S. Zhang, lawyers)

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

Other party to the proceedings before the Board of Appeal: DSN Marketing Ltd (Crawley, United Kingdom)

Details of the proceedings before OHIM

Proprietor of the design at issue: Applicant

Design at issue: Community design No 002044180-0001

Contested decision: Decision of the Third Board of Appeal of OHIM of 7 October 2014 in Case R 1864/2013-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Articles 7(1) and 7(2) of Regulation No 2245/2002.

Action brought on 17 December 2014 — Closet Clothing v OHIM — Closed Holding (CLOSET)

(Case T-815/14)

(2015/C 065/57)

Language in which the application was lodged: English

Parties

Applicant: Closet Clothing Co. Ltd (Barnet, United Kingdom) (represented by: M. Elmslie, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Closed Holding AG (Hamburg, Germany)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community word mark 'CLOSET' — Application for registration No 10 802 891

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 6 October 2014 in Case R 423/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 19 December 2014 — BSCA v Commission

(Case T-818/14)

(2015/C 065/58)

Language of the case: French

Parties

Applicant: Brussels South Charleroi Airport (BSCA) (Charleroi, Belgium) (represented by: P. Frühling, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 3 of the contested decision in that the Commission decided that the measures unlawfully implemented by Belgium, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of BSCA under the sub-concession agreement of 15 April 2002 between SOWAER and BSCA, under addendum No 3 of 29 March 2002 to the agreement between the Region of Wallonia and BSCA and under the investment decision of the Region of Wallonia of 3 April 2003, constitute, since 4 April 2014, State aid incompatible with the internal market pursuant to Article 107(1) of that treaty;

— consequently, annul Articles 4, 5 and 6 of the contested decision;

— order the Commission to pay all the costs and expenses incurred in the proceedings.

Pleas in law and main arguments

By its application, the applicant seeks the partial annulment of Commission Decision C(2014) 6849 final of 1 October 2014 on measures unlawfully implemented by Belgium in favour of Brussels South Charleroi Airport (BSCA) and Ryanair (State aid SA.14093 (C76/2002)) in which the Commission found that the measures implemented under (i) the sub-concession agreement of 15 April 2002 concluded by the Société wallonne des aéroports ('SOWAER') and BSCA, (ii) addendum No 3 of 29 March 2002 to the agreement between the Region of Wallonia and BSCA and (iii) the investment decision of the Region of Wallonia of 3 April 2003 constitute State aid incompatible with the internal market. Consequently, the Commission demanded their recovery.

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

1. First plea in law, alleging an error of law and a manifest error of assessment by the Commission in setting the date of the decision for the Region of Wallonia to provide BSCA with funding.

2. Second plea in law, alleging that the Commission's action was time-barred in that the procedure for the investigation of the measures at issue was opened more than 10 years after the decisions to grant those measures.

3. Third plea in law, alleging errors of law and of fact, a manifest error of assessment and an infringement of the obligation to state reasons, in that the Commission classified the investments and major repairs to the ILS (Instrument Landing System) and to the runway lighting as economic.

4. Fourth plea in law, alleging an error of fact, a manifest error of assessment and an infringement of the obligation to state reasons, in that the Commission found that the non-economic percentage of the cost of the investments made for the new terminal building was only 7 %.

5. Fifth and sixth plea in law, alleging errors of law and of fact and manifest errors of assessment by the Commission in determining the net present values of the measures at issue.

6. Seventh plea in law, alleging an infringement of the obligation to state reasons and an error of law by the Commission in determining the additional fee to be paid from 1 January 2016 which has the effect of rendering any calculation of the amount of that fee impossible.

7. Eighth plea in law, alleging errors of law and of fact, a manifest error of assessment and an infringement of the obligation to state reasons by the Commission in its analysis of the market at issue and of the alleged distortions of competition between Charleroi airport and Brussels National airport.

8. Ninth plea in law, alleging infringement of the principle of legitimate expectations.

Action brought on 20 December 2014 — Delta Group agroalimentare v Commission

(Case T-820/14)

(2015/C 065/59)

Language of the case: Italian

Parties

Applicant: Delta Group agroalimentare Srl (Porto Viro, Italy) (represented by: V. Migliorini, lawyer)

Defendant: European Commission

Forms of order sought

The applicant claims that the Court should:

— Declare null and void and, in any event, annul letter SM/SE S/2622874 of 28 July 2014 from Jerzy Plewa, Director-General of the Directorate-General for Agriculture and Rural Development at the European Commission, addressed to Felice Assenza, Director General of International and European Union policies at the Italian Ministry of Agriculture and Forestry Policy, of which the applicant became aware as a result of a request for access to documents dated 19 November 2014, in so far as it rejects Italy's application for support measures in respect of requests No 6 to 9 made pursuant to Article 220 of Regulation (EU) No 1308/2013 and, in particular, those relating to undertakings marketing animals slaughtered as part of the implementation of health measures against the spread of avian influenza and related commercial losses, and also Commission Implementing Regulation (EU) No 1071/2014 of 10 October 2014 on exceptional support measures for the eggs and poultrymeat sectors in Italy, published in the Official Journal of the European Union on 11 October 2014, in so far as it excludes from support measures, adopted pursuant to Article 220 of Regulation (EU) No 1308/2013, undertakings marketing animals slaughtered as part of the implementation of health measures against the spread of avian influenza and related commercial losses.

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea alleging infringement of Article 40(2) TFEU and in particular the principle of non-discrimination, with manifest error of assessment and misuse of power

   — The applicant claims in that regard that since the same biosecurity measures which have damaged the flocks of laying hens of Imola, Lugo, Occhiobello and Mordano, in respect of which support measures under Regulation (EU) No 1071/2014 have been granted, also damaged the applicant given that it had to take supply of those animals culled in order to have them butchered and sell them to its own customers, excluding from the support measures the undertaking which had to take supply of those affected animals in order to market them and including only the undertakings which had bred those animals constitutes unlawful discrimination between operators in the food supply chain, contrary to Article 40(2) TFEU. Article 40(2) TFEU moreover expressly provides for 'aids for the production and marketing of the various products.'

2. Second plea alleging infringement of Article 220 of Regulation (EU) No 1308/2013

— The applicant claims in that regard that Article 220(1)(a) of Regulation (EU) No 1308/2013 provides for measures to support the market to take account of the limitations to trade resulting from the application of measures to combat the spread of animal diseases. The damage affecting trade is therefore the very damage that is to be compensated as part of the measures taken pursuant to Article 220 of Regulation (EU) No 1308/2013 and that damage cannot be regarded as damage which is indirect in relation to the damage affecting the phase prior to that of trade (damage to livestock).

3. Third plea alleging infringement of essential procedural requirements and, in particular, Article 5 of Regulation (EU) No 182/2011

— The applicant claims in that regard that the Commission's decision to reject Italy's request that support measures for commercial undertakings and commercial loss be covered, referred to in the contested letter, has been taken without the advice of the Committee for the Common Organisation of the Agricultural Markets, thereby breaching an essential procedural requirement set out in Article 5 of Regulation (EU) No 182/2011, applicable by virtue of the reference made in Article 229 of Regulation (EU) No 1308/2013, which, in turn, is referred to in Article 220 of that latter regulation.

Action brought on 20 December 2014 — Pollo Delta di Scabin Giancarlo e C. v Commission

(Case T-821/14)

(2015/C 065/60)

Language of the case: Italian

Parties

Applicant: Pollo Delta di Scabin Giancarlo e C. Snc (Porto Viro, Italy) (represented by: V. Migliorini, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare null and void and in any event annul: (i) the letter Ref. SM/FUN S/2622874 of 28 July 2014 (sent by Jerzy Plewa, European Commission Director-General for Agriculture and Rural Development, to Felice Assenza, Italian Ministry of Agriculture and Forestry Director-General for International Policy and the European Union), of which the applicant became aware as a result of access to documents on 19 November 2014, in so far as that letter rejects Italy's application regarding Support Measures 6 to 9 requested under Article 220 of Regulation (EU) No 1308/2013, particularly those relating to abattoirs for the killing of animals pursuant to health measures designed to prevent the spread of avian flu and those relating to the resulting damage to businesses; (ii) Commission Implementing Regulation (EU) No 1071/2014 of 10 October 2014 on exceptional support measures for the eggs and poultrymeat sectors in Italy, published in the Official Journal of the European Union on 11 October 2014, in so far as it excludes from the support measures adopted under Article 220 of Regulation (EU) No 1308/2013 abattoirs for the killing of animals pursuant to health measures designed to prevent the spread of avian flu and the resulting damage to businesses;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those raised in Case T-820/14 *Delta Group agroalimentare* v *Commission*.

Action brought on 19 December 2014 — Eveready Battery Company v OHIM — Hussain and Others (POWER EDGE)

(Case T-824/14)

(2015/C 065/61)

Language in which the application was lodged: English

Parties

Applicant: Eveready Battery Company, Inc. (St. Louis, United States) (represented by: N. Hebeis, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Imran Hussain and Others (Leeds, United Kingdom)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'Power Edge' — Application for registration No 9 108 705

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 6 October 2014 in Case R 38/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 18 December 2014 — IREPA v Commission and Court of Auditors

(Case T-825/14)

(2015/C 065/62)

Language of the case: Italian

Parties

Applicant: Istituto di ricerche economiche per la pesca e l'acquacoltura — IREPA Onlus (Salerno, Italy) (represented by: F. Tedeschini, lawyer)

Defendants: European Commission and Court of Auditors of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul the European Commission's Debit Note No 3 241 411 395 of 30 September 2014 in which IREPA was asked to pay the sum of EUR 458 347,35 to the European Commission's bank account by 7 November 2014;

— Annul the European Commission's note Ref. Ares (2013) 2 644 562 of 12 July 2013 and the attached report from the European Court of Auditors of 27 February 2013, containing a pre-information letter preceding a recovery order in connection with the Italian Data Collection Programme for 2010;

— Annul the European Commission's note Ref. Ares (2014) of 6 August 2014, containing a second pre-information letter preceding a recovery order in connection with the Italian Data Collection Programme for 2010.

Pleas in law and main arguments

The present action has been brought against the Commission's objections, based on the Court of Auditors' deductions, concerning the legitimacy of the costs incurred by the applicant in connection with staff and external assistance for the Italian National Fisheries Data Collection Programme (2010), as a result of which the request for repayment of either the EU quota or the national quota was issued.

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

1. First plea in law, regarding the objection relating to 'Staff costs', alleging infringement and incorrect application of: (i) Annex I to Commission Regulation (EC) No 1078/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States for the collection and management of the basic fisheries data; (ii) Article 16 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and (iii) the principle of legitimate expectations.

   — The applicant argues, in that regard, that the request for repayment of the sums relating to 'Staff costs' is not valid, because the general and abstract content of Annex I to Regulation (EC) No 1078/2008 is to be interpreted in the light of the specific rules for the implementation of the National Programme.

   — It also maintains that the European Commission approved the specific rules of the National Programme in the 2009 budget, thereby giving rise to a legitimate expectation regarding the validity of those rules for 2010.

   — According to the applicant, the objection regarding the lack of recourse to a tendering procedure for allocating assignments for the collection of data using questionnaires is also invalid, as Article 16(e) of Directive 2004/18/EC excludes 'employment contracts' from the scope of the provisions relating to award procedures.

2. Second plea in law, regarding 'Costs of external assistance', alleging infringement and incorrect application of: (i) Regulation (EC) No 1078/2008; (ii) Article 16 of Directive 2004/18/EC; (iii) Article 14 of Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy; and (iv) the principle of legitimate expectations.

   — The applicant argues, in that regard, that the complaint regarding the lack of recourse to a selection procedure for allocating the assignment to the company Studio Nouvelle S.r.l. is in breach of Article 16(f) of Directive 2004/18/EC, which excludes the services in question from the scope of the rules on public procurement. In any event, IREPA carried out a pro-competitive procedure by extending invitations to five operators in accordance with the principles underlying public tendering procedures.

   — It also maintains that the objection that there is a lack of data regarding the controls carried out in relation to the service provided by Studio Nouvelle S.r.l. is invalid as it infringes Article 14 of Regulation (EC) No 199/2008, which does not identify any specific rules relating to controls, such rules being instead indicated in the National Plan which was approved by the European Commission, thereby giving rise to a legitimate expectation regarding the validity of those rules.

— According to the applicant, the contested inclusion, in the request for repayment, of expenses which the State had not yet actually incurred is invalid, as the sums reported had been imputed to the 2009/2010 National Programme in accordance with Articles 7, 10 and 11 of Regulation (EC) No 1078/2008 and the Commission had approved that type of reporting in respect of the documentation relating to the 2008 programme, thereby giving rise to a legitimate expectation regarding payment.

Action brought on 23 December 2014 — Spain v Commission

(Case T-826/14)

(2015/C 065/63)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Sampol Pucurull, Abogado del Estado)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested Decision;

— in the alternative, annul Article 4 of the contested Decision, and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against Commission Decision SA.35550 (2013/C) (ex 2013/NN) of 15 October 2014 concerning the scheme for the tax amortisation of financial goodwill for foreign shareholding acquisitions.

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

1. The first plea in law alleges infringement of Article 108(2) TFEU, in conjunction with Article 13 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1) and Article 296 TFEU, inasmuch as the contested Decision is a measure formally lacking a statement of reasons and inasmuch as it does not contain an assessment of the measure in the light of the judgments of the General Court of 7 November 2014 in Cases T-219/10 and T-399/11.

2. The second plea in law alleges infringement of Article 107(1) TFEU since the scheme in question is a measure of a general nature and not a selective measure.

3. The third plea in law is based on there being no new aid and the consequent infringement of Article 13 of Regulation No 659/1999.

4. The fourth plea in law alleges breach of the principles of legal certainty and the protection of legitimate expectations, in connection with Article 14 of Regulation No 659/1999 and the Commission's own statements in two earlier Decisions.

Action brought on 29 December 2014 — Antrax It v OHIM — Vasco Group (Radiators for heating)

(Case T-828/14)

(2015/C 065/64)

Language in which the application was lodged: Italian

Parties

Applicant: Antrax It Srl (Resana, Italy) (represented by: L. Gazzola, lawyer)

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

Other party to the proceedings before the Board of Appeal: Vasco Group BVBA (Dilsen, Belgium)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: The applicant

Design at issue: Community design for 'Radiators for heating' products — Community design No 593959-0001

Contested decision: Decision of the Third Board of Appeal of OHIM of 10 October 2014 in Case R 1272/2013-3

Forms of order sought

The applicant claims that the Court should:

— Join the present case to the action brought by the applicant against the decision in Case R 1273/2013-3 of OHIM, since that decision is identical to that contested in the present action;

— Annul the contested decision in so far as Community design No 593959-0001 was declared invalid because it lacked individual character and, consequently, declare valid that design without remitting the matter to OHIM for the third time;

— Annul the contested decision of OHIM in so far as it ordered Antrax It Srl to pay the costs;

— Order OHIM and Vasco Group BVBA, jointly and severally, to pay Antrax It Srl, costs, compensation and legal fees, together with any additional sums required by law;

— Order Vasco Group BVBA to pay Antrax It Srl the costs, compensation including technical compensation and legal fees incurred by the latter in the proceedings before OHIM together with any additional sums required by law;

— Declare Article 1(d) of Regulation No 216/96 to be incompatible with Article 41 of the Charter of Fundamental Rights of the European Union.

Pleas in law and main arguments

— Breach of Article 41(1) of the Charter of Fundamental Rights of the European Union;

— Breach of Articles 6, 61, 62 and 63 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

Action brought on 29 December 2014 — Antrax It v OHIM — Vasco Group (Radiators for heating)

(Case T-829/14)

(2015/C 065/65)

Language in which the application was lodged: Italian

Parties

Applicant: Antrax It Srl (Resana, Italy) (represented by: L. Gazzola, lawyer)

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

Other party to the proceedings before the Board of Appeal: Vasco Group BVBA (Dilsen, Belgium)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: The applicant

Design at issue: Community design for 'thermosiphon' products — Community design No 593959-0002

Contested decision: Decision of the Third Board of Appeal of OHIM of 10 October 2014 in Case R 1273/2013-3

Forms of order sought

The applicant claims that the Court should:

— Join the present case to the action brought by the applicant against the decision in Case R 1272/2013-3 of OHIM, since that decision is identical to that contested in the present action;

— Annul the contested decision in so far as Community design No 593959-0002 was declared invalid because it lacked individual character and, consequently, declare valid that design without remitting the matter to OHIM for the third time;

— Annul the contested decision of OHIM in so far as it ordered Antrax It Srl to pay the costs;

— Order OHIM and Vasco Group BVBA, jointly and severally, to pay Antrax It Srl, costs, compensation and legal fees, together with any additional sums required by law;

— Order Vasco Group BVBA to pay Antrax It Srl the costs, compensation including technical compensation and legal fees incurred by the latter in the proceedings before OHIM together with any additional sums required by law;

— Declare Article 1(d) of Regulation No 216/96 to be incompatible with Article 41 of the Charter of Fundamental Rights of the European Union.

Pleas in law and main arguments

— The pleas in law and main arguments are the same as those relied on in Case T-828/14.

Action brought on 22 December 2014 — Alnapharm v OHIM — Novartis (Alrexil)

(Case T-839/14)

(2015/C 065/66)

Language in which the application was lodged: English

Parties

Applicant: Alnapharm GmbH & Co. KG (Hamburg, Germany) (represented by: H. Heldt, lawyer)

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

Other party to the proceedings before the Board of Appeal: Novartis AG (Basel, Switzerland)

Details of the proceedings before OHIM

Applicant: The other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'Alrexil' — Application for registration No 10 306 249

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 23 October 2014 in Case R 1723/2013-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and refer the case back to the Board of Appeal of OHIM;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 23 December 2014 — International Gaming Projects v OHIM — British Sky Broadcasting Group (Sky BONUS)

(Case T-840/14)

(2015/C 065/67)

Language in which the application was lodged: English

Parties

Applicant: International Gaming Projects Ltd (Valletta, Malta) (represented by: M. Garayalde Niño, lawyer)

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

Other party to the proceedings before the Board of Appeal: British Sky Broadcasting Group plc (Isleworth, United Kingdom)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'Sky BONUS' — Application for registration No 10 734 549

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 23 October 2014 in Case R 2040/2013-4

Form of order sought

The applicant claims that the Court should:

— Partially annul the contested decision and grant registration of CTM application 'Sky BONUS';

— Order OHIM to pay the costs.

Pleas in law

— Infringement of Articles 8(1)(b), 8(4) and 8(5) of Regulation No 207/2009.

Action brought on 22 December 2014 — Airpressure Bodyforming v OHIM (Slim legs by airpressure bodyforming)

(Case T-842/14)

(2015/C 065/68)

Language of the case: German

Parties

Applicant: Airpressure Bodyforming GmbH (Berchtesgaden, Germany) (represented by: S. Merz, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'Slim legs by airpressure bodyforming' — Application No 12 533 709

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 29 October 2014 in Case R 1570/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) of Regulation No 207/2009;

— Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 22 December 2014 — GRE v OHIM (Mark1)

(Case T-844/14)

(2015/C 065/69)

Language of the case: German

Parties

Applicant: GRE Grand River Enterprises Deutschland GmbH (Kloster Lehnin, Germany) (represented by: I. Memmler and S. Schulz, lawyers)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'Mark 1' — Application No 12 052 461

Contested decision: Decision of the First Board of Appeal of OHIM of 2 October 2014 in Case R 648/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 29 December 2014 — Spokey v OHIM — Leder Jaeger (SPOKEY)

(Case T-846/14)

(2015/C 065/70)

Language in which the application was lodged: Polish

Parties

Applicant: Spokey sp. z o.o. (Katowice, Poland) (represented by: B. Matusiewicz-Kulig, lawyer)

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

Other party to the proceedings before the Board of Appeal: Leder Jaeger GmbH (Siegen, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: The applicant

Trade mark at issue: Community figurative mark containing the word element 'SPOKEY' — Community trade mark No 6 777 312

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 29 October 2014 in Case R 525/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— if necessary, amend the contested decision insofar as it refers to specific goods within Class 18;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Articles 8(1)(b), 75 and 76 of Regulation No 207/2009;

— Infringement of rule 50 of Commission Regulation No 2868/95.

Action brought on 2 January 2015 — Ipatau v Council

(Case T-2/15)

(2015/C 065/71)

Language of the case: French

Parties

Applicant: Vadzim Ipatau (Minsk, Belarus) (represented by: M. Michalauskas, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Decision 2014/750/CFSP of 30 October 2014 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus, in so far as it concerns the applicant;

— annul Council Implementing Regulation (EU) No 1159/2014 of 30 October 2014 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, in so far as it concerns the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are essentially identical or similar to those relied on in Case T-693/13 *Mikhalchanka* v *Council* ([1]).

([1]) OJ 2014 C 93, p. 25.

Action brought on 6 January 2015 — K-Swiss v OHIM (Parallel stripes on a shoe)

(Case T-3/15)

(2015/C 065/72)

Language of the case: English

Parties

Applicant: K-Swiss, Inc. (Westlake Village, California, United States) (represented by: R. Niebel, and M. Hecht, lawyers)

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

Details of the proceedings before OHIM

Trade mark at issue: International registration designating the European Union in respect of the figurative mark (Representation of five parallel stripes placed on the side of a sport shoe) — International registration No 932 758

Contested decision: Decision of the Second Board of Appeal of OHIM of 30 October 2014 in Case R 1093/2014-2

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM to pay the costs.

Pleas in law

— Infringement of Articles 7(1)(b) and 76 of Regulation No 207/2009.

Action brought on 8 January 2015 — Beiersdorf v OHIM (Q10)

(Case T-4/15)

(2015/C 065/73)

Language of the case: German

Parties

Applicant: Beiersdorf AG (Hamburg, Germany) (represented by: A. Renck and J. Fuhrmann, lawyers)

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

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word element 'Q10' — Application for registration No 11 480 837

Contested decision: Decision of the First Board of Appeal of OHIM of 8 October 2014 in Case R 2050/2013-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs, including those of the applicant.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 7(1)(c) of Regulation No 207/2009;

— Infringement of Article 32(2) of Regulation No 207/2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 22 December 2014 — ZZ v Commission

(Case F-140/14)

(2015/C 065/74)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Commission refusing to re-establish the career of the applicant by re-grading her, with effect from 1 March 2005, in a higher function group, and claim for compensation for the material and non-material harm allegedly suffered.

Form of order sought

— Annul the decision of the Authority Empowered to Conclude Contracts of Employment (AECE) dated 17 September 2014, sent by a note of 18 September 2014 and received by the applicant on 19 September 2014;

— Order payment of compensation for the harm suffered by the applicant assessed *ex aequo et bono* in the amount of EUR 30 000;

— Order the Commission to pay all the costs.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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