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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Seventh Chamber) of 6 November 2014 (application brought by Philippe Adam Krikorian — France) — *Grégoire Krikorian and Others*

(Case C-243/14) ([1])

(Article 267 TFEU — Direct application by the parties — Clear lack of jurisdiction of the Court)

(2015/C 081/02)

Language of the case: French

Application brought by Philippe Adam Krikorian

Parties to the main proceedings

Krikorian and Others

Operative part

The Court of Justice of the European Union manifestly lacks jurisdiction to deal with the application brought by Mr Krikorian and Others.

([1]) OJ C 16, 19.1.2015.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Szczecinie (Poland) lodged on 1 July 2014 — ASPROD sp. z o.o. v Dyrektor Izby Celnej w Szczecinie

(Case C-313/14)

(2015/C 081/03)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Szczecinie

Parties to the main proceedings

Applicant: ASPROD sp. z o.o.

Defendant: Dyrektor Izby Celnej w Szczecinie

By order of 3 December 2014, the Court of Justice (Second Chamber) ruled that Article 27(1)(f) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages ([1]) must be interpreted as precluding national rules, such as those at issue in the main proceedings, which make the application of the exemption from the harmonised excise duty provided for under that provision subject to the condition that the trader concerned must hold a decision from the tax administration fixing the maximum limits for use of the products exempted under that provision.

([1]) OJ 1992 L 316, p. 21.

Request for a preliminary ruling from the Ustavno sodišče (Slovenia) lodged on 20 November 2014 — Tadej Kotnik and others, Jože Sedonja and others, Fondazione cassa di risparmio di Imola, Imola, Italian Republic, Andrej Pipuš in Dušanka Pipuš, Tomaž Štrukelj, Luka Jukič, Angel Jaromil, Franc Marušič and others, Stajka Skrbinšek, Janez Forte and others, Marija Pipuš, Državni svet Republike Slovenije, Varuh človekovih pravic Republike Slovenije v Državni zbor Republike Slovenije

(Case C-526/14)

(2015/C 081/04)

Language of the case: Slovenian

Referring court

Ustavno sodišče

Parties to the main proceedings

Applicants: Tadej Kotnik and others, Jože Sedonja and others, Fondazione cassa di risparmio di Imola, Imola, Italian Republic, Andrej Pipuš in Dušanka Pipuš, Tomaž Štrukelj, Luka Jukič, Angel Jaromil, Franc Marušič and others, Stajka Skrbinšek, Janez Forte and others, Marija Pipuš, Državni svet Republike Slovenije, Varuh človekovih pravic Republike Slovenije

Defendant: Državni zbor Republike Slovenije

Questions referred

1. (a) Having regard to the legal effects actually produced by the Banking Communication ([1]), and given that the European Union has exclusive competence in the State aid sector, in accordance with Article 3(1)(b) of the Treaty on the Functioning of the European Union ('TFEU'), and the Commission has competence to give decisions relating to the State aid sector, pursuant to Article 108 TFEU, must the Banking Communication be regarded as binding on Member States seeking to remedy a serious disturbance in the economy by granting State aid to credit institutions where such aid is intended to be permanent and cannot be easily revoked?

   (b) Are paragraphs 40 to 46 of the Banking Communication — which make the possibility of granting State aid intended to remedy a serious disturbance in the national economy conditional upon compliance with the requirement to write off capital, hybrid capital and subordinated debt and/or to convert into capital hybrid capital instruments and subordinated debt instruments, in order to limit the amount of aid to the minimum necessary in the light of the need to take account of the moral hazard — compatible with Articles 107 TFEU, 108 TFEU and 109 TFEU, in so far as they exceed the Commission's competence, as defined in those TFEU provisions on State aid?

   (c) If Question 2 is answered in the negative, are paragraphs 40 to 46 of the Banking Communication — which make the possibility of granting State aid conditional on the requirement to write off capital and/or convert into capital, in so far as that requirement relates to shares (capital), hybrid capital instruments and subordinated debt instruments issued before the publication of the Banking Communication, all or some of which, at the time they were issued, could have been written off without any provision for compensation only in the event of the bank's collapse — compatible with the principle of the protection of legitimate expectations enshrined in EU law?

(d) If Question 2 is answered in the negative and Question 3 in the affirmative, are paragraphs 40 to 46 of the Banking Communication — which make the possibility of granting State aid conditional on the requirement to write off capital, hybrid capital and subordinated debt instruments and/or to convert into capital hybrid capital instruments and subordinated debt instruments, without the initiation and conclusion of an insolvency procedure by which the debtor's assets may be liquidated by means of judicial proceedings in which the holders of subordinated financial instruments would have the opportunity to participate as parties to the proceedings — compatible with the right to property enshrined in Article 17(1) of the Charter of Fundamental Rights of the European Union?

(e) If Question 2 is answered in the negative and Questions 3 and 4 in the affirmative, are paragraphs 40 to 46 of the Banking Communication — which make the possibility of granting State aid conditional on the requirement to write off capital, hybrid capital and subordinated debt instruments and/or to convert into capital hybrid capital instruments and subordinated debt instruments, in so far as the implementation of those measures calls for a reduction and/or increase in the base capital of public limited liability companies on the basis of the decision of the competent administrative body, not that of the general meeting of shareholders of the public limited liability company — compatible with Articles 29, 34, 35 and 40 to 42 of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ([2])?

(f) With regard to paragraph 19 of the Banking Communication, in particular the requirement laid down in that provision to respect fundamental rights, to paragraph 20, and to the affirmation of the requirement, in principle, laid down in paragraphs 43 and 44 of the communication, to convert or write down hybrid capital and subordinated debt instruments before granting State aid, may the Banking Communication be interpreted as meaning that those measures do not require Member States seeking to remedy a serious disturbance in their economy by granting State aid to credit institutions to impose an obligation to adopt such conversion and writing down measures as a condition for the grant of State aid on the basis of Article 107(3)(b) TFEU, or as meaning that, in order to be able to grant State aid, it is sufficient that the conversion or writing down measure should merely operate in a manner that is proportionate?

2. May the seventh indent of Article 2 of Directive 2001/24/EC ([3]) be interpreted as meaning that the measures requiring burden sharing by shareholders and subordinated creditors provided for in paragraphs 40 to 46 of the Banking Communication (write-down of Common Equity Tier 1, hybrid capital, subordinated debt instruments and the conversion into capital of hybrid capital instruments and subordinated debt instruments) may also be classified as reorganisation measures?

([1]) Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ 2013 C 216, p. 1).
([2]) OJ 2012 L 315.
([3]) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125).

Request for a preliminary ruling from the Tribunale di Udine (Italy) lodged on 28 November 2014 — Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidazione

(Case C-546/14)

(2015/C 081/05)

Language of the case: Italian

Referring court

Tribunale di Udine

Parties to the main proceedings

Applicant: Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidation

Question referred

On a proper construction of the principles and rules contained in Article 4(3) TEU and Council Directive 2006/112/EC ([1]), as already interpreted in the judgments of the Court of Justice of 17 July 2008 in C-132/06, of 11 December 2008 in C-174/07, and of 29 March 2012 in C-500/10, must those principles and rules also be interpreted in such a way that a national rule (and, therefore, in respect of the case in the main proceedings, an interpretation of Articles 162 and 182(b) of the Bankruptcy Law) is incompatible [with EU law] where, under that rule, a proposal for an arrangement with creditors with the liquidation of the debtor's assets, permits only partial payment of the State's claim in respect of VAT, where there is no tax settlement and where, in respect of that claim, a larger payment in the event of bankruptcy is not foreseeable on the basis of an assessment by an independent expert and following the formal review of the court?

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

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 5 December 2014 — MM v Minister for Justice and Equality, Ireland and the Attorney General

(Case C-560/14)

(2015/C 081/06)

Language of the case: English

Referring court

Supreme Court, Ireland

Parties to the main proceedings

Applicant: MM

Defendant: Minister for Justice and Equality, Ireland and the Attorney General

Question referred

1. Does the 'right to be heard' in European Union law require that an applicant for subsidiary protection, made pursuant to Council Directive 2004/83/EC ([1]), be accorded an oral hearing of that application, including the right to call or cross-examine witnesses, when the application is made in circumstances where the Member State concerned operates two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection, respectively?

([1]) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, p. 12.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 11 December 2014 — Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH v Amazon EU Sàrl and Others

(Case C-572/14)

(2015/C 081/07)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH

Defendants: Amazon EU Sàrl, Amazon Services Europe Sàrl, Amazon.de GmbH, Amazon Logistik GmbH, Amazon Media Sàrl

Question referred

Does a claim for payment of 'fair compensation' under Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([1]) which, in accordance with Austrian law, is directed against undertakings that are first to place recording material on the domestic market on a commercial basis and for consideration constitute a claim arising from 'tort, delict or quasi-delict' within the meaning of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([2])?

([1]) OJ 2001 L 167, p. 10.
([2]) OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 12 December 2014 — Argenta Spaarbank NV v Belgische Staat

(Case C-578/14)

(2015/C 081/08)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Questions referred

1. Does Article 198(10) of the 1992 Belgian Income Tax Code, in the version which was in force for the 2000 and 2001 tax years, infringe Article 4(2) of the Parent-Subsidiary Directive of 23 July 1990 (Council Directive 90/435/EEC) ([1]), in so far as that article of the Income Tax Code provides that interest is not to be regarded as a business expense up to an amount corresponding to the amount of the dividends which are deductible pursuant to Articles 202 to 204 where those dividends are derived from shares by a company which has not held those shares for an uninterrupted period of at least one year at the time of their transfer, in which connection no distinction is made according to whether those interest payments relate to (the financing of) the holding from which the dividends qualifying for exemption were derived or not?

2. Does Article 198(10) of the 1992 Belgian Income Tax Code, in the version which was applicable for the 2000 and 2001 tax years, constitute a provision for the prevention of fraud or abuse within the meaning of Article 1(2) of the Parent-Subsidiary Directive of 23 July 1990 (Council Directive 90/435/EEC), and, if so, does Article 198(10) of the 1992 Income Tax Code go further than is necessary in order to combat such fraud or abuse in so far as it provides that interest is not to be regarded as a business expense up to an amount corresponding to the dividends which are deductible pursuant to Articles 202 to 204 where those dividends are derived from shares by a company which has not held those shares for an uninterrupted period of at least one year at the time of their transfer, in which connection no distinction is made according to whether those interest payments relate to (the financing of) the holding from which the dividends qualifying for exemption were derived or not?

([1]) Council Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

Action brought on 18 December 2014 — Commission v Hellenic Republic

(Case C-584/14)

(2015/C 081/09)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and D. Loma-Osorio Lerena, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Commission claims that the Court should:

— Declare that the Hellenic Republic, by failing to take the necessary measures to comply with the judgment delivered by the Court on 10 September 2009 in Case C-286/08 *Commission* v *Greece*, failed to fulfil its obligations under Article 260 (1) TFEU;

— Order the Hellenic Republic to pay to the Commission a proposed penalty payment of EUR 72 864,00 for each day of delay in complying with the judgment delivered in Case C-286/08, from the date of delivery of judgment in the present case until the date of full compliance with the judgment in Case C-286/08;

— Order the Hellenic Republic to pay to the Commission a daily lump sum of EUR 8 096,00 for each day from the date of delivery of the judgment in Case C-286/08 until the date of delivery of the judgment in the present case, or until the date upon which the judgment in Case C-286/08 has been complied with, if earlier;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. In its judgment delivered on 10 September 2009 in Case C-286/08 *Commission* v *Greece*, ruled as follows:

   'The Court:

   1. Declares that the Hellenic Republic,

      — by failing to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste characterised by the most appropriate methods in order to ensure a high level of protection for the environment and public health, and

      — by failing to take all the necessary measures to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12/EC ([1]) of the European Parliament and of the Council of 5 April 2006 on waste and Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 ([2]) on the landfill of waste, failed to fulfil its obligations under, first, Articles 1(2) and 6 of Council Directive 91/689/EEC ([3]) of 12 December 1991 on hazardous waste, read in conjunction with Articles 5(1) and (2) and 7 (1) of Directive 2006/12, second, Article 1(2) of Directive 91/689, read in conjunction with the provisions of Articles 4 and 8 of Directive 2006/12, and, third, Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31.

   2. Orders the Hellenic Republic to pay the costs.'

2. The Commission initiated an infringement procedure against the Hellenic Republic in relation to its compliance with the abovementioned judgment of the Court on the basis of Article 260 TFEU. On the basis of the information provided by the Hellenic Republic and in particular, according to the data for 2009, which was submitted to the Commission with the reply of 16 May 2011, it appears that the total production of hazardous waste for 2011 amounts to 184 863,50 tonnes, that the historical waste is in the order of 323 452,40 tonnes and that exports amount to 5 147,40 tonnes. It follows from the above that there has been no compliance with the judgment of the Court in Case C-286/08, seven or more years after its delivery.

3. The Commission consequently brings proceedings before the Court, in accordance with Article 260(2) TFEU, which provides that, where the Commission brings a case before the Court when a Member State has not taken the necessary measures to comply with a judgment of the Court within the period defined by the Commission, then the Commission is to specify the amount of the penalty payment and/or lump sum which it considers should be paid by the Member State, and which the Commission considers appropriate in the circumstances. The final decision on the imposition of the penalties provided for by Article 260 TFEU is to be taken by the Court, which in this case has unlimited jurisdiction.

4. The Commission, applying the criteria which it set out in its Communication of 13/12/2005 (as updated on 17/09/2014) on the application of Article 260 TFEU, claims that the Court should declare that the Hellenic Republic, by failing to take the necessary measures to comply with the judgment delivered by the Court on 10 September 2009 in Case C-286/08 *Commission* v *Greece,* failed to fulfil its obligations under Article 260(1) TFEU, order the Hellenic Republic to pay to the Commission a proposed penalty payment of EUR 72 864,00 for each day of delay in complying with the judgment in Case C-286/08, from the date of delivery of judgment in the present case until the date of full compliance with the judgment in Case C-286/08, order the Hellenic Republic to pay to the Commission a daily lump sum of EUR 8 096,00 for each day from the date of delivery of the judgment in Case C-286/08 until the date of delivery of the judgment in the present case, or until the date upon which the judgment in Case C-286/08 has been complied with, if earlier, and order the Hellenic Republic to pay the costs.

([1]) OJ L 114, 27.4.2006, p. 9.
([2]) OJ L 182, 16.7. 1999, p. 1.
([3]) OJ L 377, 31.12.1991, p 20.

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 19 December 2014 — European Federation for Cosmetic Ingredients v Secretary of State for Business, Innovation and Skills

(Case C-592/14)

(2015/C 081/10)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: European Federation for Cosmetic Ingredients

Defendants: Secretary of State for Business, Innovation and Skills, Attorney General

Interveners: British Union for the Abolition of Vivisection, European Coalition to End Animal Experiments

Questions referred

1. Is Article 18(l)(b) of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products ([1]) to be interpreted as prohibiting the placing on the Community market of cosmetic products containing ingredients, or a combination of ingredients, which have been the subject of animal testing where that testing was performed outside the European Union to meet the legislative or regulatory requirements of third countries in order to market cosmetic products containing those ingredients in those countries?

2. Does the answer to question (1) depend on: -

   (a) whether the safety assessment carried out in accordance with Article 10 of that Regulation to demonstrate that the cosmetic product is safe for human health prior to it being made available on the Community market would involve the use of data resulting from the animal testing performed outside the European Union;

(b) whether the legislative or regulatory requirements of the third countries for which the animal testing was undertaken relate to the safety of cosmetic products;

(c) whether it was reasonably foreseeable, at the time that an ingredient was subjected to animal testing outside the European Union, that any person might seek to place a cosmetic product including that ingredient at some stage on the Community market; and/or

(d) any other factor, and if so, what factor?

(1) OJ L 342, p. 59

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 30 December 2014 — Virpi Komu, Hanna Ruotsalainen, Ritva Komu v Pekka Komu, Jelena Komu

(Case C-605/14)

(2015/C 081/11)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Appellants: Virpi Komu, Hanna Ruotsalainen, Ritva Komu

Respondents: Pekka Komu, Jelena Komu

Question referred

Is Article 22(1) of Council Regulation (EC) No 44/2001 (1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to be interpreted as meaning that in a case in which some of the co-owners of immoveable property apply for the property to be sold for the purpose of the dissolution of the co-ownership relationship and for the trustee to carry out the sale is a question concerning rights *in rem* in immovable property?

(1) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 29 December 2014 — Bookit, Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-607/14)

(2015/C 081/12)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Bookit, Ltd

Defendants: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. With regard to the exemption from VAT in Article 135(1)(d) of Council Directive (EC) 2006/112/EC ([1]) of 28 November 2006 on the common system of VAT as interpreted by the Court of Justice in Case C-2/95 Sparekassernes Datacenter (SDC) v Skatteministeriet (ECLI:EU:C:1997:278; [1997] ECR I-3017), what are the relevant principles to be applied in determining whether or not a 'debit and credit card handling service' (such as the service that is supplied in this case) has 'the effect of transferring funds and entails changes in the legal and financial situation' within the meaning of paragraph 66 of that judgment.

2. As a matter of principle, what factors distinguish: *(a)* a service which consists in the provision of financial information without which a payment would not be made but which do not fall within the exemption (such as in C-350/10 Nordea Pankki Suomi (ECLI:EU:C:2011:532; [2011] ECR I-7359), from *(b)* a data handling service which functionally has the effect of transferring funds and which the Court of Justice has identified as therefore being capable of falling within the exemption (such as in SDC at paragraph 66)?

3. In particular, and in the context of debit and credit card handling services:

   a. Does the exemption apply to such services which result in a transfer of funds but which do not include the task of making a debit to one account and a corresponding credit to another account?

   b. Does entitlement to the exemption depend on whether the service provider itself obtains authorisation codes directly from the cardholder's bank, or alternatively obtains those codes via its merchant acquirer bank?

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

Appeal brought on 19 January 2015 by the European Commission against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 7 November 2014 in Case T-219/10 Autogrill España v Commission

(Case C-20/15 P)

(2015/C 081/13)

Language of the case: Spanish

Parties

Appellant: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, acting as Agents)

Other party to the proceedings: Autogrill España, S.A.

Form of order sought

The Commission claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court of the European Union; and

— reserve the costs.

Pleas in law and main arguments

The General Court erred in law by incorrectly interpreting Article 107(1) TFEU and, in particular, the concept of selectivity of State aid contained in that article.

That single ground of appeal consists of two parts, which derive from the aforementioned error of law:

— in the first place, the General Court erred by requiring, in order to demonstrate that a measure is selective, the identification of a category of undertakings with specific and inherent characteristics (identifiable *ex ante*); and

— in the second place, the General Court incorrectly interpreted the concept of selectivity by making an artificial distinction between aid to the export of goods and aid to the export of capital.

Appeal brought on 19 January 2015 by the European Commission against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 7 November 2014 in Case T-399/11 Banco Santander and Santusa v Commission

(Case C-21/15 P)

(2015/C 081/14)

Language of the case: Spanish

Parties

Appellant: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, acting as Agents)

Other party to the proceedings: Banco Santander, S.A. and Santusa Holding, S.L.

Form of order sought

The Commission claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court of the European Union; and

— reserve the costs.

Pleas in law and main arguments

The General Court erred in law by incorrectly interpreting Article 107(1) TFEU and, in particular, the concept of selectivity of State aid contained in that article.

That single ground of appeal consists of two parts, which derive from the aforementioned error of law:

— in the first place, the General Court erred by requiring, in order to demonstrate that a measure is selective, the identification of a category of undertakings with specific and inherent characteristics (identifiable *ex ante*); and

— in the second place, the General Court incorrectly interpreted the concept of selectivity by making an artificial distinction between aid to the export of goods and aid to the export of capital.

GENERAL COURT

Judgment of the General Court of 22 January 2015 — Ocean Capital Administration and Others v Council

(Joined Cases T-420/11 and T-56/12) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Res judicata — Consequence of an annulment of restrictive measures for the entity owned or controlled by an entity identified as being involved in nuclear proliferation — Temporal effects of an annulment)

(2015/C 081/15)

Language of the case: English

Parties

Applicants: Ocean Capital Administration GmbH (Hamburg, Germany) and other applicants whose names appear in the annex to the judgment (Case T-420/11); IRISL Maritime Training Institute (Tehran, Iran); Kheibar Co. (Tehran); Kish Shipping Line Manning Co. (Kish Island, Iran); IRISL Multimodal Transport Co. (Tehran) (Case T-56/12) (represented by: F. Randolph, QC, M. Taher, Solicitor, and M. Lester, Barrister)

Defendant: Council of the European Union (represented by: M. Bishop and, in Case T-420/11, by P. Plaza García and, in Case T-56/12, by M.-M. Joséphidès, acting as Agents)

Re:

Applications, in Case T 420/11, for the annulment of Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65), of Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26) and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1) in so far as those measures concern the applicants, and, in Case T 56/12, for the annulment of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71), of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11) and of Regulation No 267/2012 in so far as those measures concern the applicants.

Operative part of the judgment

The Court:

1. *Annuls, in so far as they concern Ocean Capital Administration GmbH and the other applicants whose names appear in the annex to this judgment:*

   — *Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;*

   — *Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran;*

   — *Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010;*

2. *Annuls, in so far as they concern IRISL Maritime Training Institute, Kheibar Co., Kish Shipping Line Manning Co. and IRISL Multimodal Transport Co.:*

   — *Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;*

— *Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran;*

— *Regulation No 267/2012;*

3. *Declares that the effects of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, as amended by Decision 2011/299 and Decision 2011/783, are maintained as regards, on the one hand, Ocean Capital Administration and the other applicants whose names appear in the annex to this judgment and, on the other hand, IRISL Maritime Training Institute, Kheibar, Kish Shipping Line Manning and IRISL Multimodal Transport, until the annulment of Regulation No 267/2012 takes effect;*

4. *Orders the Council of the European Union to bear, in addition to its own costs, the costs incurred by Ocean Capital Administration and the 35 other applicants whose names appear in the annex to this judgment and by IRISL Maritime Training Institute, Kheibar, Kish Shipping Line Manning and IRISL Multimodal Transport.*

([1]) OJ C 290, 1.10.2011.

Judgment of the General Court of 22 January 2015 — Teva Pharma and Teva Pharmaceuticals Europe v EMA

(Case T-140/12) ([1])

(Medicinal products for human use — Orphan medicinal products — Application for marketing authorisation for the generic version of the orphan medicinal product imatinib — EMA decision refusing to validate the application for marketing authorisation — Market exclusivity)

(2015/C 081/16)

Language of the case: English

Parties

Applicants: Teva Pharma BV (Utrecht, Netherlands); and Teva Pharmaceuticals Europe BV (Utrecht) (represented by: D. Anderson, QC, K. Bacon, Barrister, G. Morgan and C. Drew, Solicitors)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, M. Tovar Gomis and N. Rampal Olmedo, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: E. White, P. Mihaylova and M. Šimerdová, acting as Agents)

Re:

Application for annulment of the EMA's decision of 24 January 2012 refusing to validate the applicants' application for authorisation to place imatinib Ratiopharm, a generic version of the orphan medicinal product imatinib, on the market, in so far as concerns therapeutic indications for the treatment of chronic myeloid leukaemia.

Operative part of the judgment

The Court:

1) *Dismisses the action.*

2) *Orders TEVA Pharma BV and Teva Pharmaceuticals Europe BV to bear their own costs and to pay the costs incurred by the European Medicines Agency (EMA).*

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

([1]) OJ C 165, 9.6.2012.

Judgment of the General Court of 22 January 2015 — Bank Tejarat v Council

(Case T-176/12) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Error of assessment)

(2015/C 081/17)

Language of the case: English

Parties

Applicant: Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, F. Zaiwalla and Z. Burbeza, Solicitors, D. Wyatt QC, and R. Blakeley, Barrister)

Defendant: Council of the European Union (represented by: M. Bishop and S. Cook, acting as Agents)

Re:

Application for the annulment in part, with immediate effect, of Council Decision 2012/35/CFSP of 23 January 2012, amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22), of Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2012 L 19, p. 1), of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1) and of Council Implementing Regulation (EU) No 709/2012 of 2 August 2012 implementing Regulation (EU) No 267/2012 (OJ 2012 L 208, p. 2).

Operative part of the judgment

The Court:

1. *Annuls, in so far as they concern Bank Tejarat:*

   — *Point 2 of Table I.B in Annex I to Council Decision 2012/35/CFSP of 23 January 2012, amending Decision 2010/413/CFSP on restrictive measures against Iran;*

   — *Point 2 of Table I.B in Annex I to Council Implementing Regulation (EU) No 54/2012 of 23 January 2012, implementing Regulation (EU) No 961/2010 on the adoption of restrictive measures against Iran;*

   — *Point 105 of Table I.B in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 on the adoption of restrictive measures against Iran and repealing Regulation (EU) No 961/2010;*

   — *Point 5 of Annex II to Council Implementing Regulation (EU) No 709/2012 of 2 August 2012, implementing Regulation No 267/2012.*

2. *Dismisses the remainder of the action;*

3. *Declares that the effects of Council Decision 2010/413/CFSP of 26 July 2010 on restrictive measures against Iran and repealing Common Position 2007/140/CFSP, as amended by Decision 2012/35, are maintained as regards Bank Tejarat until the annulment of Regulation No 267/2012 and Implementing Regulation No 709/2012 takes effect;*

4. *Orders the Council of the European Union to pay the costs.*

([1]) OJ C 174, 16.6.2012.

Judgment of the General Court of 22 January 2015 — MIP Metro v OHIM — Holsten Brauerei (H)

(Case T-193/12) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Figurative mark H — Earlier national figurative mark H — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Failure to state reasons — Article 75 of Regulation No 207/2009)

(2015/C 081/18)

Language of the case: German

Parties

Applicant: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Holsten-Brauerei AG (Hamburg, Germany) (represented by: N. Hebeis and R. Douglas, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 February 2012 (Case R 2340/2010-1), relating to opposition proceedings between Holsten-Brauerei AG and MIP Metro Group Intellectual Property GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders MIP Metro Group Intellectual Property GmbH & Co. KG to pay the costs.*

([1]) OJ C 194, 30.6.2012.

Judgment of the General Court of 22 January 2015 — Tsujimoto v OHIM — Kenzo (KENZO)

(Case T-393/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark KENZO — Earlier Community word mark KENZO — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 207/2009 — Duty to state reasons — Article 75 of Regulation No 207/2009 — Late submission of documents — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009)

(2015/C 081/19)

Language of the case: English

Parties

Applicant: Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Kenzo (Paris, France) (represented by P. Roncaglia, G. Lazzeretti and N. Parrotta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 May 2012 (Case R 1659/2011-2) concerning opposition proceedings between Kenzo and Mr Kenzo Tsujimoto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Kenzo Tsujimoto to pay the costs.*

([1]) OJ C 355, 17.11.2012.

Judgment of the General Court of 22 January 2015 — Pro-Aqua International v OHIM — Rexair (WET DUST CAN'T FLY)

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

(Community trade mark — Invalidity proceedings — Community word mark WET DUST CAN'T FLY — Absolute ground for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2015/C 081/20)

Language of the case: English

Parties

Applicant: Pro-Aqua International GmbH (Ansbach, Germany) (represented by: T. Raible, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Rexair LLC (Troy, Michigan, United States of America) (represented by A. Bayer, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 17 December 2012 (Case R 211/2012-2), concerning invalidity proceedings between Pro-Aqua International GmbH and Rexair LLC.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pro-Aqua International GmbH to pay the costs.*

([1]) OJ C 123, 27.4.2013.

Judgment of the General Court of 22 January 2015 — Novomatic v OHIM — Simba Toys (AFRICAN SIMBA)

(Case T-172/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark AFRICAN SIMBA — Earlier national figurative mark Simba — Relative ground for refusal — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2015/C 081/21)

Language of the case: German

Parties

Applicant: Novomatic AG (Gumpoldskirchen, Austria) (represented by: W. Mosing, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Simba Toys GmbH & Co. KG (Fürth, Germany) (represented by: O. Ruhl and C. Sachs, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 January 2013 (Case R 157/2012-4) relating to opposition proceedings between Simba Toys GmbH & Co. KG and Novomatic AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Novomatic AG to pay the costs.*

([1]) OJ C 141, 18.5.2013.

Judgment of the General Court of 22 January 2015 — Tsujimoto v OHIM — Kenzo (KENZO)

(Case T-322/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark KENZO — Earlier Community word mark KENZO — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 207/2009 — Late submission of documents — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009)

(2015/C 081/22)

Language of the case: English

Parties

Applicant: Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: M. Rajh and J. Crespo Carrillo, and subsequently by M. Rajh and P. Bullock, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Kenzo (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 March 2013 (Case R 1364/2012-2) concerning opposition proceedings between Kenzo and Mr Kenzo Tsujimoto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Kenzo Tsujimoto to pay the costs.*

(1) OJ C 252, 31.8.2013.

Order of the General Court of 14 January 2015 — Bolívar Cerezo v OHIM — Renovalia Energy (RENOVALIA)

(Case T-166/12) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark RENOVALIA — Earlier national word marks RENOVA ENERGY and RENOVAENERGY — Partial refusal to register — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2015/C 081/23)

Language of the case: Spanish

Parties

Applicant: Juan Bolívar Cerezo (Granada, Spain) (represented by: I. Barroso Sánchez-Lafuente, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Renovalia Energy, SA (Villarobledo, Spain) (represented by: A. Velázquez Ibáñez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 January 2012 (Case R 663/2011-1), relating to opposition proceedings between Renovalia Energy, SA and Mr Juan Bolívar Cerezo.

Operative part of the order

1. *The action is dismissed;*

2. *Mr Juan Bolívar Cerezo is ordered to pay the costs.*

(1) OJ C 194, 30.6.2012.

Order of the General Court of 14 January 2015 — SolarWorld and Others v Commission

(Case T-507/13) ([1])

(Actions for annulment — Dumping — Imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from China — Acceptance of an undertaking offered in connection with the anti-dumping proceeding — Community industry — Absence of direct concern — Inadmissibility)

(2015/C 081/24)

Language of the case: English

Parties

Applicants: SolarWorld AG (Bonn, Germany); Brandoni solare SpA (Castelfidardo, Italy); Global Sun Ltd (Sliema, Malta); Silicio Solar, SAU (Madrid, Spain); Solaria Energia y Medio Ambiente, SA (Puertollano, Spain) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: European Commission (represented by: J.-F. Brakeland, T. Maxian Rusche and A. Stobiecka-Kuik, Agents)

Re:

Action for the annulment of Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China (OJ 2013 L 209, p. 26), and of Commission Implementing Decision 2013/707/EU of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (OJ 2013 L 325, p. 214).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *SolarWorld AG, Brandoni solare SpA, Global Sun Ltd, Silicio Solar, SAU and Solaria Energia y Medio Ambiente, SA shall pay the costs.*

([1]) OJ C 325, 9.11.2013.

Order of the General Court of 13 January 2015 — Vakoma v OHIM — VACOM (VAKOMA)

(Case T-535/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark VAKOMA — Earlier Community word mark VACOM — Application instituting proceedings — Failure to comply with procedural requirements — Manifest inadmissibility)

(2015/C 081/25)

Language of the case: German

Parties

Applicant: Vakoma GmbH (Magdeburg, Germany) (represented by: P. Kazzer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: VACOM Vakuum Komponenten & Messtechnik GmbH (Jena, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 August 2013 (Case R 908/2012-1), relating to opposition proceedings between VACOM Vakuum Komponenten & Messtechnik GmbH and Vakoma GmbH.

Operative part of the order

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

2. *Vakoma GmbH is ordered to pay the costs.*

([1]) OJ C 367, 14.12.2013.

Order of the General Court of 13 January 2015 — Istituto di vigilanza dell'urbe v Commission

(Case T-579/13) ([1])

(Action for annulment and damages — Public service contracts — Tendering procedure — Provision of security guard and reception services — Rejection of a tenderer's bid — Award of the contract to another tenderer — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2015/C 081/26)

Language of the case: Italian

Parties

Applicant: Istituto di vigilanza dell'urbe SpA (Rome, Italy) (represented by: D. Dodaro and S. Cianciullo, lawyers)

Defendant: European Commission (represented by: L. Cappelletti and F. Moro, Agents)

Re:

Action, first, for annulment of the decision of the Commission rejecting the tender submitted by the applicant in connection with the call for tenders published in the Supplement to the *Official Journal of the European Union* (2013/S 101-172120) and awarding lot No 1 concerning the provision of security guard and reception services to another tenderer, as well as any prior, associated or subsequent act, including the contract concluded with the successful tenderer, and, second, for compensation for the damage sustained on account of the award of the contract to the successful tenderer.

Operative part of the order

1. *The action is dismissed.*

2. *The Istituto di vigilanza dell'urbe SpA is ordered to bear its own costs and to pay those incurred by the European Commission, including those relating to the application for interim measures, in accordance with the form of order sought by the Commission.*

([1]) OJ C 377, 21.12.2013.

Order of the President of the General Court of 15 December 2014 — August Wolff and Remedia v Commission

(Case T-672/14 R)

(Application for interim measures — Marketing authorisation for medicinal products for human use — Application for suspension of operation of a measure — Lack of urgency)

(2015/C 081/27)

Language of the case: German

Parties

Applicants: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany); and Remedia d.o.o (Zagreb, Croatia) (represented by: P. Klappich, C. Schmidt and P. Arbeiter, lawyers)

Defendant: European Commission (represented by: M. Šimerdová, A. Sipos and B.-R. Killmann, acting as Agents)

Re:

Application for the suspension of the operation of Commission Implementing Decision C (2014) 6030 final of 19 August 2014 concerning marketing authorisations for topical medicinal products for human use containing high concentrations of estradiol pursuant to Article 31 of Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Operative part of the order

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

2. *The order of 2 October 2014 is cancelled.*

3. *Costs are reserved.*

Action brought on 4 December 2014 — Tempus Energy and Tempus Energy Technology v Commission

(Case T-793/14)

(2015/C 081/28)

Language of the case: English

Parties

Applicants: Tempus Energy Ltd (Reading, United Kingdom); and Tempus Energy Technology Ltd (Cheltenham, United Kingdom) (represented by: J. Derenne, J. Blockx, C. Ziegler and M. Kinsella, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the contested decision; and

— order the defendant to bear its own costs and to pay those incurred by the applicants.

Pleas in law and main arguments

By their action the applicants seek 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 applicants rely on two pleas in law.

1. First plea in law, alleging that, by failing to open the formal investigation procedure, the Commission violated Article 108(2) TFEU, the principles of non-discrimination, proportionality and legitimate expectation and made a wrong assessment of the facts. The applicants submit that:

   — the Commission failed to properly assess the potential role of Demand-Side Response ('DSR') in the UK capacity market;

   — the restrictions on the duration of DSR contracts under the capacity market violate the principles of legitimate expectation and non-discrimination, and are based on a wrong assessment of the facts;

   — the requirement for DSR operators to choose between transitional and enduring market auctions violates the principles of legitimate expectation and non-discrimination;

   — the capacity market's cost recovery methodology violates the principles of non-discrimination, legitimate expectation and proportionality;

   — the use of open-ended capacity events rather than time-bound ones in the enduring auctions of the capacity market is contrary to the principles of non-discrimination and legitimate expectation;

   — the capacity market's bid bond requirement to obtain access to the auctions violates the principles of non-discrimination and legitimate expectation; and

   — the capacity market's failure to provide for additional remuneration for savings in transmission and distribution losses from DSR violates the principles of non-discrimination and legitimate expectation.

2. Second plea in law, alleging that the Commissions failed to provide adequate reasoning in the Decision.

Action brought on 5 December 2014 — Gazprom Neft v Council

(Case T-799/14)

(2015/C 081/29)

Language of the case: English

Parties

Applicant: Gazprom Neft OAO (Saint Petersburg, Russia) (represented by: L. Van den Hende, lawyer, and S. Cogman, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1(3) of Council Decision 2014/659/CFSP of 8 September 2014 ([1]), inserting Article 4(a) into Council Decision 2014/512/CFSP;

— annul Article 1(3) of Council Regulation No 960/2014 of 8 September 2014 ([2]), inserting Article 3(a) into Council Regulation No 833/2014;

— annul Article 1(1) and the Annex of Council Decision 2014/659/CFSP, to the extent they insert Article 1(2)(b)-(d), Article 1(3) and Annex III into Council Decision 2014/512/CFSP, in so far as these provisions concern the applicant;

— annul Article 1(5), Article 1(9) and Annex III of Council Regulation No 960/2014, to the extent they insert Article 5(2)(b)-(d), Article 5(3) and Annex VI into Council Regulation No 833/2014, in so far as these provisions concern the applicant;

— annul Article 1(4) of Council Decision 2014/659/CFSP, replacing Article 7(1)(a) of Council Decision 2014/512/CFSP, in so far as this provision concerns the applicant;

— annul Article 1(5a) of Council Regulation (EU) No 960/2014, replacing Article 11(1)(a) of Council Regulation (EU) No 833/2014, in so far as this provision concerns the applicant; and

— order the Council to pay the costs of the applicant in the present proceedings.

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 a breach of Article 296 of the Treaty on the Functioning of the European Union ('TFEU') due to a lack of reasoning since, inter alia, neither Council Decision 2014/659/CFSP nor Council Regulation No 960/2014 even attempt to explain why the applicant's non-conventional oil projects are the subject of targeted restrictive measures.

2. Second plea in law, alleging that Article 215 TFEU is an inappropriate legal basis for the contested provisions of Council Regulation (EU) No 960/2014 and that Article 29 TEU is an inappropriate legal basis for the contested provisions of Council Decision 2014/659/CFSP.

3. Third plea in law, alleging that the contested provisions violate the EU-Russia Agreement on Partnership and Cooperation ([3]).

4. Fourth plea in law, alleging a breach of the principle of proportionality and fundamental rights. The contested provisions constitute a disproportionate interference with the applicant's freedom to conduct a business and right to property. They are not appropriate to achieve their objectives (and therefore are also not necessary) and, in any event, impose burdens that very significantly outweigh any possible benefits.

([1]) Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 271, p. 54).
([2]) Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014, L 271, p. 3).
([3]) Council and Commission Decision of 30 October 1997 on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part (OJ 1997, L 327, p. 1).

Action brought on 30 December 2014 — Nutria v Commission

(Case T-832/14)

(2015/C 081/30)

Language of the case: French

Parties

Applicant: Nutria AE (Agios Konstantinos Locrida, Greece) (represented by: M.-J. Jacquot, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the Commission to pay it the sum of EUR 5 204 350 for the harm suffered;

— order the Commission to pay it additional compensation in the amount of EUR 12 000 for the costs of proceedings incurred.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging breach of Article 191 of Regulation (EC) No 1234/2007 ([1]), because of the Commission's refusal to extend the deadline by which the Greek part of the food distribution programme for the most deprived people in the Community was to be implemented.

([1]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

Action brought on 8 January 2015 — Leopard v OHIM — Smart Market (LEOPARD true racing)

(Case T-7/15)

(2015/C 081/31)

Language in which the application was lodged: French

Parties

Applicant: Leopard SA (Howald, Luxembourg) (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: Smart Market, SLU (Alcantarilla, 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 elements 'LEOPARD true racing' — Application for registration No 10 139 202

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 2 October 2014 in Case R 1866/2013-1

Form of order sought

The applicant claims that the Court should:

— annul in part 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 13 January 2015 — Banco Santander and Santusa v Commission

(Case T-12/15)

(2015/C 081/32)

Language of the case: Spanish

Parties

Applicants: Banco Santander, SA (Santander, Spain) and Santusa Holding, SL (Boadilla del Monte, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and J. Panero Rivas, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— admit and uphold the grounds for annulment set out in this application;

— annul Article 1 of the contested decision in so far as it declares that the new administrative interpretation of Article 12 TRLIS [texto refundido de la Ley del Impuesto sobre Sociedades (consolidated version of the Spanish law on corporate tax)] adopted by the Spanish administration must be regarded as State aid which is incompatible with the internal market;

— annul Article 4.1 of the contested decision in so far as it requires the Kingdom of Spain to put an end to the alleged aid scheme as described in Article 1;

— annul parts 2, 3, 4 and 5 of Article 4 of the contested decision in so far as they require the Kingdom of Spain to recover the amounts considered by the Commission to be State aid;

— in the alternative, limit the scope of the recovery obligation imposed on the Kingdom of Spain in Article 4.2 of the contested decision in the same terms as in the First and Second Decisions; and

— order to the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and principal arguments are similar to those put forward in Case T-826/14 *Spain* v *Commission*.

The applicants claim, in particular, that the Commission erred in law in the legal classification of the measure as State aid, in the identification of the beneficiary of the measure and in the characterisation of the administrative interpretation as State aid distinct from that examined in the Commission's decisions, and that it breached the principles of the protection of legitimate expectations, of estoppel and of legal certainty.

Action brought on 13 January 2015 — Lufthansa AirPlus Servicekarten v OHIM — Mareea Comtur (airpass.ro)

(Case T-14/15)

(2015/C 081/33)

Language in which the application was lodged: English

Parties

Applicant: Lufthansa AirPlus Servicekarten GmbH (Neu Isenburg, Germany) (represented by: R. Kunze, Solicitor, and G. Würtenberger, lawyer)

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

Other party to the proceedings before the Board of Appeal: SC Mareea Comtur SRL (Deva, Romania)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community figurative mark containing the word elements 'airpass.ro' — Application for registration No 10 649 358

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 17 October 2014 in Case R 1918/2013-5

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision in as much as it concerns the services in class 35;

— Order OHIM to pay the costs.

Plea in law

— Infringement of Articles 8(1)(b), 64 and 76 of Regulation No 207/2009.

Action brought on 13 January 2015 — Costa v Parliament

(Case T-15/15)

(2015/C 081/34)

Language of the case: Italian

Parties

Applicant: Paolo Costa (Venice, Italy) (represented by: G. Orsoni and M. Romeo, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— Declare the decision of the President of the European Parliament of 11 November 2014, notified on 28 November 2014, and all prior, connected or consecutive measures, to be null and void, pursuant to Articles 263 and 264 of the Treaty on the Functioning of the European Union;

— Order the European Parliament to pay the costs in their entirety.

Pleas in law and main arguments

The present action is brought against Decision No 318 189 of the President of the European Parliament of 11 November 2014 concerning the suspension of the applicant's retirement pension with effect from June 2010 and the recovery of the payments received by the applicant between July 2009 and May 2010.

In support of his action, the applicant raises two pleas in law.

1. First plea in law, alleging infringement of rules of law, infringement of the Rules governing the payment of expenses and allowances to Members of the European Parliament, and infringement of Article 12 of the regulation on life-annuities applicable to Italian Members.

   — The applicant alleges, in that regard, that there has been an infringement of Article 12(2a)(v) of the regulation on life-annuities applicable to Italian Members, to which reference is made in the Rules governing the payment of expenses and allowances to Members of the European Parliament, in that it has been wrongly used to support the suspension of pension payments to the President of the Venice Port Authority.

   — In addition, he maintains that the President of an Italian Port Authority does not fall within the scope of Article 12 (2a)(v) of that regulation, as that position — as was acknowledged by the Court of Justice in its judgment of 10 September 2014 in Case C-270/13 [*Haralambidis*] — is a specialised position awarded solely on the basis of a candidate's proven professional skills in the fields of economics and transport; it does not entail any political ties, is completely separate from government appointments of a political nature, and does not involve the performance of political functions.

2. Second plea in law, alleging infringement of the Treaties and of rules of law, infringement of Articles 4, 6 and 13 of the Treaty on European Union, infringement of Article 1 of the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the protection of property, breach of the principle of legitimate expectations, and breach of the principle of good faith.

— In that regard, the applicant alleges infringement of Articles 4 and 13 TEU, which require the European Parliament — like the other EU Institutions — at all times to protect situations where legitimate expectations have been created, within the legal order of the European Union, by any of the persons who are part of that institution.

— He also alleges breach of the principle of the protection of legitimate expectations and the principle of good faith, both of which are general and fundamental principles of EU law acknowledged and affirmed by the case-law of the Court of Justice of the European Union, which requires compliance with those principles at all times in cases concerning the repayment of sums paid to an individual in good faith.

— Lastly, the applicant alleges infringement of Article 1 of the Protocol to the ECHR concerning the protection of property, to which reference is made in Article 6 TEU and which has the same binding force as the Treaties, which requires protection of the legitimate expectation engendered in an individual regarding his lawful receipt of monies to which he is entitled.

Action brought on 15 January 2015 — Italy v Commission

(Case T-17/15)

(2015/C 081/35)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the notice of Competition EPSO/AD/294/14 — Administrators (AD 6) in the field of data protection;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 263 TFEU, Article 264 TFEU and Article 266 TFEU.

   — The applicant argues that the Commission breached the principle of *res judicata* in relation to the judgment of the Court of Justice in Case C-566/10 P [*Italy* v *Commission*], which declares that notices restricting the choice of a second language for individuals taking part in open competitions of the European Union to only English, French or German are unlawful.

2. Second plea in law, alleging infringement of Article 342 TFEU and Articles 1 and 6 of Regulation No 1/58.

   — In that regard, the applicant maintains that, by restricting the number of languages from which individuals taking part in open competitions of the European Union may select their second language to three, the Commission in practice laid down a new rule concerning the languages of the institutions, impinging on the Council's exclusive competence in that area.

3. Third plea in law, alleging infringement of: (i) Article 12 EC, now Article 18 TFEU; (ii) Article 22 of the Charter of Fundamental Rights of the European Union; (iii) Article 6(3) TEU; (iv) Article 1(2) and (3) of Annex III to the Staff Regulations; (v) Articles 1 and 6 of Regulation No 1/58; and (vi) Article 1d(1) and (6), the second paragraph of Article 27, and Article 28(f) of the Staff Regulations.

   — The applicant submits, in that regard, that the language restriction applied by the Commission is discriminatory, as the provisions cited above prohibit the imposing on EU citizens or on officials of the institutions language restrictions not (or not yet) generally and objectively laid down by those institutions' internal rules of procedure as envisaged by Article 6 of Regulation No 1/58; they also prohibit the introduction of such restrictions except in response to a specific and justifiable interest of the service concerned.

4. Fourth plea in law, alleging infringement of Article 6(3) TEU in so far as that provision enshrines the principle of the protection of legitimate expectations as a fundamental right resulting from the constitutional traditions common to the Member States.

   — In that regard, the applicant claims that the Commission undermined citizens' faith in the possibility of choosing as their second language any language of the European Union, as had continually been the case until 2007 and as was authoritatively reiterated in the judgment of the Court of Justice in Case C-566/10 P.

5. Fifth plea in law, alleging a misuse of powers, infringement of the substantive rules relating to the nature and purpose of competition notices (particularly Article 1d(1) and (6), Article 28(f), the second paragraph of Article 27, Article 34(3), and Article 45(1) of the Staff Regulations), and a breach of the principle of proportionality.

   — The applicant argues, in that regard, that, by restricting in advance and across the board the number of languages from which a second language may be chosen to three, the Commission has brought testing the candidates' language skills forward to the notice and conditions for admission stage, when such testing should instead be carried out during the competition itself. Thus, language skills become more important than professional ones.

6. Sixth plea in law, alleging infringement of: (i) Article 18 TFEU and the fourth paragraph of Article 24 TFEU; (ii) Article 22 of the Charter of Fundamental Rights of the European Union; (iii) Article 2 of Regulation No 1/58; and (iv) Article 1d(1) and (6) of the Staff Regulations.

   — In that regard, the applicant submits that, in making it compulsory for candidates to send applications in English, French or German, and for EPSO to send those candidates communications relating to the conduct of the competition in one of those languages, the Commission infringed the right of EU citizens to communicate with the institutions in their own language, and introduced further discrimination to the detriment of anyone not having a thorough knowledge of one of those three languages.

7. Seventh plea in law, alleging: (i) infringement of Articles 1 and 6 of Regulation No 1/58, Article 1d(1) and (6) and Article 28(f) of the Staff Regulations, Article 1(1)(f) of Annex III to the Staff Regulations, and the second paragraph of Article 296 TFEU (failure to provide a statement of reasons); (ii) breach of the principle of proportionality; and (iii) distortion of the facts.

   — The applicant notes, in that regard, that the Commission justified the restriction to three languages on the basis of the need for new recruits to be able immediately to communicate within the institutions. That statement of reasons is, it argues, a distortion of the facts because the three languages in question are not the ones used most frequently in communications between different language groups within the institutions; the restriction is also a disproportionate restriction of the fundamental right not to be discriminated against on the grounds of language, since there are less restrictive means of ensuring quicker communication within the institutions.

Action brought on 21 January 2015 — International Management Group v Commission

(Case T-29/15)

(2015/C 081/36)

Language of the case: English

Parties

Applicant: International Management Group (Brussels, Belgium) (represented by: M. Burgstaller and C. Farrell, Solicitors, and E. Wright, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the amended Annex to the Commission Implementing Decision of 7.11.2013 on the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union adopted on 16 December 2014; and

— order the European Commission to pay for the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission failed to demonstrate that the applicant did not comply with the requirements provided in Article 53(d)(l) of the 2002 Financial Regulation ([1]) and Article 60(2) of the 2012 Financial Regulation ([2]).
2. Second plea in law, alleging that there were no changes to the standards applied in the applicant's account, audit, internal control or procurement systems that would justify a decision by the European Commission to conclude that the applicant could no longer be entrusted with budget implementation tasks.
3. Third plea in law, alleging that the Commission failed to fulfil its obligation to respect principles of good administration and sound financial management.
4. Fourth plea in law, alleging that the Commission breached its obligations related to the principle of transparency.
5. Fifth plea in law, alleging that the Commission failed to provide the applicant with a route to redress.
6. Sixth plea in law, alleging that Commission failed in its duty to give reasons.
7. Seventh plea in law, alleging that the adoption of the contested measures constitutes a breach of the applicant's right to legitimate expectation.

([1]) 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 (OJ 2002, L 248, p. 1).

([2]) Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council, of 25 October 2012, on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012, L 298, p. 1).

Order of the General Court of 12 January 2015 — Luxembourg v Commission

(Case T-258/14) ([1])

(2015/C 081/37)

Language of the case: French

The President of the Fifth Chamber (extended composition) has ordered that the case be removed from the register.

([1]) OJ C 223, 14.7.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 24 December 2014 — ZZ v Eurojust

(Case F-142/14)

(2015/C 081/38)

Language of the case: English

Parties

Applicant: ZZ (represented by: Ekkehard H. Schulze, Rechtsanwalt)

Defendant: Eurojust

Subject-matter and description of the proceedings

Annulment of the decision not to admit the applicant to the second phase of the selection procedure, in the context of his candidature for the post of Advisor to the Office of the President of Eurojust.

Form of order sought

— annul the decisions of 8 August 2014 and 25 September 2014;

— order the defendant to admit the applicant to participate further in the selection process; and

— order the defendant to pay the costs incurred by the applicant.

Order of the Civil Service Tribunal of 15 January 2015 — Speyart v European Commission

(Case F-30/14) ([1])

(2015/C 081/39)

Language of the case: French

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

([1]) OJ C 175, 10/6/14, p. 56.

Order of the Civil Service Tribunal of 12 January 2015 — DQ and Others v European Parliament

(Case F-49/14) ([1])

(2015/C 081/40)

Language of the case: French

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

([1]) OJ C 292, 1/9/14, p. 62.

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