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(2015/C 171/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Ninth Chamber) of 26 March 2015 (request for a preliminary ruling from the Högsta domstolen — Sweden) — C More Entertainment AB v Linus Sandberg

(Case C-279/13) ([1])

(Reference for a preliminary ruling — Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Information society — Harmonisation of certain aspects of copyright and related rights — Article 3(2) — Direct broadcast of a sporting fixture on an internet site)

(2015/C 171/02)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: C More Entertainment AB

Defendant: Linus Sandberg

Operative part of the judgment

Article 3(2) 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 must be interpreted as not precluding national legislation extending the exclusive right of the broadcasting organisations referred to in Article 3(2)(d) as regards acts of communication to the public which broadcasts of sporting fixtures made live on internet, such as those at issue in the main proceedings, may constitute, provided that such an extension does not undermine the protection of copyright.

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (First Chamber) of 26 March 2015 (reference for a preliminary ruling from the Cour de cassation (France)) — Gérard Fenoll v Centre d'aide par le travail 'La Jouvene', Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon

(Case C-316/13) ([1])

(Reference for a preliminary ruling — Social policy — Charter of Fundamental Rights of the European Union — Article 31(2) — Directive 2003/88/EC — Article 7 — Notion of 'worker' — Handicapped person — Right to paid annual leave — National rules contrary to EU law — Role of the national court)

(2015/C 171/03)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Gérard Fenoll

Defendants: Centre d'aide par le travail 'La Jouvene', Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon

Operative part of the judgment

The notion of 'worker', within the meaning of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it may cover a person admitted to an employment rehabilitation centre such as that at issue in the main proceedings.

([1]) OJ C 215, 27.7.2013.

Judgment of the Court (First Chamber) of 26 March 2015 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Marian Macikowski v Dyrektor Izby Skarbowej w Gdańsku

(Case C-499/13) ([1])

(Reference for a preliminary ruling — Common system of value added tax — Principles of proportionality and fiscal neutrality — Taxation of a supply of immovable property in a procedure for compulsory sale by auction — National legislation requiring the court enforcement officer executing such a sale to calculate and pay VAT on the transaction — Payment of the purchase price to the competent court and need for the VAT to be paid to be transferred by that court to the court enforcement officer — Liability for damages and criminal liability of the court enforcement officer for non-payment of VAT — Difference between the general statutory time-limit for the payment of VAT by a taxable person and the time-limit imposed on the court enforcement officer — Impossibility of deducting the input VAT paid)

(2015/C 171/04)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Marian Macikowski

Defendant: Dyrektor Izby Skarbowej w Gdańsku

Operative part of the judgment

1) *Articles 9, 193 and 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which, within the context of a sale of immovable property effected through enforcement, imposes on a person — namely the court enforcement officer who made the sale — obligations to calculate, collect and pay the value added tax on the proceeds of that transaction within the prescribed time-limits.*

2) *The principle of proportionality must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, under which a court enforcement officer must be liable with his entire assets for the amount of value added tax due on the proceeds of the sale of immovable property effected through enforcement where he does not discharge his obligation to collect and pay that tax, provided that the court enforcement officer concerned actually has all legal means to discharge that obligation, which it is for the referring court to determine.*

3) *Articles 206, 250 and 252 of Directive 2006/112 and the principle of fiscal neutrality must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, under which the paying agent as referred to in that provision is required to calculate, collect and pay an amount of value added tax on a sale of goods effected through enforcement without being able to deduct the amount of value added tax paid as input tax from the beginning of the tax period to the date of the collection of that tax from the taxable person.*

([1]) OJ C 367, 14.12.2013.

Judgment of the Court (Fourth Chamber) of 26 March 2015 (reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania)) — 'Litaksa' UAB v 'BTA Insurance Company' SE

(Case C-556/13) ([1])

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 90/232/EEC — Article 2 — Differentiation in the amount of the insurance premium depending on the territory in which the vehicle is used)

(2015/C 171/05)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: 'Litaksa' UAB

Defendant: 'BTA Insurance Company' SE

Operative part of the judgment

Article 2 of the Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as meaning that a premium which varies according to whether the insured vehicle is to be used only in the territory of the Member State in which that vehicle is normally based or in the entire territory of the European Union does not fall within the concept of 'single premium', within the meaning of that article.

([1]) OJ C 24, 25.1.2014.

Judgment of the Court (Second Chamber) of 26 March 2015 — European Commission v Moravia Gas Storage a.s., formerly Globula a.s., Czech Republic

(Case C-596/13 P) ([1])

(Appeals — Internal market in natural gas — Obligation of natural gas undertakings — Organisation of a system of negotiated third party access to gas storage facilities — Decision of the Czech authorities — Temporary exemption for future underground gas storage facilities in Dambořice — Commission decision — Order to withdraw the exemption decision — Directives 2003/55/EC and 2009/73/EC — Temporal application)

(2015/C 171/06)

Language of the case: English

Parties

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

Other parties to the proceedings: Moravia Gas Storage a.s., formerly Globula a.s. (represented by: P. Zákoucký and D. Koláček, advokáti), Czech Republic (represented by M. Smolek, T. Müller and J. Vláčil, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union in Globula v Commission (T-465/11, EU:T:2013:406);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 61, 1.3.2014.

Judgment of the Court (Fifth Chamber) of 26 March 2015 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Ambisig — Ambiente e Sistemas de Informação Geográfica SA v Nersant — Associação Empresarial da Região de Santarém, Núcleo Inicial — Formação e Consultoria Lda

(Case C-601/13) ([1])

(Reference for a preliminary ruling — Directive 2004/18/EC — Public service contracts — Conduct of the procedure — Contract award criteria — Qualifications of the staff assigned to performance of the contract)

(2015/C 171/07)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Ambisig — Ambiente e Sistemas de Informação Geográfica SA

Defendants: Nersant — Associação Empresarial da Região de Santarém, Núcleo Inicial — Formação e Consultoria Lda

Operative part of the judgment

With regard to procurement contracts for the provision of services of an intellectual nature, training and consultancy, Article 53(1)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts does not preclude the contracting authority from using a criterion enabling evaluation of the teams specifically put forward by the tenderers for the performance of the contract and which takes into consideration the composition of the team and the experience and academic and professional background of the team members.

([1]) OJ C 39, 8.2.2014.

Judgment of the Court (Sixth Chamber) of 26 March 2015 — Wünsche Handelsgesellschaft International mbH & Co KG v European Commission

(Case C-7/14 P) ([1])

(Appeal — Community Customs Code — Articles 220(2) and 239 — Refund of import duties — Import of preserved mushrooms from China — Decision declaring the refund of import duties unjustified)

(2015/C 171/08)

Language of the case: German

Parties

Appellant: Wünsche Handelsgesellschaft International mbH & Co KG (represented by: K. Landry and G. Schwendinger, Rechtsanwalte)

Other party to the proceedings: European Commission (represented by: A. Caeiros and B.-R. Killmann, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Wünsche Handelsgesellschaft International mbH & Co KG to pay the costs.*

([1]) OJ C 52, 22.2.14.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland), lodged on 5 June 2014 — Jednostka Innowacyjno-Wdrożeniowa Petrol S.C. Paczuski Maciej i Puławski Ryszard v Minister Finansów

(Case C-275/14)

(2015/C 171/09)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Jednostka Innowacyjno-Wdrożeniowa Petrol S.C. Paczuski Maciej i Puławski Ryszard

Defendant: Minister Finansów

By order of 5 February 2015, the Court held that the second subparagraph of Article 2(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([1]) must be construed as precluding national provisions, such as those in issue in the main proceedings, which impose excise duty on additives coming under heading 3811 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008, at a rate which differs from that applied to the fuel to which they are added.

The second subparagraph of Article 2(3) of Directive 2003/96 must be interpreted as meaning that it may be relied on by an individual as against the competent national authority in the context of proceedings before a national court which seek to have set aside the application of national legal rules which are at variance with that provision.

([1]) OJ 2003 L 283, p. 51.

Request for a preliminary ruling made by the Sąd Rejonowy w Rzeszowie (Poland), lodged on 10 June 2014 — Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe 'Stylinart' sp. z o.o. v Skarb Państwa — Wojewoda Podkarpacki, Skarb Państwa — Prezydent Miasta Przemyśla

(Case C-282/14)

(2015/C 171/10)

Language of the case: Polish

Referring court

Sąd Rejonowy w Rzeszowie

Parties to the main proceedings

Applicant: Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe 'Stylinart' sp. z o.o.

Defendant: Skarb Państwa — Wojewoda Podkarpacki, Skarb Państwa — Prezydent Miasta Przemyśla

By order of 11 December 2014, the Court of Justice of the EU ruled that it manifestly lacked jurisdiction to reply to the question referred by the Sąd Rejonowy w Rzeszowie.

Appeal brought on 12 January 2015 by Ledra Advertising Ltd against the order of the General Court (First Chamber) delivered on 10 November 2014 in Case T-289/13: Ledra Advertising Ltd v Commission and European Central Bank

(Case C-8/15 P)

(2015/C 171/11)

Language of the case: English

Parties

Appellant: Ledra Advertising Ltd (represented by: C. Paschalides, Solicitor, A. Paschalides, dikigoros and A. Riza QC)

Other parties to the proceedings: European Commission and European Central Bank

Form of order sought

The appellant claims that the Court should:

— allow the appeal and dismiss the applications of the Defendants and order them to bear the costs, both before this Court and before the General Court and for the case to proceed to trial on the substantive issues.

Pleas in law and main arguments

1. The General Court infringed EU law in its appraisal of a number of propositions in its judgment as follows.

a) That the 'duties conferred on the Commission… within the ESM Treaty do not entail any power to make decisions of their own and …that the activities of those two institutions within the ESM Treaty solely commit the ESM ([1]),' was relied on by the General Court without appraising at all the impact of the proposition of law it accepted *arguendo* at paragraph 48, that the Commission 'had not surrendered effective control of its overarching decision making role under Article 136(3) [TFEU] pursuant to its powers under Article 17 [TEU] to act as the EU institution responsible for ensuring that acts concluded under the ESM Treaty were in conformity with EU law.'

b) It is submitted that the case of *Pringle* ([2])upon which the General Court relied ([3]), decides that whereas the Commission and the ECB solely commit the ESM ([4]), nevertheless at *inter alia* ([5]) paragraph 164 of that case the court observed that the 'tasks allocated to the Commission by the ESM Treaty enable it, as provided in 13(3) and 13(4) of that treaty, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law' and at paragraph 174 that 'under Article 13(3) of the ESM Treaty the MoU which is to be negotiated with the Member State requesting stability support must be fully consistent with EU law.'

c) 'A claim for compensation that is directed against the EU and is based on the mere illegality of an act or course of conduct that has not been adopted by an institution of the EU or by its servants must be rejected as inadmissible ([6]),' was applied without an appraisal of the submission in the Appellant's reply which was that ... the ECB must have been acting as an EU institution since the ESM could not lawfully exercise effective control of the coercive power under EU law to allow and/or make and/or act in furtherance of the unless-demand. The said coercive power is vested exclusively in the ECB '... effective control of which could not be surrendered under EU law.'

d) 'The conduct allegedly giving rise to the damage pleaded is a failure by the Commission to act when signing the MoU. However, the MoU was signed after the reduction in the value of the applicant's deposit... That reduction actually occurred on the entry into force of the measures of 29 March 2013. Therefore the applicant cannot be regarded as having established with necessary certainty that the damage it claims to have suffered was actually caused by the inaction alleged against the Commission' ([7]). This proposition ignores the way the applicant put his case referred to at paragraph 41 of the judgment viz. 'that it is in respect of the conditions attached to FAF provided to [the Republic of Cyprus] on 26 April 2013 and the process by which they were required by the Commission and the ECB that caused the applicant damage for which it seeks compensation pursuant to Articles 268 and 340 TFEU.' The process by which they were required included the failure by the Commission to ensure that the conditionality was in conformity with EU law and the unless-demand made by the ECB to cut the supply of euro to Cyprus off which were continuing acts/failures to act beginning on 15 March 2013 and ending with compliance with the conditionality on 29 March 2013.

e) The contents of the MoU were challenged on the basis that they referred back to prior compliance with a conditionality that *ex hypothesi* arose prior to the diminution in the value of the applicant's deposit, which the General Court failed to appraise as an integral part of a course of conduct.

f) 'In cases where the conduct allegedly giving rise to the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that the damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against the defendant institution': *Portela v Commission* ([8]). In other words 'even if' ([9]) the Commission acted in accordance with its duty to ensure the conditions were consistent with EU law it would have made no difference 'as the MoU was signed after the reduction in value of the applicant's deposit at BoC ([10]).' Again the General Court failed to appraise the arguments relied on by the Appellant: see *inter alia* (d) and (e) above.

g) Further and alternatively the General Court was wrong in point of fact to hold that the MoU was signed after the diminution deposits in all cases. In the case of BoC the final diminution in value did not occur until after the MoU was signed on 26 April 2013 viz. at the end of June 2013.

2. If the ECJ accepts that the defendants were in law capable of acting as institutions of the EU it follows that the General Court's decision in respect of the second head of claim [for annulment] referred to at paragraphs 55 to 60 of the judgment would fall away *afortiori*.

([1]) At paragraph 45 of its judgment.
([2]) Case C-370/12 [2012].
([3]) Paragraph 45 of judgment.
([4]) Paragraph 45 of judgment dated 10 November 2014.
([5]) See also 112 and 163.
([6]) Paragraph 43 of the judgment and case C-520/12 P.
([7]) Paragraph 54 of judgment.
([8]) Case T-137/07 at paragraph 80.
([9]) Case T-7/96 Perillo v Commission.
([10]) Paragraph 54 of judgment.

Appeal brought on 12 January 2015 by Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi against the order of the General Court (First Chamber) delivered on 10 November 2014 in Case T-291/13: Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi v European Commission and European Central Bank

(Case C-9/15 P)

(2015/C 171/12)

Language of the case: English

Parties

Appellants: Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi (represented by: C. Paschalides, Solicitor, A. Paschalides, dikigoros and A. Riza QC)

Other parties to the proceedings: European Commission and European Central Bank

Form of order sought

The appellant claims that the Court should:

— allow the appeal and dismiss the applications of the Defendants and order them to bear the costs, both before this Court and before the General Court and for the case to proceed to trial on the substantive issues.

Pleas in law and main arguments

1. The General Court infringed EU law in its appraisal of a number of propositions in its judgment as follows.

a) That the 'duties conferred on the Commission… within the ESM Treaty do not entail any power to make decisions of their own and …that the activities of those two institutions within the ESM Treaty solely commit the ESM,' ([1]) was relied on by the General Court without appraising at all the impact of the proposition of law it accepted *arguendo* at paragraph 48, that the Commission 'had not surrendered effective control of its overarching decision making role under Article 136(3) [TFEU] pursuant to its powers under Article 17 [TEU] to act as the EU institution responsible for ensuring that acts concluded under the ESM Treaty were in conformity with EU law.'

b) It is submitted that the case of *Pringle* ([2]) upon which the General Court relied ([3]), decides that whereas the Commission and the ECB solely commit the ESM ([4]), nevertheless at *inter alia* ([5]) paragraph 164 of that case the court observed that the 'tasks allocated to the Commission by the ESM Treaty enable it, as provided in 13(3) and 13(4) of that treaty, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law' and at paragraph 174 that 'under Article 13(3) of the ESM Treaty the MoU which is to be negotiated with the Member State requesting stability support must be fully consistent with EU law.'

c) 'A claim for compensation that is directed against the EU and is based on the mere illegality of an act or course of conduct that has not been adopted by an institution of the EU or by its servants must be rejected as inadmissible ([6]),' was applied without an appraisal of the submission in the Appellant's reply which was that '... the ECB must have been acting as an EU institution since the ESM could not lawfully exercise effective control of the coercive power under EU law to allow and/or make and/or act in furtherance of the unless-demand. The said coercive power is vested exclusively in the ECB ... effective control of which could not be surrendered under EU law.'

d) 'The conduct allegedly giving rise to the damage pleaded is a failure by the Commission to act when signing the MoU. However, the MoU was signed after the reduction in the value of the applicant's deposit... That reduction actually occurred on the entry into force of the measures of 29 March 2013. Therefore the applicant cannot be regarded as having established with necessary certainty that the damage it claims to have suffered was actually caused by the inaction alleged against the Commission ([7]).' This proposition ignores the way the applicant put his case referred to at paragraph 41 of the judgment viz. 'that it is in respect of the conditions attached to FAF provided to [the Republic of Cyprus] on 26 April 2013 and the process by which they were required by the Commission and the ECB that caused the applicant damage for which it seeks compensation pursuant to Articles 268 and 340 TFEU.' The process by which they were required included the failure by the Commission to ensure that the conditionality was in conformity with EU law and the unless-demand made by the ECB to cut the supply of euro to Cyprus off which were continuing acts/failures to act beginning on 15 March 2013 and ending with compliance with the conditionality on 29 March 2013.

e) The contents of the MoU were challenged on the basis that they referred back to prior compliance with a conditionality that *ex hypothesi* arose prior to the diminution in the value of the applicant's deposit, which the General Court failed to appraise as an integral part of a course of conduct.

f) 'In cases where the conduct allegedly giving rise to the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that the damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against the defendant institution': *Portela v Commission* ([8]). In other words 'even if' ([9]) the Commission acted in accordance with its duty to ensure the conditions were consistent with EU law it would have made no difference 'as the MoU was signed after the reduction in value of the applicant's deposit at BoC ([10]).' Again the General Court failed to appraise the arguments relied on by the Appellant: see *inter alia* (d) and (e) above.

g) Further and alternatively the General Court was wrong in point of fact to hold that the MoU was signed after the diminution deposits in all cases. In the case of BoC the final diminution in value did not occur until after the MoU was signed on 26 April 2013 viz. at the end of June 2013.

2. If the ECJ accepts that the defendants were in law capable of acting as institutions of the EU it follows that the General Court's decision in respect of the second head of claim [for annulment] referred to at paragraphs 55 to 60 of the judgment would fall away *afortiori*.

(1) At paragraph 45 of its judgment.
(2) Case C-370/12 [2012].
(3) Paragraph 45 of judgment.
(4) Paragraph 45 of judgment dated 10 November 2014.
(5) See also 112 and 163.
(6) Paragraph 43 of the judgment and case C-520/12 P.
(7) Paragraph 54 of judgment.
(8) Case T-137/07 at paragraph 80.
(9) Case T-7/96 Perillo v Commission.
(10) Paragraph 54 of judgment.

Appeal brought on 12 January 2015 by Christos Theophilou and Eleni Theophilou against the order of the General Court (First Chamber) delivered on 10 November 2014 in Case T-293/13: Christos Theophilou and Eleni Theophilou v European Commission and European Central Bank

(Case C-10/15 P)

(2015/C 171/13)

Language of the case: English

Parties

Appellants: Christos Theophilou and Eleni Theophilou (represented by: C. Paschalides, Solicitor, A. Paschalides, dikigoros and A. Riza QC)

Other parties to the proceedings: European Commission and European Central Bank

Form of order sought

The appellant claims that the Court should:

— allow the appeal and dismiss the applications of the Defendants and order them to bear the costs, both before this Court and before the General Court and for the case to proceed to trial on the substantive issues.

Pleas in law and main arguments

1. The General Court infringed EU law in its appraisal of a number of propositions in its judgment as follows.

   a) That the 'duties conferred on the Commission… within the ESM Treaty do not entail any power to make decisions of their own and …that the activities of those two institutions within the ESM Treaty solely commit the ESM (1),' was relied on by the General Court without appraising at all the impact of the proposition of law it accepted *arguendo* at paragraph 48, that the Commission 'had not surrendered effective control of its overarching decision making role under Article 136(3) [TFEU] pursuant to its powers under Article 17 [TEU] to act as the EU institution responsible for ensuring that acts concluded under the ESM Treaty were in conformity with EU law'

b) It is submitted that the case of *Pringle* ([2]) upon which the General Court relied ([3]), decides that whereas the Commission and the ECB solely commit the ESM ([4]), nevertheless at *inter alia* ([5]) paragraph 164 of that case the court observed that the 'tasks allocated to the Commission by the ESM Treaty enable it, as provided in 13(3) and 13(4) of that treaty, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law' and at paragraph 174 that 'under Article 13(3) of the ESM Treaty the MoU which is to be negotiated with the Member State requesting stability support must be fully consistent with EU law.'

c) 'A claim for compensation that is directed against the EU and is based on the mere illegality of an act or course of conduct that has not been adopted by an institution of the EU or by its servants must be rejected as inadmissible ([6]),' was applied without an appraisal of the submission in the Appellant's reply which was that '... the ECB must have been acting as an EU institution since the ESM could not lawfully exercise effective control of the coercive power under EU law to allow and/or make and/or act in furtherance of the unless-demand. The said coercive power is vested exclusively in the ECB ... effective control of which could not be surrendered under EU law.'

d) 'The conduct allegedly giving rise to the damage pleaded is a failure by the Commission to act when signing the MoU. However, the MoU was signed after the reduction in the value of the applicant's deposit... That reduction actually occurred on the entry into force of the measures of 29 March 2013. Therefore the applicant cannot be regarded as having established with necessary certainty that the damage it claims to have suffered was actually caused by the inaction alleged against the Commission ([7]).' This proposition ignores the way the applicant put his case referred to at paragraph 41 of the judgment viz. 'that it is in respect of the conditions attached to FAF provided to [the Republic of Cyprus] on 26 April 2013 and the process by which they were required by the Commission and the ECB that caused the applicant damage for which it seeks compensation pursuant to Articles 268 and 340 TFEU.' The process by which they were required included the failure by the Commission to ensure that the conditionality was in conformity with EU law and the unless-demand made by the ECB to cut the supply of euro to Cyprus off which were continuing acts/failures to act beginning 15 March 2013 and ending with compliance with the conditionality on 29 March 2013.

e) The contents of the MoU were challenged on the basis that they referred back to prior compliance with a conditionality that *ex hypothesi* arose prior to the diminution in the value of the applicant's deposit, which the General Court failed to appraise as an integral part of a course of conduct.

f) 'In cases where the conduct allegedly giving rise to the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that the damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against the defendant institution': *Portela v Commission* ([8]). In other words 'even if' ([9]) the Commission acted in accordance with its duty to ensure the conditions were consistent with EU law it would have made no difference 'as the MoU was signed after the reduction in value of the applicant's deposit at BoC.' ([10]) Again the General Court failed to appraise the arguments relied on by the Appellant: see *inter alia* (d) and (e) above.

g) Further and alternatively the General Court was wrong in point of fact to hold that the MoU was signed after the diminution deposits in all cases. In the case of BoC the final diminution in value did not occur until after the MoU was signed on 26 April 2013 viz. at the end of June 2013.

2. If the ECJ accepts that the defendants were in law capable of acting as institutions of the EU it follows that the General Court's decision in respect of the second head of claim [for annulment] referred to at paragraphs 55 to 60 of the judgment would fall away *afortiori*.

(1) At paragraph 45 of its judgment.
(2) Case C-370/12 [2012].
(3) Paragraph 45 of judgment.
(4) Paragraph 45 of judgment dated 10 November 2014.
(5) See also 112 and 163.
(6) Paragraph 43 of the judgment and case C-520/12 P.
(7) Paragraph 54 of judgment.
(8) Case T-137/07 at paragraph 80.
(9) Case T-7/96 Perillo v Commission.
(10) Paragraph 54 of judgment.

Request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 10 February 2015 — Firma Theodor Pfister v Landkreis Main-Spessart

(Case C-58/15)

(2015/C 171/14)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Firma Theodor Pfister

Defendant: Landkreis Main-Spessart

Question referred

— Does the second sentence of Article 27(3) of Regulation (EC) No 882/2004 [1] of the European Parliament and of the Council of 29 April 2004 permit, for the transitional period of 2007, the imposition of meat inspection fees to cover costs under the previous legal provisions (Directive 85/73/EEC in the version of Directive 96/43/EC)?

(1) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 17 February 2015 — Emmanuel Lebek v Janusz Domino

(Case C-70/15)

(2015/C 171/15)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Emmanuel Lebek

Respondent: Janusz Domino

Questions referred

1. Must Article 34(2) 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 ([1]) be interpreted as meaning that the possibility of commencing proceedings to challenge a judgment laid down therein covers both the situation in which such a challenge can be brought within the time-limit laid down in national law and the situation in which that time-limit has already passed but it is possible to submit an application for relief from the effects of its passing and then — following the grant of such relief — actually to commence such proceedings?

2. Must Article 19(4) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 ([2]) be interpreted as excluding the application of provisions of national law concerning the possibility of relief from the effects of the expiry of the time for appeal or as meaning that the defendant has the choice of availing himself of either the application for relief provided for in that provision or the relevant set of provisions under national law?

([1]) OJ 2001 L 12, p. 1.
([2]) OJ 2007 L 324, p. 79.

Request for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 18 February 2015 — Dumitru Tarcău, Ileana Tarcău v Banca Comercială Intesa Sanpaolo România SA — Sucursala Baia Mare and Others

(Case C-74/15)

(2015/C 171/16)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Appellants: Dumitru Tarcău, Ileana Tarcău

Respondents: Banca Comercială Intesa Sanpaolo România SA — Sucursala Baia Mare, Banca Comercială Intesa Sanpaolo România SA Arad, Cristian Nicolae Tarcău, Corina Tarcău, SC Magenta, in the person of the liquidator, Pareto Grup IPURL, SC Crisco SRL, in the person of the special administrator, CII Renata Moldovan, SC Crisco SRL, in the person of the special administrator, Cristian Tarcău

Questions referred

1. Must Article 2(b) of Directive 93/13/EEC ([1]), as regards the definition of 'consumer', be interpreted as including in or, conversely, as excluding from, that definition natural persons who have, as guarantors/sureties, concluded additional acts and contracts (guarantee contracts, contracts providing immovable property as security) ancillary to the credit agreement entered into by a commercial company in order to carry on its activity, in circumstances in which those natural persons have no connection with the activities of the commercial company and have acted for purposes outside their trade, business or profession.

2. Must Article 1(1) of Directive 93/13/EEC be interpreted as meaning that only contracts concluded between traders and consumers concerning the sale of goods or supply of services fall within the ambit of that directive or as meaning that contracts (contracts of guarantee and of surety) ancillary to a credit agreement, the beneficiary of which is a commercial company, concluded by natural persons who have no connection with the activities of that commercial company and who acted for purposes outside their trade, business or profession also fall within the ambit of that directive?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 19 February 2015 — Paul Vervloet and Others, Organisme voor de financiering van pensioenen Ogeo Fund, Gemeente Schaarbeek, Frédéric Ensch Famenne v Ministerraad; intervening parties: Arcofin CVBA and Others

(Case C-76/15)

(2015/C 171/17)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Paul Vervloet, Marc De Wit, Edgard Timperman, Godelieve Van Braekel, Patrick Beckx, Marc De Schryver, Guy Deneire, Steve Van Hoof, Organisme voor de financiering van pensioenen Ogeo Fund, Gemeente Schaarbeek, Frédéric Ensch Famenne

Defendant: Ministerraad

Intervening parties: Arcofin CVBA, Arcopar CVBA, Arcoplus CVBA

Questions referred

1. Must Articles 2 and 3 of Directive 94/19/EC ([1]) of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, where appropriate read in conjunction with Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ([2]) and with the general principle of equality, be interpreted as meaning that:

   (a) they impose an obligation on the Member States to guarantee the shares of recognised cooperatives operating in the financial sector in the same way as deposits?

   (b) they preclude a Member State from entrusting to the body which is partially responsible for guaranteeing the deposits referred to in that directive the task of also guaranteeing, in an amount up to EUR 100 000, the value of the shares of the members, being natural persons, of a recognised cooperative operating in the financial sector?

2. Is the European Commission Decision of 3 July 2014 ([3]) 'on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives' compatible with Articles 107 TFEU and 296 TFEU in so far as it classifies the guarantee scheme which forms the subject of that decision as new State aid?

3. In the event of a negative answer to the second question, must Article 107 TFEU be interpreted as meaning that a scheme concerning the State guarantee granted to the members, being natural persons, of recognised cooperatives operating in the financial sector, within the meaning of Article 36/24(1)(1)(3) of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, constitutes new State aid which must be notified to the European Commission?

4. In the event of an affirmative answer to the second question, is that decision of the European Commission compatible with Article 108(3) TFEU if it is interpreted as holding that the State aid at issue was put into effect before 3 March 2011 or 1 April 2011 or on one or other of those dates, or, conversely, if it is interpreted as holding that the State aid at issue was put into effect at a later date?

5. Must Article 108(3) TFEU be interpreted as precluding a Member State from adopting a measure, such as that contained in Article 36/24(1)(3) of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, if that measure puts State aid into effect or constitutes State aid which has already been put into effect and that State aid has not yet been notified to the European Commission?

6. Must Article 108(3) TFEU be interpreted as precluding a Member State from adopting, without prior notification to the European Commission, a measure, such as that contained in Article 36/24(1)(3) of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, if that measure constitutes State aid which has not yet been put into effect?

(1) OJ 1994 L 135, p. 5.
(2) OJ 2000 C 364, p. 1.
(3) Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives (notified under document C(2014) 1021) (OJ 2014 L 284, p. 53).

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 20 February 2015 — Colena AG v Deiters GmbH

(Case C-78/15)

(2015/C 171/18)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Colena AG

Defendant: Deiters GmbH

Questions referred

1. Are coloured non-corrective themed contact lenses consisting of copolymers and water (hydrogel) a 'cosmetic product' ('substance' and/or 'mixture') within the meaning of Article 2(1)(a) of Regulation (EC) No 1223/2009 ([1]), which is intended, within the meaning of that provision, to be placed in contact with external parts of the human body?

2. Can the scope of Regulation (EC) No 1223/2009 be extended to a situation where a product which does not fulfil the conditions of Article 2(1)(a) of the regulation appears to be a cosmetic product according to the predominant purpose for a reasonably well informed and reasonably observant and circumspect average consumer, for example owing to the fact that wording such as 'Cosmetic eye accessories are governed by the EU Cosmetics Directive' or 'Colour eye accessories are governed by the EU Cosmetics Directive' is used on the packaging?

(1) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products, OJ 2009 L 342, p. 59.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 27 February 2015 — Sprengen/Pakweg Douane BV, other party: Staatssecretaris van Financiën

(Case C-97/15)

(2015/C 171/19)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Sprengen/Pakweg Douane BV

Other party: Staatssecretaris van Financiën

Questions referred

1. Must the last paragraph of Note 5(C) to Chapter 84 of the CN — whether or not having regard to Attachments A and B to the Information Technology Agreement — be interpreted as meaning that apparatus such as the screenplays described in this judgment are to be classified as 'hard disk drives' in subheading 8471 70 50 of the CN, even though the apparatus has features and characteristics such that it is capable of reproducing on a television set or video monitor multimedia files stored on the hard disks, after converting those files into analogue signals?

2. If question 1 must be answered in the negative, must heading 8521 of the CN then be interpreted as meaning that apparatus such as the screenplays can be classified under it, even though their video reproducing function is not their specific function, but is their principal function?

Request for a preliminary ruling from the Juzgado de lo Social No 33 de Barcelona (Spain) lodged on 27 February 2015 — María Begoña Espadas Recio v Servicio Público de Empleo Estatal (SPEE)

(Case C-98/15)

(2015/C 171/20)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Barcelona

Parties to the main proceedings

Applicant: María Begoña Espadas Recio

Defendant: Servicio Público de Empleo Estatal (SPEE)

Questions referred

1. In accordance with the line of authority laid down in the judgment of 10 June 2010 of the Court of Justice in *Bruno and Others* (C-395/08 and C–396/08], must Clause 4 of the Framework Agreement on part-time work, annexed to Directive 97/81/EC ([1]) concerning the Framework Agreement on part-time work, be interpreted as applying to a contributory unemployment benefit like that provided for in Article 210 of the Spanish Ley General de Seguridad Social, funded exclusively by the contributions paid by the employee and the undertakings having employed her, and based on the periods of employment in respect of which contributions were paid in the six years preceding the legal situation of unemployment?

2. If the previous question is answered in the affirmative, in accordance with the case-law laid down in *Bruno and Others*, must Clause 4 of the Framework Agreement be interpreted as precluding a national provision which, as is the case of Article 3(4) of Real Decreto 625/1985 of 2 April (Rules on unemployment benefits), to which rule 4 of paragraph 1 of the seventh additional provision of the Ley General de Seguridad Social refers — in the case of 'vertical' part-time work (work carried out only three days a week) — disregards, for the purposes of calculation of the duration of unemployment benefit, days not worked even though contributions were paid in respect of those days, with the resulting reduction in the duration of the benefit granted?

3. Must the prohibition of direct and indirect discrimination on grounds of sex laid down in Article 4 of Directive 79/7 ([2]) be interpreted as prohibiting or precluding a national provision which, as is the case of Article 3(4) of [Real Decreto 625/1985], in the case of 'vertical' part-time work (work carried out only three days a week), excludes days not worked from the calculation of days in respect of which contributions have been paid, with the resulting reduction in the duration of unemployment benefit?

([1]) OJ 1998 L 14, p. 9.
([2]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

Request for a preliminary ruling from the Tribunal Supremo (Sala de lo Civil) (Spain) lodged on 27 February 2015 — Christian Liffers v Producciones Mandarina, S.L. and Gestevisión Telecinco, S.A.

(Case C-99/15)

(2015/C 171/21)

Language of the case: Spanish

Referring court

Tribunal Supremo (Sala de lo Civil)

Parties to the main proceedings

Applicant: Christian Liffers

Defendants: Producciones Mandarina, S.L. and Gestevisión Telecinco, S.A.

Question referred

1. May Article 13(1) of Directive 2004/48/EC of the European Parliament and of the Council ([1]) of 29 April 2004 on the enforcement of intellectual property rights be interpreted as meaning that the party injured by an intellectual property infringement who claims damages for pecuniary loss based on the amount of royalties or fees that would be due if the infringer had requested authorisation to use the intellectual property right in question cannot also claim damages for the moral prejudice suffered?

([1]) OJ 2004 L 157, p. 45.

Request for a preliminary ruling from the Fővárosi Ítélőtábla (Hungary) lodged on 2 March 2015 — Gazdasági Versenyhivatal v Siemens Aktiengesellschaft Österreich

(Case C-102/15)

(2015/C 171/22)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla

Parties to the main proceedings

Applicant: Gazdasági Versenyhivatal

Defendant: Siemens Aktiengesellschaft Österreich

Question referred

Does the concept of a claim in matters relating to *quasi-delict* under Article 5(3) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 [on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters] cover a claim which has its origin in the reimbursement of a fine imposed in competition proceedings and paid by a party domiciled in another Member State — the reimbursement to whom was subsequently held to be unjustified — which the competition authority makes against that party in order to obtain the return of interest which must legally be paid on reimbursement and which was paid by the authority concerned?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Cour d'appel de Pau (France) lodged on 6 March 2015 — Association des Utilisateurs et Distributeurs de l'Agro Chimie Européenne (Audace), Phyteron 2000 SAS, Association des éleveurs solidaires, Cruzalebes EARL, Des deux rivières EARL, Mounacq EARL v GAEC Reconnu La Vinardière, Ministère public

(Case C-114/15)

(2015/C 171/23)

Language of the case: French

Referring court

Cour d'appel de Pau

Parties to the main proceedings

Appellants: Association des Utilisateurs et Distributeurs de l'Agro Chimie Européenne (Audace), Phyteron 2000 SAS, Association des éleveurs solidaires, Cruzalebes EARL, Des deux rivières EARL, Mounacq EARL

Respondents: GAEC Reconnu La Vinardière, Ministère public

Questions referred

1. Does national legislation comply with Articles 34 to 36 TFEU in so far as it reserves access to parallel imports of veterinary medicinal products exclusively to wholesale distributors in possession of the authorisation provided for under Article 65 of Directive 2001/82/EC ([1]), thus excluding those with retail distribution rights and livestock farmers?

2. On a proper construction of Article 65 of Directive 2001/82/EC and Article 16 of Directive 2006/123/EC ([2]) (the 'services' Directive), is a Member State entitled not to recognise authorisations for the wholesale distribution of veterinary medicinal products that are issued by the competent authorities of other Member States to their own nationals and to require that those nationals additionally hold wholesale distribution authorisations issued by its own competent authorities in order to be entitled to apply for and to use authorisations for the parallel importation of veterinary medicinal products within that Member State?

3. Does national legislation comply with Articles 34, 36 and 56 TFEU and Article 16 of Directive 2006/123 in so far as it assimilates parallel importers of veterinary medicinal products to holders of an operating licence which is not required under Directive 2001/82/EC, as amended, establishing a Community Code for veterinary medicinal products, and which consequently requires such importers to have available to them an establishment in the territory of the Member State concerned and to have successfully completed all the pharmacovigilance operations provided for under Articles 72 to 79 of Directive 2001/82/EC?

([1]) Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ 2001 L 311, p. 1).
([2]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 6 March 2015 — Secretary of State for the Home Department v NA

(Case C-115/15)

(2015/C 171/24)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: NA

Questions referred

1. Must a third country national ex-spouse of a Union citizen be able to show that their former spouse was exercising Treaty rights in the host Member state at the time of their divorce in order to retain a right of residence under Article 13 (2) of Directive 2004/38/EC ([1])?

2. Does an EU citizen have an EU law right to reside in a host member state under Articles 20 and 21 of the TFEU in circumstances where the only state within the EU in which the citizen is entitled to reside is his state of nationality, but there is a finding of fact by a competent tribunal that the removal of the citizen from the host member state to his state of nationality would breach his rights under Article 8 of the ECHR or Article 7 of the Charter of Fundamental Rights of the EU?

3. If the EU citizen in (2) (above) is a child, does the parent having sole care of that child have a derived right of residence in the host member state if the child would have to accompany the parent on removal of the parent from the host member state?

4. Does a child have a right to reside in the host Member State pursuant to Article 12 of Regulation (EEC) No 1612/68/EEC ([2]) (now Article 10 of Regulation 492/2011/EU ([3])) if the child's Union citizen parent, who has been employed in the host Member State, has ceased to reside in the host Member State before the child enters education in that state?

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

([2]) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community OJ L 257, p. 2.

([3]) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union OJ L 141, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia del País Vasco (España) lodged on 9 March 2015 — Confederación Sindical ELA, Juan Manuel Martínez Sánchez v Aquarbe S.A.U., Consorcio de Aguas de Busturialdea

(Case C-118/15)

(2015/C 171/25)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia del País Vasco

Parties to the main proceedings

Applicants: Confederación Sindical ELA, Juan Manuel Martínez Sánchez

Defendants: Aquarbe S.A.U., Consorcio de Aguas de Busturialdea

Questions referred

Does Article 1(1)(b) of Council Directive 2001/23/EC ([1]) of 12 March 2001, in conjunction with Article 4(1) thereof, preclude an interpretation of the Spanish legislation intended to give effect to the Directive, to the effect that a public-sector undertaking, responsible for a service central to its own activities and requiring important material resources, that has been providing that service by means of a public contract, requiring the contractor to use those resources which it owns, is not subject to the obligation to take over the rights and obligations relating to employment relationships when it decides not to extend the contract but to assume direct responsibility for its performance, using its own staff and thereby excluding the staff employed by the contractor, so that the service continues to be provided without any change other than that arising as a result of the replacement of the workers performing the activities and the fact that they are employed by a different employer?

([1]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses OJ 2001 L 82, p. 16.

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 10 March 2015 — C

(Case C-122/15)

(2015/C 171/26)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: C

Other party: Veronsaajien oikeudenvalvontayksikkö

Questions referred

1) Are the provisions of Article 3(1)(c) of Directive 2000/78/EC ([1]) to be interpreted as meaning that national legislation such as the provisions on supplementary tax on pension income of the first and fourth subparagraphs of Paragraph 124 of the Tuloverolaki (Law on income tax) fall within the scope of EU law and the provision concerning the prohibition of discrimination on grounds of age laid down in Article 21(1) of the Charter of Fundamental Rights of the European Union should consequently be applied in the present case?

   Questions 2 and 3 are submitted only in the event that the Court of Justice's reply to Question 1 is that the matter falls within the scope of EU law.

2) If the first question is answered in the affirmative, are Article 2(1) and (2)(a) or (b) of Directive 2000/78/EC and the provisions of Article 21(1) of the Charter of Fundamental Rights of the European Union to be interpreted as precluding national legislation such as the provisions of the first and fourth subparagraphs of Paragraph 124 of the Tuloverolaki concerning the supplementary tax on pension income, under which the pension income received by a natural person, the receipt of which is based at least indirectly on the person's age, is burdened in certain cases with more income tax than would be charged on the equivalent amount of employment income?

3) If those provisions of Directive 2000/78/EC and the Charter of Fundamental Rights of the European Union preclude national legislation such as the supplementary tax on pension income, must it also be assessed in the present case whether Article 6(1) of that directive is to be interpreted as meaning that national legislation such as the supplementary tax on pension income may nevertheless be regarded in terms of its aim as objectively and reasonably justified within the meaning of that provision of the directive, in particular on the basis of a legitimate employment policy, labour market or vocational training objective, since the purpose expressed in the preparatory materials for the Tuloverolaki is, by means of the supplementary tax on pension income, to collect tax revenue from recipients of pension income who are capable of paying, to narrow the difference of tax rates between pension income and employment income, and to improve incentives for older persons to continue working?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 16 March 2015 — H. M. v Agentsia za darzhavna finansova inspektsia (ADFI)

(Case C-129/15)

(2015/C 171/27)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Appellant in cassation: H. M.

Respondent in cassation: Agentsia za darzhavna finansova inspektsia (ADFI)

Questions referred

1) Is Article 1(9) of Directive 2004/18/EC ([1]) to be interpreted as meaning that a body/company is a body governed by public law merely because over 30 % of its revenue from its activity in the previous year is derived from medical activities which were paid for out of the Natsionalna zdravnoosiguritelna kasa (national health insurance fund) and carried out in conditions of effective competition with other medical establishments?

2) Is Article 1(9) of Directive 2004/18 to be interpreted as meaning that the provision of medical services in conditions of effective competition by private companies established for profit-making purposes may be regarded as 'meeting needs in the general interest'?

3) Is Article 1(9) of Directive 2004/18 to be interpreted as precluding Paragraph 1, point 21 of the Additional Provisions (Dopalnitelni razporedbi) of the Law on public procurement (Zakon za obshtestvenite porachki), according to which it is sufficient, for the purposes of determining that a body is a body governed by public law, if just one of the criteria corresponding to the cumulative criteria laid down by that directive is met?

([1]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

GENERAL COURT

Judgment of the General Court of 9 March 2015 — Deutsche Börse v Commission

(Case T-175/12) ([1])

(Competition — Concentrations — Financial instruments sector — European derivatives market — Decision declaring that the concentration is incompatible with the internal market — Assessment of the effects of the transaction on competition — Efficiency gains — Commitments)

(2015/C 171/28)

Language of the case: English

Parties

Applicant: Deutsche Börse AG (Frankfurt am Main, Germany) (represented by: C. Zschocke, J. Beninca and T. Schwarze, lawyers)

Defendant: European Commission (represented by: T. Christoforou, V. Bottka, N. Khan and B. Mongin, acting as Agents)

Intervener in support of the defendant: Icap Securities Ltd (London, United Kingdom) (represented by: C.T. Riis-Madsen, lawyer, and S. Stephanou, Solicitor)

Re:

Application for annulment of Commission Decision C(2012) 440 final of 1 February 2012, declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case No COMP/M.6166 — Deutsche Börse/NYSE Euronext).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Deutsche Börse AG to bear its own costs and to pay those incurred by the European Commission and by Icap Securities Ltd.*

([1]) OJ C 174, 16.6.2012.

Order of the General Court of 17 March 2015 — Mammoet Salvage BV v Commission

(Case T-234/14) ([1])

('Action for declaration that an institution has failed to act and for damages — Contractual liability — Non-contractual liability — Plea of inadmissibility — Eighth European Development Fund — Works to remove 74 wrecks from the Bay of Nouadhibou — Contract concluded between the applicant and Mauritania and taken up by the Commission for funding by the European Union — Execution of a contract — Report on the end date for payments from the European Union under the contract — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law')

(2015/C 171/29)

Language of the case: Dutch

Parties

Applicant: Mammoet Salvage BV (Rotterdam, Netherlands) (represented by: P.Kuypers and A.Schadd, lawyers)

Defendant: European Commission (represented by: P.Van Nuffel and S.Bartlet, agents)

Re:

An action under article 265 of TFEU seeking a declaration that the Commission had unlawfully refrained from acceding to the applicant's request to extend the period for payments from the European Union pursuant to the contract for the work of removing 74 wrecks from the Bay of Nouadhibou (Mauritania) between the Islamic Republic of Mauritania and the applicant and accepted for financing by the Commission under the Eighth European Development Fund and, in the alternative, an action ordering the Commission to pay the invoices issued by the applicant under the above-mentioned contract on the basis of the contractual liability of the European Union and, in the further alternative, an action seeking recognition of the non-contractual liability of the European Union.

Operative part of the order

1. *The action is dismissed.*

2. *Mammoet Salvage is ordered to pay the costs.*

([1]) OJ C 184, 16.6.2014.

Action brought on 17 February 2015 — European Dynamics Luxembourg and Evropaïki Dynamiki/ Commission

(Case T-74/15)

(2015/C 171/30)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg), Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: I. Ampazis and M. Sfyri, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Commission (ESTAT/G0/MHF/Gl/MH/nf D (2014) of 8 December 2014), notified to the applicants as an attachment to Customer Additional Information Form DESIS III-000455-6000494078-REQ-O1-CINF-03 of 9 December 2014, which rejected their offer in relation to the Request for services No DESIS III-000455-6000494078-REQ-01 within the context of framework contract ESP DESIS III Lot no 4,

— annul the decision of the Commission, notified to the applicants as an attachment to Customer Additional Information Form DESIS 111-000485-6000494078- REQ-01-CINF-02 of 12 December 2014, which rejected their offer in relation to the Request for Services No DESIS III-000485-6000494078-REQ-0l, within the context of framework contract ESP-DESIS III Lot no 4,

— order the Commission to pay the applicants' damages suffered for the loss of opportunity in the case of DESIS ill-000485-6000494078-REQ-OI-CINF-02, for an amount of 12 000,00 euros, plus interest,

— order the Commission to pay the applicants' legal fees and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

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

Firstly, the applicants argue that the Commission infringed the obligation to state reason within the evaluation of their offers in DESIS III-000455-6000494078-REQ-01 and DESIS III-000485-6000494078-REQ-01.

Secondly, the applicants argue that the Commission committed several manifest errors of assessment within the evaluation of their offer in DESIS 111-000485-6000494078-REQ-01.

Action brought on 25 February 2015 — Uganda Commercial Impex v Council

(Case T-107/15)

(2015/C 171/31)

Language of the case: English

Parties

Applicant: Uganda Commercial Impex Ltd (Kampala, Uganda) (represented by: S. Zaiwalla, P. Reddy, K. Mittal and Z. Burbeza, Solicitors, and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Decision 2014/862/CFSP ([1]) and Council Implementing Regulation (EU) No 1275/2014 ([2]) insofar as they apply to the applicant (including the entry of the applicant in entry b) 9 of the Annex to Decision 2014/862/CFSP);

— insofar as necessary to declare Article 9(1) of Council Regulation (EC) No 1183/2005 of 18 July 2005 (as amended) inapplicable to the applicant; and

— order the Council to pay the applicant's costs of this application.

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 Council has failed to undertake any or any adequate independent assessment of the applicant's designation, as it was required to do, and has erred in law in following the decision of the UN Sanctions Committee without undertaking any EU-level assessment.

2. Second plea in law, alleging that the Council committed a manifest error of assessment and/or the applicant's designation is unlawful because the criteria for designation are not met in the applicant's case. In particular, there is no basis for alleging that the applicant has breached the arms embargo and the Council cannot and/or has failed to establish any relevant matters set out in its statement of reasons.

3. Third plea in law, alleging that the Council violated the applicant's procedural rights and in particular its rights of defence and rights to effective judicial protection, by *inter alia* failing to provide the applicant with the material on which its designation was maintained prior to the passing of Council Implementing Decision 2014/862/CFSP and Council Implementing Regulation (EU) No 1275/2014, and by failing to give adequate reasons.

4. Fourth plea in law, alleging that the applicant's designation is in any event in breach with its fundamental rights and the principle of proportionality.

([1]) Council Implementing Decision 2014/862/CFSP of 1 December 2014 implementing Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ L 346, p. 36).

([2]) Council Implementing Regulation (EU) No 1275/2014 of 1 December 2014 implementing Article 9(1) and (4) of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ L 346, p. 3).

Action brought on 2 March 2015 — Hellenic Republic v Commission

(Case T-112/15)

(2015/C 171/32)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I.-K. Khalkias, G. Kanellopoulos, E. Leftheriotou and A.-E. Vasilopoulou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Implementing Decision of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) [notified under document C(2014) 10135] (OJ 2012 L 369, p. 71), in so far as it excludes from European Union financing expenditure which was incurred in the field of area payments in the 2008 claim year and correspond to: (a) 10 % of the whole amount of expenditure incurred for pasture land payments, (b) 5 % of the whole amount of expenditure incurred for additional coupled payments and (c) 5 % of the whole amount of the expenditure incurred in the area of rural development.

Pleas in law and main arguments

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

1. With regard to the imposed 10 % correction with respect to pasture land:

   — The first plea in law in support of annulment is a claim of misinterpretation and misapplication of Article 2 of Commission Regulation (EC) No 796/2004 of 21 April 2004 ([1]), as concerns the definition of pasture, failure to state adequate statement of reasons and an infringement of the principle of proportionality.

2. With regard to the imposed 5 % corrections with respect to additional coupled payments and measures for rural development:

— the second plea in law in support of annulment is a claim that the financial correction to the extent of 5 % with respect to additional coupled payments was imposed on the basis of error as to the facts, failure to state adequate of reasons and an infringement of the principle of proportionality;

— by the third plea in law in support of annulment, the applicant claims that there are no grounds for the imposition of the financial correction imposed to the extent of 5 % with respect to Pillar 2 payments and in any event the relevant assessment by the Commission is made on the basis of error as to the facts and is manifestly disproportionate to the risks which its findings with respect to Pillar 2 measures involve. In particular, as regards Measure 214 of the Rural Development Programme, the applicant claims that the correction which has been imposed is in part the second which has been imposed for the same reason and is therefore unlawful and should be annulled.

(1) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 4 March 2015 — Estonia v Commission

(Case T-117/15)

(2015/C 171/33)

Language of the case: Estonian

Parties

Applicant: Republic of Estonia (represented by: Kristi Kraavi-Käerdi, acting as Agent)

Defendant: European Commission

Form of order sought

— annul the decision contained in the European Commission's letter of 22 December 2014 (Ares(2014)4324235) declining to amend European Commission Decision 2006/776/EC on the amounts to be charged for the quantities of surplus sugar not eliminated (1);

— 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 contested decision is contrary to point 2 of Chapter 4 of Annex IV to the Act of Accession (2) in conjunction with Article 58 of the Act of Accession

   — According to the applicant, it follows from the judgment of the Court of Justice in *Pimix* (C-146/11, EU:C:2012:450) that Commission Decision 2006/776 was contrary to those provisions of the Act of Accession even from the time of its adoption, and the Commission should have amended it. Since, in the contested decision, the Commission declined to amend Decision 2006/776, the contested decision too is contrary to those provisions of the Act of Accession.

2. Second plea in law, alleging breach of the principle of good administration

   — According to the applicant, the Commission is under an obligation, pursuant to the principle of good administration, to apply legal acts in accordance with the interpretations given by the Court of Justice. Since the Commission did not bring Decision 2006/776 into harmony with EU law, deriving from the judgments of the General Court in *Czech Republic* v *Commission* (T-248/07, ECR, EU:T:2012:170) and *Lithuania* v *Commission* (T-262/07, ECR, EU:T:2012:171) and the judgment of the Court of Justice in *Pimix* (C-146/11, EU:C:2012:450), it thus infringed the principle of good administration.

3. Third plea in law, alleging breach of the principle of proportionality

— According to the applicant, the contested decision and Decision 2006/776 are contrary to the principle of proportionality, since Estonia cannot rely against individuals on Regulation (EC) No 60/2004 ([3]) and its obligations under those decisions are confined to payment into the EU budget and do not make it possible to attain the objectives of the system of eliminating surplus stocks of sugar.

4. Fourth plea in law, alleging that the Commission's DG Agriculture and Rural Development lacked competence to adopt the contested decision

— The applicant claims that the decision whether to amend Commission Decision 2006/776 should have been adopted by the college of commissioners. It is a decision of principle whose adoption may not be delegated.

([1]) Commission Decision 2006/776/EC of 13 November 2006 on the amounts to be charged for the quantities of surplus sugar not eliminated (OJ 2006 L 314, p. 35).

([2]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

([3]) Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8).

Action brought on 16 March 2015 — Unicorn v OHIM — Mercilink Equipment Leasing (UNICORN-čerpací stanice)

(Case T-123/15)

(2015/C 171/34)

Language in which the application was lodged: English

Parties

Applicant: Unicorn a.s. (Prague, Czech Republic) (represented by: L. Lorenc, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mercilink Equipment Leasing Ltd (Limassol, Cyprus)

Details of the proceedings before OHIM

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

Trade mark at issue: Community word mark 'UNICORN-čerpací stanice' — Community trade mark No 11 014 685

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 13 January 2015 in Case R 153/2014-5

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM to pay the costs.

Pleas in law

— OHIM did not properly take into consideration evidence submitted by the applicant;

— OHIM incorrectly considered good reputation of the earlier trademarks.

Action brought on 18 March 2015 — Unicorn v OHIM — Mercilink Equipment Leasing (UNICORN)

(Case T-124/15)

(2015/C 171/35)

Language in which the application was lodged: English

Parties

Applicant: Unicorn a.s. (Prague, Czech Republic) (represented by: L. Lorenc, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mercilink Equipment Leasing Ltd (Limassol, Cyprus)

Details of the proceedings before OHIM

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

Trade mark at issue: Community figurative mark (Representation of a unicorn) – Community trade mark No 11 014 743

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 13 January 2015 in Case R 149/2014-5

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM to pay the costs.

Pleas in law

— OHIM did not properly take into consideration evidence submitted by the applicant;

— OHIM incorrectly considered good reputation of the earlier trademarks.

Action brought on 18 March 2015 — Unicorn v OHIM — Mercilink Equipment Leasing (UNICORN)

(Case T-125/15)

(2015/C 171/36)

Language in which the application was lodged: English

Parties

Applicant: Unicorn a.s. (Praha, Czech Republic) (represented by: L. Lorenc, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mercilink Equipment Leasing Ltd (Limassol, Cyprus)

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 'UNICORN' — Community trade mark No 11 014 701

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 13 January 2015 in Case R 150/2014-5

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM to pay the costs.

Pleas in law

— OHIM did not properly take into consideration evidence submitted by the applicant;

— OHIM incorrectly considered good reputation of the earlier trademarks.

Action brought on 20 March 2015 — Rotkäppchen — Mumm Sektkellereien v OHIM — Ruiz Moncayo (RED RIDING HOOD)

(Case T-128/15)

(2015/C 171/37)

Language in which the application was lodged: English

Parties

Applicant: Rotkäppchen — Mumm Sektkellereien GmbH (Freyburg, Germany) (represented by: W. Berlit, lawyer)

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

Other party to the proceedings before the Board of Appeal: Alberto Ruiz Moncayo (Entrena, Spain)

Details of the proceedings before OHIM

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

Trade mark at issue: Community word mark 'RED RIDING HOOD' — Application for registration No 11 299 831

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 28 January 2015 in Case R 1012/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 27 March 2014 in opposition proceedings No B 2 177 817;

— reject the CTM application No 11 299 831;

— order OHIM to pay the costs.

Plea(s) in law

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

Action brought on 23 March 2015 — salesforce.com v OHIM

(SOCIAL.COM)

(Case T-134/15)

(2015/C 171/38)

Language of the case: English

Parties

Applicant: salesforce.com, Inc. (San Francisco, United States) (represented by: A. Nordemann, M. Maier, 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 'SOCIAL.COM' — Application for registration No 12 245 411

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 20 January 2015 in Case R 1752/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea(s) in law

— Infringement of Article 7(1)(b) in conjuction with Article 7 (2) of Regulation No 207/2009;

— Infringement of Article 7(1)(c) in conjuction with Article 7 (2) of Regulation No 207/2009.

Action brought on 30 March 2015 — DHL Express (France) v OHIM — Chronopost (WEBSHIPPIING)

(Case T-142/15)

(2015/C 171/39)

Language in which the application was lodged: French

Parties

Applicant: DHL Express (France) (Le Bourget, France) (represented by: A. Casalonga, F. Codevelle and C. Bercial Arias, lawyers)

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

Other party to the proceedings before the Board of Appeal: Chronopost (Paris, France)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community trade mark No 1 909 183

Procedure before OHIM: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 28 January 2015 in Case R 2425/2013-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare that the rights of the proprietor of Community registration No 1 909 183 WEBSHIPPING are to be revoked and that the mark be deemed not to have had any effects as from the date of the application for revocation, namely 6 July 2012;

— order OHIM and the intervener (if necessary) to pay the costs.

Plea in law

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

Action brought on 25 March 2015 — L'Oréal v OHIM — Theralab (VICHY LABORATOIRES V IDÉALIA)

(Case T-144/15)

(2015/C 171/40)

Language in which the application was lodged: English

Parties

Applicant: L'Oréal (Paris, France) (represented by: J. Sena Mioludo, lawyer)

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

Other party to the proceedings before the Board of Appeal: Theralab — Produtos Farmacêuticos e Nutracêuticos, Lda (Viseu, Portugal)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'VICHY LABORATOIRES V IDÉALIA' — Application for registration No 11 074 391

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 22 January 2015 in Case R 1097/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 26 February 2014 in Opposition B 002139916;

— reject the opposition B 002139916;

— accept the community Trademark Application No 011074391 'VICHY LABORATOIRES V IDÉALIA (+fig.)' in its entirety;

— order OHIM to pay the costs.

Plea(s) in law

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

Action brought on 23 March 2015 — hyphen v OHIM — Skylotec

(Case T-146/15)

(2015/C 171/41)

Language in which the application was lodged: German

Parties

Applicant: hyphen GmbH (Munich, Germany) (represented by: M. Gail, lawyer)

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

Other party to the proceedings before the Board of Appeal: Skylotec GmbH (Neuwied, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark (Representation of a polygon) — Community trade mark No 2 255 537

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 9 March 2015 in Case R 1506/2014-4

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 15(1)(a) and (b) of Regulation No 207/2009;

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

Action brought on 1 April 2015 — Puma v OHIM — Gemma Group (Device of a jumping animal)
(Case T-159/15)

(2015/C 171/42)

Language in which the application was lodged: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gemma Group Srl (Cerasolo Ausa, Italy)

Details of the proceedings before OHIM

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

Trade mark at issue: Community figurative mark (Device of a jumping animal) — Application for registration No 11 573 474

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 19 December 2014 in Case R 1207/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and the other party to the proceedings to pay the costs.

Plea in law

— Infringement of Articles 8(5), 75 and 76 of Regulation No 207/2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 26 March 2015 — DO v ESMA

(Case F-32/14) ([1])

(Civil service — ESMA staff — Member of the temporary staff — Non-renewal of contract — Staff report — Delay in drawing up staff report — Inconsistency of general and specific assessments)

(2015/C 171/43)

Language of the case: English

Parties

Applicant: DO (represented by: S.A. Pappas, lawyer)

Defendant: European Securities and Markets Authority (represented by: R. Vasileva, acting as Agent, assisted by D. Waelbroeck and A. Duron, lawyers)

Re:

Application for annulment of the decision not to renew the applicant's temporary agent contract as a consequence of the negative appraisal report, for annulment of the above-mentioned appraisal report and for compensation for the loss suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that DO is to bear her own costs and orders her to pay the costs incurred by the European Securities and Markets Authority.*

([1]) OJ C 184, 16.6.2014, p. 45.

Order of the Civil Service Tribunal (Third Chamber) of 25 March 2015 — Necci v Commission

(Case F-5/15) ([1])

(Civil Service — Officials — Pensions — Transfer of pension rights acquired in a national pension scheme — Proposal to add years of pensionable service — Late claim — Failure to follow the pre-litigation procedure — Manifestly inadmissible)

(2015/C 171/44)

Language of the case: French

Parties

Applicant: Claudio Necci (Auderghem, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: J. Currall and G. Gattinara, acting as Agents)

Re:

Application for a declaration of the illegality of Article 9 of the general implementing provisions (GIPs) of Article 11(2) of Annex VIII to the Staff Regulations and annulment of the decision relating to transfer of the applicant's pension rights into the European Union pension scheme, a decision which applies the new GIPs relating to Articles 11 and 12 of Annex VIII to the Staff Regulations.

Operative part of the order

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

2. *Mr Necci shall bear his own costs.*

(1) OJ C 96, 23.3.15, p. 26.

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