Official Journal of the European Union

C 311

English edition

Information and Notices

Volume 58

21 September 2015

Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2015/C 311/01)

Last publication

OJ C 302, 14.9.2015.

Past publications

OJ C 294, 7.9.2015.

OJ C 279, 24.8.2015.

OJ C 270, 17.8.2015.

OJ C 262, 10.8.2015.

OJ C 254, 3.8.2015.

OJ C 245, 27.7.2015.

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 16 July 2015 — European Commission v Council of the European Union

(Case C-425/13) ([1])

(Action for annulment — Council decision authorising the opening of negotiations on linking the EU greenhouse gas emissions trading scheme with a greenhouse gas emissions trading system in Australia — Negotiating directives — Special committee — Articles 13(2) TEU, 218(2) to (4) TFEU and 295 TFEU — Institutional balance)

(2015/C 311/02)

Language of the case: English

Parties

Applicant: European Commission (represented by G. Valero Jordana and F. Castillo de la Torre, acting as Agents)

Intervener in support of the applicant: European Parliament (represented by R. Passos and D. Warin, acting as Agents)

Defendant: Council of the European Union (represented by K. Michoel, M. Moore and J.-P. Hix, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by M. Smolek, J. Vláčil and E. Ruffer, acting as Agents), Kingdom of Denmark (represented by C. Thorning, L. Volck Madsen and U. Melgaard, acting as Agents), Federal Republic of Germany (represented by T. Henze and B. Beutler, acting as Agents), French Republic (represented by D. Colas, G. de Bergues, F. Fize and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by M. Bulterman and M. de Ree, acting as Agents), Republic of Poland (represented by B. Majczyna, acting as Agent), Kingdom of Sweden (represented by A. Falk, C. Meyer-Seitz, U. Persson, E. Karlsson, L. Swedenborg and C. Hagerman, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by E. Jenkinson and M. Holt, acting as Agents, and J. Holmes and B. Kennelly, Barristers)

Operative part of the judgment

The Court:

1) *Annuls, in Section A, entitled 'Procedure for negotiations', of the Annex to the Council Decision of 13 May 2013 authorising the opening of negotiations on linking the EU emissions trading scheme with an emissions trading system in Australia:*

   — *the second sentence of paragraph 1 of that section, according to which, 'where appropriate, detailed negotiating positions of the Union shall be established within the special committee referred to in Article 1(2) or within the Council', and*

   — *the words 'and establish negotiating positions' in paragraph 3 of that section;*

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

3) *Orders the European Commission and the Council of the European Union to bear their own costs, including those relating to the procedure that gave rise to the order in Commission v Council (C-425/13, EU:C:2014:91);*

4) *Orders the European Parliament and the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands, the Republic of Poland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 274, 21.9.2013.

Judgment of the Court (Fifth Chamber) of 16 July 2015 (request for a preliminary ruling from the Cour de cassation — France) — Directeur général des finances publiques v Mapfre asistencia compania internacional de seguros y reaseguros SA and Mapfre warranty SpA v Directeur général des finances publiques

(Case C-584/13) ([1])

(Reference for a preliminary ruling — Taxation — Turnover tax — Scope — Exemption — Notion of 'insurance transactions' — Notion of 'supply of services' — Lump sum for a warranty covering breakdowns of a second-hand vehicle)

(2015/C 311/03)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Directeur général des finances publiques, Mapfre warranty SpA

Defendants: Mapfre asistencia compania internacional de seguros y reaseguros SA, Directeur général des finances publiques

Operative part of the judgment

Article 13(B)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as meaning that the supply of services whereby an economic operator which is independent of a second-hand motor-vehicle dealer provides, in return for payment of a lump sum, a warranty covering mechanical breakdowns which may affect certain parts of that vehicle constitutes an exempt insurance transaction within the meaning of that provision. It is for the referring court to determine whether, in the light of circumstances such as those of the cases in the main proceedings, the supply of services at issue in the main proceedings is such a supply. The provision of such a supply and the sale of the second-hand vehicle must, in principle, be considered to be distinct and independent supplies, to be treated separately from the point of view of VAT. It is for the referring court to determine whether, having regard to the specific circumstances of the cases in the main proceedings, the sale of a second-hand vehicle and the warranty provided by an independent economic operator to the dealer selling that second-hand vehicle covering mechanical breakdowns which may affect certain parts of that vehicle are so interconnected that they must be regarded as constituting a single transaction or whether, on the contrary, they are independent transactions.

([1]) OJ C 31, 1.2.2014.

Judgment of the Court (Second Chamber) of 16 July 2015 — ClientEarth v European Commission

(Case C-612/13 P) ([1])

(Appeal — Access to documents of the institutions of the European Union — Regulation (EC) No 1049/2001 — Third indent of Article 4(2) — Environmental information — Aarhus Convention — Article 4(1) and (4) — Exception to right of access — Protection of the purpose of investigations — Studies carried out by an undertaking, at the request of the European Commission, concerning the transposition of directives on the environment — Partial refusal of access)

(2015/C 311/04)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: P. Kirch, lawyer)

Other party to the proceedings: European Commission (represented by: L. Pignataro-Nolin, P. Costa de Oliveira and M. Konstantinidis, acting as Agents)

Interveners in support of the defendant: European Parliament (represented by J. Rodrigues and L. Visaggio, acting as Agents), Council of the European Union (represented by M. Moore, M. Simm and A. Jensen, acting as Agents)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the General Court of the European Union in ClientEarth v Commission (T-111/11, EU:T:2013:482) in so far as the General Court of the European Union thereby accepted that the European Commission could, by its decision of 30 May 2011, refuse to ClientEarth, on the basis of a general presumption, full access to those of the studies relating to the compatibility of the legislation of various Member States with European Union environmental law which, on the date when that decision was adopted, had not led the European Commission to send a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file pertaining to the pre-litigation stage of infringement proceedings;*

2) *Dismisses the appeal for the remainder;*

3) *Annuls the decision of the Commission of 30 May 2011 in so far as the European Commission thereby refused to give to ClientEarth full access to the studies referred to in point 1 of the operative part of this judgment;*

4) *Orders ClientEarth and the European Commission to bear their own costs relating to the appeal and to the procedure at first instance;*

5) *Orders the European Parliament and the Council of the European Union to bear their own costs relating to the appeal.*

([1]) OJ C 71, 8.3.2014.

Judgment of the Court (Second Chamber) of 16 July 2015 — ClientEarth, Pesticide Action Network Europe (PAN Europe) v European Food Safety Authority (EFSA), European Commission

(Case C-615/13 P) ([1])

(Appeal — Access to documents of the institutions of the European Union — Regulation (EC) No 1049/2001 — Article 4(1)(b) — Regulation (EC) No 45/2001 — Article 8 — Exception to right of access — Protection of personal data — Concept of 'Personal data' — Conditions for transfer of personal data — Names of authors of each comment on European Food Safety Authority (EFSA) draft guidance relating to scientific documents to be included in applications for authorisation to place plant protection products on the market — Refusal of access)

(2015/C 311/05)

Language of the case: English

Parties

Appellants: ClientEarth, Pesticide Action Network Europe (PAN Europe) (represented by: P. Kirch, lawyer)

Other parties to the proceedings: European Food Safety Authority (EFSA) (represented by: D. Detken and C. Pintado, acting as Agents), European Commission (represented by B. Martenczuk and L. Pignataro-Nolin, acting as Agents)

Intervener in support of the defendants: European Data Protection Supervisor (EDPS) (represented by A. Buchta and M. Pérez Asinari, acting as Agents)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the General Court of the European Union in ClientEarth and PAN Europe v EFSA (T-214/11, EU:T:2013:483);*

2) *Annuls the decision of the European Food Safety Authority (EFSA) of 12 December 2011;*

3) *Orders the European Food Safety Authority (EFSA) to bear its own costs and to pay the costs incurred by ClientEarth and Pesticide Action Network Europe (PAN Europe) in the appeal and in the proceedings at first instance;*

4) *Orders the European Commission to bear its own costs relating to the appeal and the proceedings at first instance;*

5) *Orders the European Data Protection Supervisor (EDPS) to bear its own costs relating to the appeal proceedings.*

([1]) OJ C 71, 8.3.2014.

Judgment of the Court (Third Chamber) of 16 July 2015 — European Commission v Italian Republic

(Case C-653/13) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 2006/12/EC — Articles 4 and 5 — Waste management — Region of Campania — Judgment of the Court — Finding of a failure to fulfil obligations — Failure to comply in full with a judgment of the Court — Article 260(2) TFEU — Financial penalties — Penalty payment — Lump sum payment)

(2015/C 311/06)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: D. Recchia and E. Sanfrutos Cano, acting as Agents)

Defendant: Italian Republic (represented by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato)

Operative part of the judgment

The Court:

1. *declares that, by failing to adopt all the measures necessary to comply with the judgment in Commission v Italy (C-297/08, EU:C:2010:115), the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU,*

2. *orders the Italian Republic to pay the European Commission, into the account 'European Union own resources', a penalty payment of EUR 120 000 for each day of delay in adopting the measures necessary to ensure compliance with the judgment in Commission v Italy (C-297/08, EU:C:2010:115), from the day of delivery of the judgment in the present case until the day on which the judgment in Commission v Italy (C-297/08, EU:C:2010:115) is complied with,*

3. *orders the Italian Republic to pay the European Commission a lump sum, into the account 'European Union own resources', of EUR 20 million,*

4. *orders the Italian Republic to pay the costs.*

([1]) OJ C 93, 29.3.2014.

Judgment of the Court (First Chamber) of 16 July 2015 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Diageo Brands BV v Simiramida-04 EOOD

(Case C-681/13) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Recognition and enforcement of judgments — Grounds for refusing enforcement — Infringement of public policy in the State in which recognition is sought — Judgment given by a court in another Member State contrary to EU law on trade marks — Directive 2004/48/EC — Enforcement of intellectual property rights — Legal costs)

(2015/C 311/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Diageo Brands BV

Defendant: Simiramida-04 EOOD

Operative part of the judgment

1. *Article 34(1) 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 must be interpreted as meaning that the fact that a judgment given in a Member State is contrary to EU law does not justify that judgment's not being recognised in another Member State on the grounds that it infringes public policy in that State where the error of law relied on does not constitute a manifest breach of a rule of law regarded as essential in the EU legal order and therefore in the legal order of the Member State in which recognition is sought or of a right recognised as being fundamental in those legal orders. That is not the case of an error affecting the application of a provision such as Article 5(3) of Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992.*

   When determining whether there is a manifest breach of public policy in the State in which recognition is sought, the court of that State must take account of the fact that, save where specific circumstances make it too difficult, or impossible, to make use of the legal remedies in the Member State of origin, the individuals concerned must avail themselves of all the legal remedies available in that Member State with a view to preventing such a breach before it occurs.

2. *Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as applying to the legal costs incurred by the parties in the context of an action for damages, brought in a Member State, to compensate for the injury caused as a result of a seizure carried out in another Member State, which was intended to prevent an infringement of an intellectual property right, when, in connection with that action, a question arises concerning the recognition of a judgment given in that other Member State declaring that seizure to be unjustified.*

([1]) OJ C 71, 8.3.2014.

Judgment of the Court (Grand Chamber) of 16 July 2015 — European Commission v Rusal Armenal ZAO, Council of the European Union

(Case C-21/14 P) ([1])

(Appeal — Dumping — Imports of certain aluminium foil originating in Armenia, Brazil and China — Accession of the Republic of Armenia to the World Trade Organisation (WTO) — Article 2(7) of Regulation (EC) No 384/96 — Whether compatible with the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT))

(2015/C 311/08)

Language of the case: English

Parties

Appellant: European Commission (represented by: J.-F. Brakeland, M. França and T. Maxian Rusche, Agents)

Other parties to the proceedings: Rusal Armenal ZAO (represented by B. Evtimov, lawyer), Council of the European Union (represented by: S. Boelaert and J. P. Hix, Agents, and by B. O'Connor, Solicitor, and S. Gubel, avocat)

Intervener in support of the appellant: European Parliament (represented by D. Warin and A. Auersperger Matić, Agents)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the General Court of the European Union in Rusal Armenal v Council (T-512/09, EU:T:2013:571);*

2) *Refers the case back to the General Court of the European Union for it to rule on the pleas in law on which it did not adjudicate;*

3) *Reserves the costs.*

([1]) OJ C 61, 1.3.2014.

Judgment of the Court (Grand Chamber) of 16 July 2015 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia

(Case C-83/14) ([1])

(Directive 2000/43/EC — Principle of equal treatment between persons irrespective of racial or ethnic origin — Urban districts lived in mainly by persons of Roma origin — Placing of electricity meters on pylons forming part of the overhead electricity supply network, at a height of between six and seven metres — Concepts of 'direct discrimination' and 'indirect discrimination' — Burden of proof — Possible justification — Prevention of tampering with electricity meters and of unlawful connections — Proportionality — Widespread nature of the measure — Offensive and stigmatising effect of the measure — Directives 2006/32/EC and 2009/72/EC — Inability of final consumers to monitor their electricity consumption)

(2015/C 311/09)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Appellant: CHEZ Razpredelenie Bulgaria AD

Respondent: Komisia za zashtita ot diskriminatsia

Third parties: Anelia Nikolova, Darzhavna Komisia za energiyno i vodno regulirane

Operative part of the judgment

1. *The concept of 'discrimination on the grounds of ethnic origin', for the purpose of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply in circumstances such as those at issue before the referring court — in which, in an urban district mainly lived in by inhabitants of Roma origin, all the electricity meters are placed on pylons forming part of the overhead electricity supply network at a height of between six and seven metres, whereas such meters are placed at a height of less than two metres in the other districts — irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure.*

2. *Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favourable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests.*

3. *Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as that described in paragraph 1 of this operative part constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive.*

4. *Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that:*

— *that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin;*

— *the concept of an 'apparently neutral' provision, criterion or practice as referred to in that provision means a provision, criterion or practice which is worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic;*

— *the concept of 'particular disadvantage' within the meaning of that provision does not refer to serious, obvious or particularly significant cases of inequality, but denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue;*

— *assuming that a measure, such as that described in paragraph 1 of this operative part, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a measure is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b);*

— *such a measure would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued. That is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or, in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.*

([1]) OJ C 142, 12.5.2014.

Judgment of the Court (Third Chamber) of 16 July 2015 — European Commission v Republic of Slovenia

(Case C-140/14) ([1])

(Failure of a Member State to fulfil obligations — Directives 2008/98/EC and 1999/31/EC — Prevention and elimination of the depositing of excavated earth and rubble and other waste — Landfill — Failure to adopt measures for the disposal and storage of that waste — Use of judicial remedies)

(2015/C 311/10)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: E. Sanfrutos Cano and M. Žebre, acting as Agents)

Defendant: Republic of Slovenia (represented by: J. Morela, acting as Agent)

Operative part of the judgment

The Court:

(1) *Declares that the Republic of Slovenia,*

— *by authorising the deposit of excavated earth on plot No 115/1 in the municipal land register of Teharje (Bukovžlak), without ensuring that other waste had not previously or at the same time been deposited at that site, and since no other measure has been adopted to remove from that site the waste not covered by the permit issued, that site must be considered as constituting an illegal landfill which does not comply with the conditions and requirements laid down, first, by Articles 13 and 36(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, and secondly, by Articles 5(3)(e), 6, read in conjunction with Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC, 7 to 9, 11 and 12 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, and by Annexes I to III to that directive, and*

— *by failing, since April 2009, to adopt sufficient measures to prevent, and then to remove the deposit of excavated earth classifiable as waste under item number 17 05 06 (dredging spoil other than those mentioned in 17 05 05) and item number 17 05 05 (dredging spoil containing dangerous substances) at the site of construction work on the municipal infrastructure for the commercial area at Gaberje-jug, so that that site must also be considered to be an illegal landfill which does not comply with the abovementioned provisions of Directives 1999/31 and 2008/98 or with Articles 12, 15 and 17 of Directive 2008/98,*

has failed to fulfil its obligations under all of those provisions;

(2) *Orders the Republic of Slovenia to pay the costs.*

([1]) OJ C 184, 16.6.2014.

Judgment of the Court (Third Chamber) of 16 July 2015 — European Commission v Republic of Bulgaria

(Case C-145/14) ([1])

(Failure of a Member State to fulfil its obligations — Environment — Directive 1999/31/EC — Article 14 — Landfill of waste — Non-hazardous waste — Non-conformity of existing landfills)

(2015/C 311/11)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: S. Petrova and E. Sanfrutos Cano, acting as Agents)

Defendant: Republic of Bulgaria (represented by E. Petranova and D. Drambozova, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that by failing to adopt the necessary measures to ensure that, as from 16 July 2009, the existing landfills for non-hazardous waste in its territory do not continue to function unless they satisfy the requirements of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the Republic of Bulgaria has failed to fulfil its obligation under Article 14(a) to (c) of that directive;*

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

3. *Orders the European Commission and the Republic of Bulgaria to bear their own costs.*

([1]) OJ C 159, 26.5.2014.

Judgment of the Court (Third Chamber) of 16 July 2015 (request for a preliminary ruling from the Landgericht Köln — Germany) — Sommer Antriebs- und Funktechnik GmbH v Rademacher Geräte-Elektronik GmbH & Co. KG

(Case C-369/14) ([1])

(Reference for a preliminary ruling — Waste electrical and electronic equipment — Directive 2002/96/EC — Articles 2(1) and 3(a) and Annexes I A and I B — Directive 2012/19/EU — Articles 2(1)(a), 2(3)(b) and 3(1)(a) and (b), and Annexes I and II — Concepts of 'electrical and electronic equipment' and 'electrical and electronic tools' — Garage-door operating devices)

(2015/C 311/12)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Sommer Antriebs- und Funktechnik GmbH

Defendant: Rademacher Geräte-Elektronik GmbH & Co. KG

Operative part of the judgment

Articles 2(1) and 3(a) of Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), and Annexes I A, point 6, and I B, point 6, thereto, and Article 2(1)(a) and 2(3)(b), and Article 3 (1)(a) and (b), of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) and Annexes I, point 6, and II, point 6, thereto, must be interpreted as meaning that garage-door operating devices, such as those at issue in the main proceedings, which are dependent on an electric current of approximately 220 to 240 volts to work properly, designed to be incorporated into the building structure together with the relevant garage door and can at any time be dismantled, re-installed and/or added to that structure, fall within the scope of Directive 2002/96 and, during the transitional period fixed in Article 2(1)(a) of Directive 2012/19, that of the latter directive.

([1]) OJ C 439, 8.12.2014.

Judgment of the Court (Ninth Chamber) of 16 July 2015 — European Commission v Kingdom of Denmark

(Case C-468/14) ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/37/EC — Manufacture, presentation and sale of tobacco products — Articles 2(4) and 8 — Prohibition on the sale of tobacco for oral use — Loose 'Snus' (oral tobacco))

(2015/C 311/13)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: C. Cattabriga and M. Clausen, acting as Agents)

Defendant: Kingdom of Denmark (represented by: C. Thorning and M. Wolff, acting as Agents)

Operative part of the judgment

The Court:

1) *declares that, by having continued to authorise the sale of loose 'snus' (oral tobacco), the Kingdom of Denmark has failed to fulfil its obligations under Article 2(4) in conjunction with Article 8 of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, and*

2) *orders Kingdom of Denmark to pay the costs.*

([1]) OJ C 439, 8.12.2014.

Judgment of the Court (Sixth Chamber) of 16 July 2015 — European Commission v French Republic

(Case C-485/14) ([1])

(Failure of a Member State to fulfil obligations — Free movement of capital — Articles 63 TFEU and 40 of the EEA Agreement — Duty payable on transfers for which no consideration is given — Exemption — Gifts and legacies — Difference in treatment — Bodies located in another Member State — Lack of a bilateral tax agreement)

(2015/C 311/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-F. Brakeland and W. Roels, acting as Agents)

Defendant: French Republic (represented by: D. Colas and J.-S. Pilczer, acting as Agents)

Operative part of the judgment

The Court:

1. *declares that, by exempting from droits de mutation à titre gratuit (duty payable on transfers for which no consideration is given) gifts and legacies to public bodies or to charitable bodies only where such bodies are established in France or in another Member State or in another State which is party to the Agreement on the European Economic Area of 2 May 1992, which has concluded a bilateral agreement with it, the French Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area, and*

2. *orders the French Republic to pay the costs.*

([1]) OJ C 7, 12.1.2015.

Request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU

(Opinion 3/15)

(2015/C 311/15)

Language of procedure: all the official languages

Applicant

European Commission (represented by: F. Castillo de la Torre, B. Hartmann, J. Samnadda, Agents)

Question submitted to the Court

Does the European Union have exclusive competence to conclude the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled?

Appeal brought on 12 December 2014 by Junited Autoglas Deutschland GmbH & Co. KG against the judgment of the General Court (Fifth Chamber) delivered on 16 October 2014 in Case T-297/13: Junited Autoglas Deutschland GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-579/14 P)

(2015/C 311/16)

Language of the case: English

Parties

Appellant: Junited Autoglas Deutschland GmbH & Co. KG (represented by: C. Weil, Rechtsanwalt)

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

By order of 4 June 2015 the Court of Justice (Sixth Chamber) has dismissed the appeal and ordered Junited Autoglas Deutschland GmbH & Co. KG to pay the costs.

Appeal brought on 23 December 2014 by Bharat Heavy Electricals Ltd against the order of the General Court (Eighth Chamber) delivered on 21 October 2014 in Case T-374/14: Bharat Heavy Electricals Ltd v European Commission

(Case C-602/14 P)

(2015/C 311/17)

Language of the case: English

Parties

Appellant: Bharat Heavy Electricals Ltd (represented by: A. Mc Donagh, avocat)

Other party to the proceedings: European Commission

By order of 4 June 2015 the Court of Justice (Sixth Chamber) has dismissed the appeal and ordered Bharat Heavy Electricals Ltd to bear its own costs.

Appeal brought on 28 January 2015 by Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the General Court (Third Chamber) delivered on 25 November 2014 in Case T-556/12: Office for Harmonisation in the Internal Market (Trade Marks and Designs) v Royalton Overseas Ltd

(Case C-36/15 P)

(2015/C 311/18)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent)

Other parties to the proceedings: Royalton Overseas Ltd, S.C. Romarose Invest Srl

The case was removed from the Register of the Court of Justice by order of the Court of 29 April 2015.

Appeal brought on 20 March 2015 by Mohammad Makhlouf against the judgment of the General Court (Seventh Chamber) delivered on 21 January 2015 in Case T-509/11 Makhlouf v Council

(Case C-136/15 P)

(2015/C 311/19)

Language of the case: French

Parties

Appellant: Mohammad Makhlouf (represented by: G. Karouni, avocat)

Other party to the proceedings: Council of the European Union

Form of order sought

— Set aside the judgment under appeal;

— state that the decisions and regulations of the Council of the European Union which are at issue in the present action are null and void in so far as they concern the appellant;

— order the Council to pay the appellant's costs relating the present appeal and to the proceedings before the General Court.

Pleas in law and main arguments

In support of his appeal, the appellant puts forward a single plea in law alleging an error of law by the General Court in the application of the rules relating to the obligation imposed on the Council.

More specifically, the appellant alleges that the General Court relied on the Council's reasoning which is incomplete and unsubstantiated, which prevented him from identifying the actual and specific reasons for his listing. As a consequence, the appellant was not in a position to ensure an adequate defence, since he was unaware of the acts which were alleged against him concerning the repression of demonstrators, or the provision of support to the regime, or benefiting from the regime.

In addition, the General Court manifestly misstated its obligation to provide reasons by trying to mitigate the Council's failure to act, by relying, wrongly and for the first time in its judgment, on the fact that the appellant 'benefits from … the …regime'.

The fact that the Council's statement of reasons did not set out clearly and explicitly the acts with which he is charged and which gave rise to the restrictive measure, seriously prejudiced the exercise of the appellant's rights of defence.

Appeal brought on 19 May 2015 by Robert Aubineau and Others against the judgment of the General Court (Third Chamber) delivered on 18 March 2015 in Cases T-195/11, T-458/11, T-448/12 and T-41/13, Cahier and Others v Council and Commission

(Case C-227/15 P)

(2015/C 311/20)

Language of the case: French

Parties

Appellants: Robert Aubineau and Others (represented by Ch.-E. Gudin, avocat)

Other parties to the proceedings: Council, Commission, France

Form of order sought

— set aside the judgment which refuses to acknowledge the prohibition on producers-distillers themselves distilling the wine they have produced in excess of the normal quantity, on the ground that they may apply for a licence, by becoming distillers beforehand.

— set aside the judgment which refuses to acknowledge the discriminatory character of Regulation (EC) No 1623/2000 ([1]) which does not grant the same rights to spirits producers.

— set aside the judgment which refuses to acknowledge the wrongful conduct and liability of the institutions that have adopted rules which, when applied within a common organisation of the market, as in the present case, are incompatible with the principle of non-discrimination that has been enshrined as a general principle of EU law in the case-law of the Court of Justice and in Article 40 TFEU.

— set aside the judgment which refuses to acknowledge the harm suffered by the appellants as a result of a regulation that is open to two interpretations, a regulation which has led national courts to severely sanction the appellants. The regulation being open to two interpretations is the direct consequence of a text for which its author is liable, namely, in the present case, the Commission.

Pleas in law and main arguments

In support of the appeal, the appellants rely on four pleas in law.

First, the appellants request the Court of Justice to set aside the judgment of the General Court which refuses to acknowledge the discriminatory character of Regulation No 1623/2000 that does not grant the same rights to spirits producers.

Secondly, the appellants consider that the General Court erred in law by refusing to acknowledge the wrongful conduct and liability of the institutions that have adopted and interpreted rules which, when applied within a common organisation of the market, as in the present case, are incompatible with the principle of non-discrimination that has been enshrined as a general principle of EU law in the case-law of the Court of Justice and in Article 40 TFEU.

Thirdly, the appellants complain that the General Court failed to acknowledge the harm they have suffered. Regulation No 1623/2000 being open to two interpretations has led the national courts to severely sanction the appellants and, accordingly, that illegality is the very cause of the harm suffered.

Lastly, the appellants claim that the General Court misconstrued the meaning and scope of Article 65 of Regulation No 1623/2000 which lays down specific formalities for producers who themselves possess distillation facilities and who intend to carry out the compulsory distillation of the wine they have produced in excess of the normal quantity.

(1) Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms (OJ 2000 L 194, p. 45).

Appeal brought on 26 May 2015 by Emsibeth SpA against the judgment of the General Court (Eighth Chamber) of 26 March 2015 in Case T-596/13, Emsibeth v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-251/15 P)

(2015/C 311/21)

Language of the case: Italian

Parties

Appellant: Emsibeth SpA (represented by: A. Arpaia, avvocato)

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

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal (judgment of the General Court of the European Union of 26 March 2015 in Case T-596/13);

— decide the case on its merits;

— order OHIM to pay the costs, including those incurred at first instance.

Grounds of appeal and main arguments

The applicant alleges infringement or misapplication of Article 8(1)(b) of Regulation (EC) No 207/2009 ([1]). In particular, there is a lack of coherence in that judgment in relation to the criteria under which the General Court assessed the concepts of (i) the relevant public, identity or similarity of the (ii) products and of the (iii) trademarks and also (iv) the existence of a likelihood of confusion between the two marks.

(i) The judgment under appeal is vitiated by inconsistency given that, even though the average consumer — identified as the relevant public — is characterised as being a *'well-informed and cautious observer'*, however, when the General Court proceeds to assess in substance the actual ability of that consumer to discern between two clearly different marks, it regards that consumer as being wholly superficial and unable to carry out, on his own, evaluations of marginal difficulty.

(ii) The judgment under appeal appears to be at odds with the EU case-law which states that, in assessing the similarity of the goods, account should be taken of all relevant features relating to those goods including their nature, purpose, method of use, whether they are in competition or are complementary, as well as the distribution channels of the products. The General Court failed in fact to consider any of those factors, limiting its assessment to the mere finding that the products to colour and decolour hair were 'included' in cosmetics and that therefore those products should be considered to be identical.

(iii) The judgment under appeal is vitiated by an error in so far as the comparison between a word mark and a composite mark gave too little weight to the figurative elements of the second mark, which were not present in the first mark and capable of distinguishing the two signs, limiting its assessment to the comparison between the verbal parts alone.

The General Court also erred, in the judgment under appeal by excluding from the comparison the first element of the earlier mark (Mc) and did not consider that such a prefix, where placed in front of a name and in view of its widespread use, is commonly understood as a surname of Scottish origin and accordingly pronounced in English by all the relevant public and not just by the Anglo-Saxon part of the relevant public.

(iv) The judgment under appeal is vitiated by an error in so far as, despite the many differences between the two marks being compared, the General Court considered that there was a likelihood of confusion.

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

Appeal brought on 8 June 2015 by Sea Handling SpA, in liquidation, formerly Sea Handling SpA against the judgment of the General Court (Fourth Chamber) of 25 March 2015 in Case T-456/13, Sea Handling v Commission

(Case C-271/15 P)

(2015/C 311/22)

Language of the case: Italian

Parties

Appellant: Sea Handling SpA, in liquidation, formerly Sea Handling SpA (represented by: B. Nascimbene and M. Merola, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union of 25 March 2015 in Case T-456/13;

2. annul European Commission Decision Ref. Ares (2013) 2028929 of 12 June 2013 refusing SEA Handling's request for access to certain documents concerning Case SA.21420 — Italy/SEA Handling;

3. order the European Commission to pay the costs, including those relating to the proceedings before the General Court.

Grounds of appeal and main arguments

1. First ground alleging that the General Court erred in law and provided contradictory and insufficient reasoning in the judgment under appeal, in the assessment of the exception relating to the protection of the purpose of investigations as referred to in the third indent of Article 4(2) of Regulation No 1049/2001 ([1]).

   The General Court erred in law in so far as it upheld the Commission's use to the general presumption of confidentiality in respect of a request for access to specific documents. The General Court's interpretation of the exception relating to protection of the purpose of investigations under the third indent of Article 4(2) of Regulation No 1049/2001 introduces a restriction on the right of access to documents which (i) is disproportionate to the purposes of Article 4 of Regulation No 1049/2001 and (ii) lacks an adequate statement of reasons.

   With regard to the first objection, the appellant complains that the General Court cannot allow the Commission to oppose the general presumption in favour of a request for access to documents of a state aid procedure which identifies, in a precise and timely manner, the documents requested. This is all the more so when, in a context like the present case, characterised by deplorable procedural infringements attributable to the Commission, such an action ends up transforming the general presumption of confidentiality into an irrebuttable presumption, which cannot be challenged by the party seeking access to the measures, in breach of the provisions of Article 4 of Regulation No 1049/2001.

   With regard to the second objection, the appellant complains that, in the judgment under appeal, the General Court failed to provide adequate reasons for considering that it was possible to apply the legal principle set out by the Court of Justice in its judgment of 29 June 2010 in *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, ECR, EU:C:2010:376, to cases concerning a request for access not to the entire file but to specifically identified documents.

2. Second ground alleging error of law in the judgment under appeal in so far as the General Court rejects the possibility of partial access to the documents.

   The General Court erred in holding that the application of the general presumption justified the refusal to disclose the requested documents, approving the Commission's refusal to grant partial access to them. In the present case, there was a failure to meet the conditions which previously have led the General Court to deny partial access to files covered by the general presumption of confidentiality; the Commission therefore could not be entitled to refuse partial access solely on the ground that the documents requested were contained in the administrative file concerning a procedure for reviewing State aid.

3. Third ground alleging error of law in the judgment under appeal in so far as the General Court failed to fulfil its obligation to examine the documents affected by the refusal of access.

The General Court erred in law in so far as it failed to fulfil its obligation to examine the documents affected by the refusal of access, stating that it could review the Commission's actions without examining the documentation in question.

4. Fourth ground alleging that the General Court contradicted itself and erred in law in so far as it failed to take sufficient account of the procedural defects committed when adopting the contested decision.

The judgment under appeal is vitiated by an error of law in so far as the General Court did not accept that the procedural defects committed by the Commission had an impact on the ability of the applicant to put forward its point of view as to the applicability of the presumption of confidentiality in the case at issue. The General Court failed to consider that the errors in question nullified the applicant's procedural rights and, thereby, transformed the general presumption of harm to the investigative activities from a rebuttable presumption to an irrebuttable one.

5. Fifth ground alleging error of law in so far as the General Court denied the existence of an overriding public interest.

The General Court erred in law by holding that there was no overriding public interest that can prevail against the exceptions in Article 4(2) of Regulation No 1049/2001 without taking into account the arguments put forward by the appellant in that regard.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145 p. 43).

Request for a preliminary ruling from the Sąd Apelacyjny w Warszawie (Poland) lodged on 17 June 2015 — Edyta Mikołajczyk v Marie Louise Czarnecka, Stefan Czarnecki

(Case C-294/15)

(2015/C 311/23)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie

Parties to the main proceedings

Applicant: Edyta Mikołajczyk

Defendants: Marie Louise Czarnecka, Stefan Czarnecki

Questions referred

1. Are cases relating to annulment of a marriage following the death of one of the spouses within the scope of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (1)?

2. In the event of an affirmative answer to Question 1, does the scope of that regulation extend to an action for annulment of marriage brought by a person other than one of the spouses?

3. In the event of an affirmative answer to Question 2, in actions for annulment of marriage brought by a person other than one of the spouses, may the jurisdiction of the court be based on the grounds mentioned in the fifth and sixth indents of Article 3(1)(a) of the regulation?

(1) OJ 2003 L 338, p. 1.

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 18 June 2015 — 'Borta' UAB v VĮ Klaipėdos valstybinio jūrų uosto direkcija

(Case C-298/15)

(2015/C 311/24)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant: 'Borta' UAB

Respondent: VĮ Klaipėdos valstybinio jūrų uosto direkcija

Questions referred

1. Must the provisions of Articles 37, 38, 53 and 54 of Directive 2004/17 (1) be understood and interpreted, whether together or separately (but without limitation to those provisions), as meaning that:

   (a) they preclude a national rule under which, in the case where subcontractors are invited to perform a works contract, the main work, as identified by the contracting authority, must be carried out by the supplier?

   (b) they preclude a scheme, laid down in the procurement documents, for combining the professional capacities of suppliers, such as that specified by the contracting authority in the contested tender specification, which requires that the portion representing the professional capacity of the relevant economic operator (a joint-activity partner) must correspond to the portion of the specific work which it will actually carry out under the public procurement contract?

2. Must the provisions of Articles 10, 46 and 47 of Directive 2004/17 be understood and interpreted, whether together or separately (but without limitation to those provisions), as meaning that:

   (a) the principles of equal treatment of suppliers and transparency are not infringed in the case where the contracting authority:

   — provides beforehand, in the procurement documents, a general option of combining the professional capacities of suppliers, but does not set out the scheme for implementing this option;

   — subsequently, in the course of the public procurement procedure, it defines in greater detail the requirements governing the appraisal of the qualifications of suppliers by laying down certain restrictions on combining the professional capacities of suppliers;

   — because of this more detailed definition of the content of the qualification requirements, it extends the deadline for tender submissions and announces this extension in the *Official Journal*?

(b) a restriction on the combining of suppliers' capacities does not have to be clearly indicated in advance if the specific character of the contracting authority's activities and the special features of the public procurement contract make such a restriction foreseeable and justifiable?

(1) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Request for a preliminary ruling from the Sąd Okręgowy w Łodzi (Poland) lodged on 22 June 2015 — Criminal proceedings against G.M. and M.S.

(Case C-303/15)

(2015/C 311/25)

Language of the case: Polish

Referring court

Sąd Okręgowy w Łodzi

Parties to the main proceedings

G.M. and M.S.

Question referred

Is Article 8(1) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37) (1) to be interpreted as meaning that in the event of failure to communicate regulations, which are considered to be technical regulations, different consequences are possible: as regards regulations which concern the freedoms which are not subject to the restrictions of Article 36 of the Treaty on the Functioning of the European Union, the failure to communicate must have the consequence that those regulations cannot be applied; whereas, as regards regulations which concern the freedoms which are subject to the restrictions of Article 36 of the Treaty, the national court, which at the same time is an EU court, may assess whether those regulations, despite the failure to communicate, comply with the requirements of Article 36 of the Treaty and can be applied?

(1) OJ 1998 L 204, p. 37.

Action brought on 23 June 2015 — European Commission v Romania

(Case C-306/15)

(2015/C 311/26)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: E. Sanfrutos Cano, L.Nicolae, acting as Agents)

Defendant: Romania

Form of order sought

The applicant claims that the court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the provisions of Commission Directive 2013/2/EU of 7 February 2013 amending Annex 1 to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste ([1]) or, in any event, by failing to communicate the same to the Commission, Romania has failed to fulfil its obligations under Article 2(1) of that directive;

— order Romania to pay the costs of the proceedings.

Pleas in law and main arguments

The time-limit for transposition of the directive into national law expired on 30 September 2013.

([1]) OJ 2013 L 37, p. 10.

Reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom) made on 26 June 2015 — The Queen on the application of Hemming (trading as 'Simply Pleasure Ltd.') and others v Westminster City Council

(Case C-316/15)

(2015/C 311/27)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Hemming, trading as 'Simply Pleasure Ltd.', James Alan Poulton, Harmony Ltd, Gatisle Ltd, trading as 'Janus', Winart Publications Ltd, Darker Enterprises Ltd, Swish Publications Ltd.

Defendant: Westminster City Council

Questions referred

Where an applicant for the grant or renewal of a sex establishment licence has to pay a fee made up of two parts, one related to the administration of the application and non-returnable, the other for the management of the licensing regime and refundable if the application is refused:

(1) does the requirement to pay a fee including the second refundable part mean, as a matter of European law and without more, that the respondents incurred a charge from their applications which was contrary to article 13(2) of Directive 2006/123/EC on Services in the Internal Market ([1]) in so far as it exceeded any cost to Westminster City Council of processing the application?

(2) does a conclusion that such a requirement should be regarded as involving a charge — or, if it is so to be regarded, a charge exceeding the cost to Westminster City Council of processing the application — depend on the effect of further (and if so what) circumstances, for example:

(a) evidence establishing that the payment of the second refundable part involved or would be likely to involve an applicant in some cost or loss,

(b) the size of the second refundable part and the length of time for which it is held before being refunded, or

(c) any saving in the costs to Westminster City Council of processing applications(and so in their non-refundable cost) that results from requiring an up-front fee consisting of both parts to be paid by all applicants?

(1) OJ L 376, p. 36

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 26 June 2015 — X, Staatssecretaris van Financiën

(Case C-317/15)

(2015/C 311/28)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellants: X, Staatssecretaris van Financiën

Questions referred

1. Does the respect for the application to third countries of restrictions, as provided for in Article 64(1) TFEU, extend also to the application of restrictions existing under national rules, such as the extended recovery period at issue in the case in the main proceedings, which rules can also be applied in situations that have nothing to do with direct investment, the provision of financial services or the admission of securities to capital markets?

2. Does the respect for the application of restrictions relating to the movement of capital involving the provision of financial services, as provided for in Article 64(1) TFEU, concern also restrictions that, like the extended recovery period at issue in the case in the main proceedings, are not directed at the provider of the services and do not determine either the conditions or the mechanisms of the provision of services?

3. Does a situation such as that in the case in the main proceedings, in which a resident of a Member State has opened a (securities) account with a banking institution outside the European Union, also come within the definition of 'the movement of capital ... involving … the provision of financial services' within the meaning of Article 64(1) TFEU, and does it matter in this connection whether (and if so, to what extent) that banking institution carries out activities for the benefit of the account holder?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 26 June 2015 — Tecnoedi Costruzioni Srl v Comune di Fossano

(Case C-318/15)

(2015/C 311/29)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Tecnoedi Costruzioni Srl

Defendant: Comune di Fossano

Question referred

Must Articles 49 and 56 of the Treaty on the Functioning of the European Union and the principles of freedom of establishment, freedom to provide services, equal treatment, non-discrimination and proportionality be interpreted as precluding legislative provisions such as those currently in force in Italy, namely Articles 122(9) and 253(20-bis) of Legislative Decree No 163 of 2006, concerning the automatic exclusion of abnormally low tenders in procedures for the award of works contracts with a value below the threshold which may be of cross-border interest?

Appeal brought on 30 June 2015 by Polynt SpA against the judgment of the General Court (Fifth Chamber) delivered on 30 April 2015 in Case T-134/13: Polynt SpA and Sitre Srl v European Chemicals Agency (ECHA)

(Case C-323/15 P)

(2015/C 311/30)

Language of the case: English

Parties

Appellant: Polynt SpA (represented by: C. Mereu, avocat)

Other parties to the proceedings: European Chemicals Agency (ECHA), Sitre Srl, New Japan Chemical, REACh ChemAdvice GmbH, Kingdom of the Netherlands, European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court in Case T-134/13; and

— Annul the contested decision or alternatively, refer the case back to the General Court to rule on the Appellant's Application for annulment; and

— Order the Respondent to pay all the costs of these proceedings, including the costs before the General Court.

Pleas in law and main arguments

The Appellant submits that, in dismissing its application for annulment of the Contested Decision, the General Court breached Community law. In particular, the Appellant contends that the General Court committed a number of errors in its reasoning and interpretation of the legal framework as applicable to the Appellant's situation. That resulted in the General Court making the following errors in law:

— The General Court made contradictory and erroneous statements with respect to the need to have regard to risk assessment pursuant to Article 57(f) of REACH ([1]), leading to a misinterpretation of the same.

— The General Court made contradictory statements and departed from established case law on the status and weight of guidance documents in interpreting what is meant by 'equivalent level of concern' under Article 57(f) of the same.

— The General Court flawed reliance on Article 60(2) of REACH led to insufficient reasoning.

— The General Court applied the wrong legal text in dismissing the arguments relating to worker and consumer exposure, thereby misapplying Article 57(f).

For these reasons the Appellant claims that the judgment of the General Court in Case T-134/13 should be set aside and the Contested Decision should be annulled.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Autorisation and Restriction of Chemicals (REACH), establishing an European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/67/EEC, 93/105/EC AND 2000/21/EC, OJ L 396 p. 1

Appeal brought on 30 June 2015 by Hitachi Chemical Europe GmbH and Polynt SpA against the judgment of the General Court (Fifth Chamber) delivered on 30 April 2015 in Case T-135/13: Hitachi Chemical Europe GmbH, Polynt SpA and Sitre Srl v European Chemicals Agency (ECHA)

(Case C-324/15 P)

(2015/C 311/31)

Language of the case: English

Parties

Appellants: Hitachi Chemical Europe GmbH and Polynt SpA (represented by: C. Mereu, avocat)

Other parties to the proceedings: European Chemicals Agency (ECHA), Sitre Srl, REACh ChemAdvice GmbH, New Japan Chemical, Kingdom of the Netherlands, European Commission

Form of order sought

The appellants claim that the Court should:

— Set aside the judgment of the General Court in Case T-135/13; and

— Annul the contested decision or alternatively, refer the case back to the General Court to rule on the Appellants' Application for annulment; and

— Order the Respondent to pay all the costs of these proceedings, including the costs before the General Court.

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment of the Contested Decision, the General Court breached Community law. In particular, the Appellants contend that the General Court committed a number of errors in its reasoning and interpretation of the legal framework as applicable to the Appellants' situation. That resulted in the General Court making the following errors in law:

— The General Court made contradictory and erroneous statements with respect to the need to have regard to risk assessment pursuant to Article 57(f) of REACH ([1]), leading to a misinterpretation of the same.

— The General Court made contradictory statements and departed from established case law on the status and weight of guidance documents in interpreting what is meant by 'equivalent level of concern' under Article 57(f) of the same.

— The General Court flawed reliance on Article 60(2) of REACH led to insufficient reasoning.

— The General Court applied the wrong legal text in dismissing the arguments relating to worker and consumer exposure, thereby misapplying Article 57(f).

For these reasons the Appellants claim that the judgment of the General Court in Case T-135/13 should be set aside and the Contested Decision should be annulled.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Autorisation and Restriction of Chemicals (REACH), establishing an European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/67/EEC, 93/105/EC AND 2000/21/EC, OJ L 396 p. 1

Request for a preliminary ruling from the Administratīvā apgabaltiesa (Latvia) lodged on 1 July 2015 — 'DNB Banka'AS v Valsts ieņēmumu dienests

(Case C-326/15)

(2015/C 311/32)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: 'DNB Banka'AS

Other party to the proceedings: Valsts ieņēmumu dienests

Questions referred

1. Is it possible for there to be an independent group of persons for the purposes of Article 132(1)(f) of the Directive ([1]), when the members of that group are established in separate Member States of the European Union, in which that provision of the Directive has been transposed with different requirements which are not compatible?

2. Can a Member State restrict the right of a taxable person to apply the exemption provided for in Article 132(1)(f) of the Directive, when that taxable person has satisfied all the requirements for the application of the exemption in its Member State, but that provision of the Directive has been transposed into the national law of the Member States of other members of the group with restrictions which limit the possibility for taxable persons of other Member States of applying in their own Member State the corresponding exemption from value added tax?

3. Is it permissible to apply the exemption in Article 132(1)(f) of the Directive to services in the Member State of the recipient of those services, who is a taxable person for value added tax, when the provider of the services, also a taxable person for value added tax, has applied in another Member State value added tax to those services in accordance with general arrangements, that is, considering that value added tax on those services was payable in the Member State of the recipient of those services, in accordance with Article 196 of the Directive?

4. Must the term 'independent group of persons', for the purposes of Article 132(1)(f) of the Directive, be taken to mean a separate legal person whose existence has to be proved through a specific agreement creating that independent group of persons?

   If the reply to that question is that an independent group of persons need not necessarily be taken to mean a separate entity, is an independent group of persons to be regarded as a group of related undertakings in which, in the course of their usual economic activities, those undertakings provide each other with support services for carrying out their commercial activities, and may the existence of that group be proved through the contracts for services concluded or through documentation on transfer prices?

5. Can a Member State restrict the right of a taxable person to apply the value added tax exemption in Article 132(1)(f) of the Directive, when that taxable person has applied an uplift to the transactions, as required under the legislation on direct taxation of the Member State where the taxable person is established?

6. Does the exemption in Article 132(1)(f) of the Directive apply to services received from third countries? In other words, where a member of an independent group of persons, as referred to in Article 132(1)(f) of the Directive, provides, within that group, services to other members of the group, can that person be a taxable person from a third country?

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

Appeal brought on 3 July 2015 by the French Republic against the judgment of the General Court (Fourth Chamber) delivered on 16 April 2015 in Case T-402/12 *Carl Schlyter* v *European Commission*

(Case C-331/15 P)

(2015/C 311/33)

Language of the case: English

Parties

Appellant: French Republic (represented by: G. de Bergues, D. Colas and F. Fize, acting as Agents)

Other parties to the proceedings: Carl Schlyter, European Commission, Republic of Finland, Kingdom of Sweden

Form of order sought

The French Government claims that the Court should:

— set aside the judgment delivered by the Fourth Chamber of the General Court on 16 April 2015 in Case T 402/12, *Carl Schlyter* v *Commission*, inasmuch as that judgment annulled the decision of the European Commission of 27 June 2012 refusing, during the standstill period, access to a detailed opinion concerning a draft Order relating to the content and submission conditions of the annual declaration of nanoparticle substances (2011/673/F), which had been notified to it by the French authorities pursuant to Directive 98/34/EC ([1]) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998;

— refer the case back to the General Court;

— order the respondent to pay the costs.

Grounds of appeal and main arguments

By its appeal submitted on 3 July 2015, the French Government requests the Court of Justice of the European Union, pursuant to Article 56 of the Statute of the Court of Justice, to set aside the judgment delivered by the Fourth Chamber of the General Court on 16 April 2015 in Case T 402/12, *Carl Schlyter* v *Commission* ('the judgment under appeal').

In support of its appeal, the French Government puts forward a single ground of appeal.

In support of that ground of appeal, the French Government submits that the General Court committed a number of errors of law in relation to the classification of the procedure laid down by Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ('Directive 98/34') and in relation to the application of the exception relating to the protection of the purpose of investigations provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 ([2]) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ('Regulation No 1049/2001').

In the first place, the French Government submits that the General Court committed an error of law in refusing to classify the procedure laid down by Directive 98/34 as an investigation within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

In that regard, the French Government point outs, first, that the definition of the concept of investigation given by the General Court in the judgment under appeal is not based on any definition established by Regulation No 1049/2001, Directive 98/34 or the case law.

Moreover, secondly, that definition is not consistent with the approach taken by the Eighth Chamber of the General Court in its judgment of 25 September 2014 in Case T-306/12 *Spirlea* v *Commission*. In that judgment, the General Court recognised that the so-called 'EU Pilot' procedure may be classified as an investigation within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001. According to the French Government, the purpose and constituent elements of the so-called 'EU Pilot' procedure bear striking similarities to the purpose and constituent elements of the procedure laid down by Directive 98/34.

Thirdly, in the event that the Court endorses the definition of the concept of investigation contained in the judgment under appeal, the French Government considers that the procedure laid down by Directive 98/34 conforms to that definition in any event, taking into account its purpose and constituent elements.

In the second place, the French Government considers, first, that the General Court committed an error of law in holding, in the alternative, that, even if the detailed opinion delivered by the Commission forms part of an investigation within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001, the disclosure of that document does not necessarily undermine the purpose of the procedure laid down by Directive 98/34.

In that regard, the French Government point outs that the applicant did not at any time in his initial application, his reply or his observations on the statements in intervention raise the argument that, if the procedure laid down by Directive 98/34 were to constitute an investigation, disclosure of the contested document would not undermine the purpose of that investigation.

Consequently, in so far as the plea raised by the General Court in the alternative was not raised by the applicant and relates to the substantive legality of the contested decision, the French Government considers that, in paragraphs 84 to 88 of the judgment under appeal, the General Court committed an error of law in raising that plea of its own motion.

Secondly, in the judgment under appeal, the General Court held that the purpose of the procedure laid down by Directive 98/34 is to prevent the adoption, by a national legislature, of a national technical regulation which constitutes an obstacle to the free movement of goods, the free movement of services or the freedom of establishment of service operators within the internal market (paragraph 85 of the judgment under appeal).

The French Government considers that the General Court thus gave a restrictive interpretation of the purpose of the procedure laid down by Directive 98/34.

The French Government takes the view that, in addition to the objective of securing the conformity of national rules, the procedure laid down by Directive 98/34 also pursues an objective relating to the quality of the dialogue between the Commission and the Member State concerned.

([1]) OJ 1998 L 204, p. 37.
([2]) OJ 2001 L 145, p. 43.

Request for a preliminary ruling from the Arbetsdomstolen (Sweden) lodged on 6 July 2015 — Unionen v Almega Tjänsteförbunden, ISS Facility Services AB

(Case C-336/15)

(2015/C 311/34)

Language of the case: Swedish

Referring court

Arbetsdomstolen

Parties to the main proceedings

Applicant: Unionen

Defendants: Almega Tjänsteförbunden, ISS Facility Services AB

Question referred

Is it compatible with the Transfer of Undertakings Directive [1], after a year has elapsed following the transfer of an undertaking, on application of a provision in the transferee's collective agreement which means that, where a certain contiguous length of service with a single employer is a condition for an extended notice period to be granted, not to take account of the length of service with the transferor, when the employees, under an identical provision in the collective agreement which applied to the transferor, had the right to have that length of service taken into account?

[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 Nederlandstalige Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 7 July 2015 — Criminal proceedings against Luc Vanderborght, other party: Verbond der Vlaamse Tandartsen (VZW)

(Case C-339/15)

(2015/C 311/35)

Language of the case: Dutch

Referring court

Nederlandstalige Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Defendant: Luc Vanderborght

Other party: Verbond der Vlaamse Tandartsen (VZW)

Questions referred

1. Should Directive 2005/29/EC [1] of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market be interpreted as precluding a national law — such as Article 1 of the Belgian Law of 15 April 1958 on advertising in dental care matters — which prohibits, in absolute terms, any advertising, by anyone, relating to oral or dental care?

2. Is a prohibition on advertising in respect of oral and dental care to be regarded as a 'rule relating to the health and safety aspects of products' within the meaning of Article 3(3) of Directive 2005/29/EC …

3. Should Directive 2005/29/EC … be interpreted as precluding a national provision — such as Article 8d of the Royal Decree of 1 June 1934 laying down rules for the practice of dentistry — which describes in detail the requirements in terms of discreetness to be met by a sign, intended for the public, at a dental practice?

4. Should Directive 2000/31/EC ([2]) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market be interpreted as precluding a national law — such as Article 1 of the Belgian Law of 15 April 1958 on advertising in dental care matters — which prohibits, in absolute terms, any advertising, by anyone, relating to oral or dental care, including a prohibition on commercial advertising by electronic means (website)?

5. How should the term 'information society services', as defined in Article 2(a) of Directive 2000/31/EC by reference to Article 1(2) of Directive 98/34/EC, ([3]) as amended by Directive 98/48/EC, ([4]) be interpreted?

6. Should Articles 49 TFEU and 56 TFEU be interpreted as precluding national legislation such as that at issue in the main proceedings, whereby, in order to protect public health, a complete ban is imposed on advertising in respect of dental care?

([1]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

([2]) Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

([3]) Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37).

([4]) Directive of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 8 July 2015 — J. Klinkenberg v Minister van Infrastructuur en Milieu

(Case C-343/15)

(2015/C 311/36)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Appellant: J. Klinkenberg

Respondent: Minister van Infrastructuur en Milieu

Questions referred

1. Must Article 1 of Directive 1999/63/EC ([1]) and Clause 1(1) of the Annex to that directive, entitled 'European Agreement on the organisation of working time of seafarers', be interpreted as meaning that that directive and that agreement are applicable to a public official who works for the Netherlands National Maritime Company and who is a member of the crew of a ship engaged in carrying out fisheries inspections?

2. If Question 1 is answered in the negative, must Article 2 of Directive 89/391/EEC ([2]), Article 1(3) and Article 2(1) and (2) of Directive 93/104/EC ([3]), and Article 1(3) and Article 2(1) and (2) of Directive 2003/88/EC ([4]) be interpreted as meaning that Directive 93/104/EC and Directive 2003/88/EC are applicable to the public official referred to in Question 1?

3. Must Articles 3, 5 and 6 of Directive 93/104/EC and Articles 3, 5 and 6 of Directive 2003/88/EC be interpreted as precluding a regulation of a Member State on the basis of which the hours during which the public official referred to in Question 1 does not perform any work during the voyage but during which he is obliged to be available on call in order to remedy problems in the engine room are regarded as constituting rest periods?

4. Must Articles 3, 5 and 6 of Directive 93/104/EC and Articles 3, 5 and 6 of Directive 2003/88/EC be interpreted as precluding a regulation of a Member State on the basis of which the hours during which the public official referred to in Question 1 does not perform any work during the voyage but during which he is obliged, on the instructions of the master of the ship, to perform work if that is necessary for the immediate safety of the ship, of the persons on board, of the cargo or of the environment, or for the purpose of giving assistance to other ships or persons in distress, are regarded as constituting rest periods?

([1]) Council Directive of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers (OJ 1999 L 167, p. 33).

([2]) Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

([3]) Council Directive of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

([4]) Directive of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Reference for a preliminary ruling from Appeal Commissioners (Ireland) made on 6 July 2015 — National Roads Authority v The Revenue Commissioners

(Case C-344/15)

(2015/C 311/37)

Language of the case: English

Referring court

Appeal Commissioners

Parties to the main proceedings

Applicant: National Roads Authority

Defendant: The Revenue Commissioners

Questions referred

1. If a body governed by public law carries on an activity such as providing access to a road on payment of a toll and if in the Member State there are private bodies who collect tolls on different toll roads pursuant to an agreement with the public body concerned under national statutory provisions, is the second indent of Article 13 of Council Directive 2006/112/EC ([1]) to be interpreted as meaning that the public body concerned must be deemed to be in competition with the private operators concerned such that to treat the public body as a non-taxable person is deemed to lead to a significant distortion of competition notwithstanding the facts that (a) there is not and cannot be any actual competition between the public body and the private operators concerned and (b) there is no evidence that there is any realistic possibility that any private operator could enter the market to build and operate a toll road which would compete with the toll road operated by the public body?

2. If there is no presumption, what exercise should be conducted to determine whether there is a significant distortion of competition within the meaning of the second indent of Article 13 of Council Directive 2006/112/EC?

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

Appeal brought on 7 July 2015 by Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuzneckie ferrosplavy OAO (KF) against the judgment of the General Court (Second Chamber) delivered on 28 April 2015 in Case T-169/12: Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuzneckie ferrosplavy OAO (KF) v Council of the European Union

(Case C-345/15 P)

(2015/C 311/38)

Language of the case: English

Parties

Appellants: Chelyabinsk electrometallurgical integrated plant OAO (CHEMK), Kuzneckie ferrosplavy OAO (KF) (represented by: B. Evtimov, lawyer, D. O'Keeffe, Solicitor)

Other parties to the proceedings: Council of the European Union, European Commission, Euroalliages

Form of order sought

The appellants claim that the Court should:

— Set aside the Judgment of the General Court;

— Give a final judgment on the matter where the stage of the procedure so permits;

— In the alternative, refer the case for reconsideration to the General Court;

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

— Order the interveners to bear their own costs.

Pleas in law and main arguments

The appellants submit that the General Court infringed EU law in its appraisal of the appellants' pleas in law in its judgment as follows:

— In their first plea in law on appeal, the appellants contend that the General Court erred in its interpretation of Article 11 (3) of Council Regulation (EC) No 1225/2009 (1) ('the Basic Anti-dumping Regulation') and erred in its legal appraisal when it rejected the plea at first instance that Article 11(9) of the Basic Anti-dumping Regulation and its reference to Article 2 of the Basic Anti-dumping Regulation require the institutions to calculate a dumping margin in all interim reviews of dumping, thereby also infringing the legal principles of good administration, transparency and legal certainty;

— In their second plea in law on appeal, the appellants contend that the General Court erred in its interpretation of the reasoning of the General Court in its judgment in Case T-143/06 MTZ Polyfilms v Council of the European Union.

(1) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community OJ L 343, p. 51.

Request a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) of 10 July 2015 — Criminal proceedings against Luciano Baldetti

(Case C-350/15)

(2015/C 311/39)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Party to the main proceedings

Luciano Baldetti

Question referred for a preliminary ruling

On a proper construction of Article 4 of [Protocol No 7 to the European Convention on the Protection of Human Rights and Fundamental Freedoms] and Article 50 [of the Charter of Fundamental Rights of the European Union], is the provision made under Article 10b of Legislative Decree No 74/00 consistent with Community law, in so far as it permits the criminal liability of a person to whom a final assessment by the tax authorities of the State has already been issued imposing an administrative penalty in the sum of 30 % of the unpaid amount to be assessed in respect of the same act or omission (non-payment of VAT)?

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 14 July 2015 — Ilves Jakelu Oy

(Case C-368/15)

(2015/C 311/40)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Ilves Jakelu Oy

Other party: Ministry of Transport and Communications

Questions referred

1. In interpreting Article 9 of Postal Directive 97/67/EC ([1]), as amended by Directives 2002/39/EC ([2]) and 2008/6/EC ([3]), is the distribution of postal items of contract customers to be considered a service outside the scope of the universal service under Article 9(1) or a service within the scope of the universal service under Article 9(2), where the postal undertaking agrees with its customers on the conditions governing delivery and charges them an individually agreed fee?

2. If the aforementioned distribution of postal items of contract customers involves a service outside the scope of the universal service, are Article 9(1) and Article 2(14) to be interpreted in such a way that the provision of such postal services, under circumstances such as those in the main proceedings, can be made subject to an individual licence, as provided for in the Postal Act?

3. If the aforementioned distribution of postal items of contract customers involves a service outside the scope of the universal service, is Article 9(1) to be interpreted in such a way that an authorisation concerning such services can be made subject only to terms intended to guarantee compliance with the essential requirements under Article 2(19) of the Postal Directive and that authorisations concerning such services cannot be made subject to any terms with respect to the quality, availability, or performance of the relevant services under Article 9(2) of the Directive?

4. If authorisations concerning the aforementioned distribution of postal items of contract customers can be made subject only to terms intended to guarantee compliance with the essential requirements, can terms such as those at issue in the main proceedings — which relate to the postal service's conditions governing delivery, the frequency of distribution of items, change-of-address and delivery-suspension service, the labelling of items, and clearance locations — be considered consistent with the essential requirements under Article 2(19) and necessary in order to guarantee compliance with the essential requirements under Article 9(1)?

([1]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14).
([2]) Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ 2002 L 176, p. 21).
([3]) Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 July 2015 — Siderurgia Sevillana, S.A. v Administración del Estado

(Case C-369/15)

(2015/C 311/41)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Siderurgia Sevillana, S.A.

Defendant: Administración del Estado

Questions referred

1. Is Decision 2013/448/EU ([1]) contrary to the provisions of Article 296 of the Treaty on the Functioning of the European Union and to Article 41 of the Charter of Fundamental Rights ([2]) in so far as the correction factor has been established by a mechanism which, in infringement of the obligation to state reasons, does not enable the operators of installations concerned to be informed of the data, calculations and criteria taken into account for its adoption?

2. By defining and fixing as it does the cap for industrial emissions and the cross-sectoral correction factor provided for in Article 10a(5) of Directive 2003/87/EC ([3]) and Article 15 of Decision 2011/278/EU ([4]), does Decision 2013/448/EU infringe Articles 10a(1) and 23(3) of that Directive because it has not been drawn up in accordance with the regulatory procedure with scrutiny governed by Decision 1999/468/EC. ([5])

3. Having regard to the fact that Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU create a discrepancy between:

   — the calculation basis governed by Article 10a(5)(a) and (b) of Directive 2003/87/EC, by not including in those bases emissions from electricity production related to the combustion of waste gases and from the cogeneration of heat which occur in installations included in Annex I to that Directive, and

   — the criteria laid down by Article 10a(1) and (4) of the Directive for the free allocation of emission allowances, which does include that type of emissions:

      a) Do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a(5), in conjunction with Article 3(u) and the third subparagraph *in fine* of the aforementioned Article 10a(1) of Directive 2003/87/EC in that they consider that emissions produced by combustion of waste gases or by the generation of heat in installations which produce electricity and are included in Annex I to that Directive are in any event emissions from 'electricity generators' for the purpose of determining the industrial emissions cap, and must therefore be excluded from the calculation?

      b) Even if the reply to the previous question is in the negative, do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a (5) of Directive 2003/87/EC and/or the objectives of that Directive insofar as they exclude from the basis of calculation of the industrial emissions cap governed by that provision emissions from electricity production from waste gases and from the cogeneration of heat, produced in installations included in Annex I to the aforementioned Directive, to which, however, emission allowances may be allocated free of charge under Article 10a(1) to (4) of the Directive?

4. Are Commission Decision 2013/448/EU and, where appropriate, Decision 2011/278/EU, which it implements, contrary to Article 10a(12) of the Directive, because they extend the cross-sectoral correction factor to sectors defined in Commission Decision 2010/2/EU ([6]) (now Decision 2014/746/EU) ([7]) as they are deemed to be exposed to a significant risk of carbon leakage, with the consequent reduction in free emission allowances allocated?

5. Does Decision 2013/448/EU infringe Article 10a(5) of Directive 2003/87/EEC in so far as the European Commission, in order to determine the verified emissions carried out in the period 2005-2007 to which Article 10a(5)(a) and (b) refers:

   a) did not take into consideration emissions which were not included in the Community independent transaction log, even though, in the period under consideration, it was not obligatory to register such emissions.

   b) extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction.

   c) excluded all emissions from installations closed before 30 June 2011.

(1) 2013/448/EU: Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).
(2) OJ 2000 C 364, p. 1.
(3) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).
(4) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).
(5) 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).
(6) 2010/2/EU: Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ 2010 L 1, p. 10).
(7) OJ 2014 L 308, p. 114.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 July 2015 — Solvay Solutions España, S.L. v Administración del Estado

(Case C-370/15)

(2015/C 311/42)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Solvay Solutions España, S.L.

Defendant: Administración del Estado

Questions referred

1. Is Decision 2013/448/EU (1) contrary to the provisions of Article 296 of the Treaty on the Functioning of the European Union and to Article 41 of the Charter of Fundamental Rights (2) in so far as the correction factor has been established by a mechanism which, in infringement of the obligation to state reasons, does not enable the operators of installations concerned to be informed of the data, calculations and criteria taken into account for its adoption?

2. By defining and fixing as it does the cap for industrial emissions and the cross-sectoral correction factor provided for in Article 10a(5) of Directive 2003/87/EC ([3]) and Article 15 of Decision 2011/278/EU ([4]), does Decision 2013/448/EU infringe Articles 10a(1) and 23(3) of that Directive because it has not been drawn up in accordance with the regulatory procedure with scrutiny governed by Decision 1999/468/EC ([5]).

3. Having regard to the fact that Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU create a discrepancy between:

— the calculation basis governed by Article 10a(5)(a) and (b) of Directive 2003/87/EC, by not including in those bases emissions from electricity production related to the combustion of waste gases and from the cogeneration of heat which occur in installations included in Annex I to that Directive, and

— the criteria laid down by Article 10a(1) and (4) of the Directive for the free allocation of emission allowances, which does include that type of emissions:

a) Do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a(5), in conjunction with Article 3(u) and the third subparagraph *in fine* of the aforementioned Article 10a(1) of Directive 2003/87/EC in that they consider that emissions produced by combustion of waste gases or by the generation of heat in installations which produce electricity and are included in Annex I to that Directive are in any event emissions from 'electricity generators' for the purpose of determining the industrial emissions cap, and must therefore be excluded from the calculation?

b) Even if the reply to the previous question is in the negative, do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a (5) of Directive 2003/87/EC and/or the objectives of that Directive insofar as they exclude from the basis of calculation of the industrial emissions cap governed by that provision emissions from electricity production from waste gases and from the cogeneration of heat, produced in installations included in Annex I to the aforementioned Directive, to which, however, emission allowances may be allocated free of charge under Article 10a(1) to (4) of the Directive?

4. Are Commission Decision 2013/448/EU and, where appropriate, Decision 2011/278/EU, which it implements, contrary to Article 10a(12) of the Directive, because they extend the cross-sectoral correction factor to sectors defined in Commission Decision 2010/2/EU ([6]) (now Decision 2014/746/EU) ([7]) as they are deemed to be exposed to a significant risk of carbon leakage, with the consequent reduction in free emission allowances allocated?

5. Does Decision 2013/448/EU infringe Article 10a(5) of Directive 2003/87/EEC in so far as the European Commission, in order to determine the verified emissions carried out in the period 2005-2007 to which Article 10a(5)(a) and (b) refers:

a) did not take into consideration emissions which were not included in the Community independent transaction log, even though, in the period under consideration, it was not obligatory to register such emissions.

b) extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction.

c) excluded all emissions from installations closed before 30 June 2011.

(1) 2013/448/EU: Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).
(2) OJ 2000 C 364, p. 1.
(3) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).
(4) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).
(5) 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).
(6) 2010/2/EU: Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ 2010 L 1, p. 10).
(7) OJ 2014 L 308, p. 114.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 July 2015 — Cepsa Química, S.A. v Administración del Estado

(Case C-371/15)

(2015/C 311/43)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Cepsa Química, S.A.

Defendant: Administración del Estado

Questions referred

1. Is Decision 2013/448/EU (1) contrary to the provisions of Article 296 of the Treaty on the Functioning of the European Union and to Article 41 of the Charter of Fundamental Rights (2) in so far as the correction factor has been established by a mechanism which, in infringement of the obligation to state reasons, does not enable the operators of installations concerned to be informed of the data, calculations and criteria taken into account for its adoption?

2. By defining and fixing as it does the cap for industrial emissions and the cross-sectoral correction factor provided for in Article 10a(5) of Directive 2003/87/EC (3) and Article 15 of Decision 2011/278/EU (4), does Decision 2013/448/EU infringe Articles 10a(1) and 23(3) of that Directive because it has not been drawn up in accordance with the regulatory procedure with scrutiny governed by Decision 1999/468/EC (5).

3. Having regard to the fact that Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU create a discrepancy between:

   — the calculation basis governed by Article 10a(5)(a) and (b) of Directive 2003/87/EC, by not including in those bases emissions from electricity production related to the combustion of waste gases and from the cogeneration of heat which occur in installations included in Annex I to that Directive, and

— the criteria laid down by Article 10a(1) and (4) of the Directive for the free allocation of emission allowances, which does include that type of emissions:

a) Do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a(5), in conjunction with Article 3(u) and the third subparagraph *in fine* of the aforementioned Article 10a(1) of Directive 2003/87/EC in that they consider that emissions produced by combustion of waste gases or by the generation of heat in installations which produce electricity and are included in Annex I to that Directive are in any event emissions from 'electricity generators' for the purpose of determining the industrial emissions cap, and must therefore be excluded from the calculation?

b) Even if the reply to the previous question is in the negative, do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a (5) of Directive 2003/87/EC and/or the objectives of that Directive insofar as they exclude from the basis of calculation of the industrial emissions cap governed by that provision emissions from electricity production from waste gases and from the cogeneration of heat, produced in installations included in Annex I to the aforementioned Directive, to which, however, emission allowances may be allocated free of charge under Article 10a(1) to (4) of the Directive?

4. Are Commission Decision 2013/448/EU and, where appropriate, Decision 2011/278/EU, which it implements, contrary to Article 10a(12) of the Directive, because they extend the cross-sectoral correction factor to sectors defined in Commission Decision 2010/2/EU ([6]) (now Decision 2014/746/EU) ([7]) as they are deemed to be exposed to a significant risk of carbon leakage, with the consequent reduction in free emission allowances allocated?

5. Does Decision 2013/448/EU infringe Article 10a(5) of Directive 2003/87/EEC in so far as the European Commission, in order to determine the verified emissions carried out in the period 2005-2007 to which Article 10a(5)(a) and (b) refers:

a) did not take into consideration emissions which were not included in the Community independent transaction log, even though, in the period under consideration, it was not obligatory to register such emissions.

b) extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction.

c) excluded all emissions from installations closed before 30 June 2011.

([1]) 2013/448/EU: Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).
([2]) OJ 2000 C 364, p. 1.
([3]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).
([4]) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).
([5]) 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).
([6]) 2010/2/EU: Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ 2010 L 1, p. 10).
([7]) OJ 2014 L 308, p. 114.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 July 2015 — Dow Chemical Ibérica, S.L. v Administración del Estado

(Case C-372/15)

(2015/C 311/44)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Dow Chemical Ibérica, S.L.

Defendant: Administración del Estado

Questions referred

1. Is Decision 2013/448/EU ([1]) contrary to the provisions of Article 296 of the Treaty on the Functioning of the European Union and to Article 41 of the Charter of Fundamental Rights ([2]) in so far as the correction factor has been established by a mechanism which, in infringement of the obligation to state reasons, does not enable the operators of installations concerned to be informed of the data, calculations and criteria taken into account for its adoption?

2. By defining and fixing as it does the cap for industrial emissions and the cross-sectoral correction factor provided for in Article 10a(5) of Directive 2003/87/EC ([3]) and Article 15 of Decision 2011/278/EU ([4]), does Decision 2013/448/EU infringe Articles 10a(1) and 23(3) of that Directive because it has not been drawn up in accordance with the regulatory procedure with scrutiny governed by Decision 1999/468/EC ([5]).

3. Having regard to the fact that Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU create a discrepancy between:

   — the calculation basis governed by Article 10a(5)(a) and (b) of Directive 2003/87/EC, by not including in those bases emissions from electricity production related to the combustion of waste gases and from the cogeneration of heat which occur in installations included in Annex I to that Directive, and

   — the criteria laid down by Article 10a(1) and (4) of the Directive for the free allocation of emission allowances, which does include that type of emissions:

   a) Do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a(5), in conjunction with Article 3(u) and the third subparagraph *in fine* of the aforementioned Article 10a(1) of Directive 2003/87/EC in that they consider that emissions produced by combustion of waste gases or by the generation of heat in installations which produce electricity and are included in Annex I to that Directive are in any event emissions from 'electricity generators' for the purpose of determining the industrial emissions cap, and must therefore be excluded from the calculation?

   b) Even if the reply to the previous question is in the negative, do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a (5) of Directive 2003/87/EC and/or the objectives of that Directive insofar as they exclude from the basis of calculation of the industrial emissions cap governed by that provision emissions from electricity production from waste gases and from the cogeneration of heat, produced in installations included in Annex I to the aforementioned Directive, to which, however, emission allowances may be allocated free of charge under Article 10a(1) to (4) of the Directive?

4. Are Commission Decision 2013/448/EU and, where appropriate, Decision 2011/278/EU, which it implements, contrary to Article 10a(12) of the Directive, because they extend the cross-sectoral correction factor to sectors defined in Commission Decision 2010/2/EU ([6]) (now Decision 2014/746/EU) ([7]) as they are deemed to be exposed to a significant risk of carbon leakage, with the consequent reduction in free emission allowances allocated?

5. Does Decision 2013/448/EU infringe Article 10a(5) of Directive 2003/87/EEC in so far as the European Commission, in order to determine the verified emissions carried out in the period 2005-2007 to which Article 10a(5)(a) and (b) refers:

   a) did not take into consideration emissions which were not included in the Community independent transaction log, even though, in the period under consideration, it was not obligatory to register such emissions.

   b) extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction.

   c) excluded all emissions from installations closed before 30 June 2011.

([1]) 2013/448/EU: Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).
([2]) OJ 2000 C 364, p. 1.
([3]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).
([4]) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).
([5]) 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).
([6]) 2010/2/EU: Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ 2010 L 1, p. 10).
([7]) OJ 2014 L 308, p. 114.

Action brought on 17 July 2015 — European Commission v Council of the European Union

(Case C-389/15)

(2015/C 311/45)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Castillo de la Torre, J. Guillem Carrau, B. Hartmann, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul the decision of the Council of 7 May 2015 authorising the opening of negotiations on a revised Lisbon Agreement on Appellations of Origin and Geographical Indications as regards matters falling within the competence of the European Union;

— maintain the effects of the contested decision, where appropriate, until the entry into force, within a reasonable period from the delivery of the present judgment, of a new decision that is to be adopted by the Council of the European Union pursuant to Article 218(3), (4) and (8) TFEU;

— order the Council of the European Union to bear the costs.

Pleas in law and main arguments

First plea: The contested Decision acknowledges the existence of competence of the Member States, in breach of Article 3 TFEU, since the negotiation concerns an agreement which falls within the exclusive competence of the Union

Second plea: Infringement of Articles 207(3) and 218(3), (4) and (8) TFEU because the Council has appointed Member States as 'negotiators', in a matter of EU competence, and has not adopted the contested Decision in accordance with the applicable majority

---

Appeal brought on 21 July 2015 by John Dalli against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 12 May 2015 in Case T-562/12: John Dalli v European Commission

(Case C-394/15 P)

(2015/C 311/46)

Language of the case: English

Parties

Appellant: John Dalli (represented by: L. Levi and S. Rodrigues, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The Appellant claims that the Court should:

— declare his appeal admissible;

— annul the contested judgment;

— annul the contested decision;

— order compensation for damage of 1 symbolic euro for non-material damage and, on a provisional basis, of EUR 1 913 396 for material damage;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of his appeal, the Appellant raises:

— a first plea in law, alleging that the General Court ruled *ultra petita* by changing the subject-matter of the dispute;

— a second plea in law, alleging a failure to provide reasons;

— a third plea in law, alleging a breach of procedure which adversely affects the interests of the Appellant, including his rights of defence;

— a fourth plea in law, raising several distortions of facts and evidence; and

— a fifth plea in law, challenging the interpretation or application of European Union law by the General Court.

GENERAL COURT

Order of the General Court of 29 June 2015 — Frank Bold v Commission

(Case T-19/13) ([1])

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Decision granting the Czech Republic an option for transitional free allocation for the modernisation of electricity generation — Request for internal review of that decision — Lack of measure of individual scope — Commission decision declaring the request for a review inadmissible — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2015/C 311/47)

Language of the case: English

Parties

Applicant: Frank Bold Society, formerly Ekologický právní servis (Brno, Czech Republic) (represented by: P. Černý, lawyer)

Defendant: European Commission (represented initially by: P. Oliver and L. Pignataro-Nolin, and subsequently by: L. Pignataro-Nolin and J. Tomkin, acting as Agents)

Intervener in support of the defendant: Czech Republic (represented by: M. Smolek, T. Müller and D. Hadroušek, acting as Agents)

Re:

Application for annulment of (i) Commission Decision C(2012) 8382 final of 12 November 2012 rejecting as inadmissible the request for internal review of Commission decision C(2012) 4576 final of 6 July 2012 granting the Czech Republic an option for transitional free allocation for the modernisation of electricity generation, and (ii) the latter decision.

Operative part of the order

1. *The action is dismissed.*

2. *Frank Bold Society is ordered to bear its own costs and to pay those incurred by the European Commission.*

3. *The Czech Republic shall bear its own costs.*

([1]) OJ C 79, 16.3.2013.

Order of the General Court of 22 June 2015 — In vivo v Commission

(Case T-690/13) ([1])

(Action for failure to act — Refusal of the European Anti-Fraud Office (OLAF) to open an external investigation — Position defined — Application for directions to be issued — No direct concern — Inadmissibility)

(2015/C 311/48)

Language of the case: English

Parties

Applicant: In vivo OOO (Abinsk, Russia) (represented by: T. Huopalainen, lawyer)

Defendant: European Commission (represented by: J.-P. Keppenne and J. Baquero Cruz, acting as Agents)

Re:

Action seeking a declaration by the General Court that the European Anti-Fraud Office (OLAF) failed to act in refusing to open an external investigation and an order that it remedy the situation.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *In vivo OOO shall pay the costs.*

([1]) OJ C 151, 19.5.2014.

Order of the General Court of 24 June 2015 — Wm. Wrigley Jr. v OHIM (Extra)

(Case T-552/14) ([1])

(Community trade mark — Application for Community figurative mark Extra — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2015/C 311/49)

Language of the case: English

Parties

Applicant: Wm. Wrigley Jr. Company (Wilmington, Delaware, United States) (represented by: M. Kinkeldey, S. Brandstätter and C. Schmitt, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 19 May 2014 (Case R 199/2014-5) relating to an application for registration of the figurative sign Extra as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Wm. Wrigley Jr. Company shall pay the costs.*

(1) OJ C 351, 6.10.2014.

Order of the General Court of 24 June 2015 — Wm. Wrigley Jr. v OHIM (Extra)

(Case T-553/14) (1)

(Community trade mark — Application for Community figurative mark Extra — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2015/C 311/50)

Language of the case: English

Parties

Applicant: Wm. Wrigley Jr. Company (Wilmington, Delaware, United States) (represented by: M. Kinkeldey, S. Brandstätter and C. Schmitt, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 19 May 2014 (Case R 218/2014-5) relating to an application for registration of the figurative sign Extra as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Wm. Wrigley Jr. Company shall pay the costs.*

(1) OJ C 351, 6.10.2014.

Order of the General Court of 24 June 2015 — Wm. Wrigley Jr. v OHIM (Representation of a sphere)

(Case T-625/14) ([1])

(Community trade mark — Application for Community figurative mark representing a sphere — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2015/C 311/51)

Language of the case: English

Parties

Applicant: Wm. Wrigley Jr. Company (Wilmington, Delaware, United States) (represented by: M. Kinkeldey, S. Brandstätter and C. Schmitt, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 17 June 2014 (Case R 168/2014-5) relating to an application for registration of a figurative sign representing a sphere as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Wm. Wrigley Jr. Company shall pay the costs.*

([1]) OJ C 351, 6.10.2014.

Order of the General Court of 24 June 2015 — Wm. Wrigley Jr. v OHIM (Representation of a blue sphere)

(Case T-626/14) ([1])

(Community trade mark — Application for Community figurative mark representing a blue sphere — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2015/C 311/52)

Language of the case: English

Parties

Applicant: Wm. Wrigley Jr. Company (Wilmington, Delaware, United States) (represented by: M. Kinkeldey, S. Brandstätter and C. Schmitt, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 17 June 2014 (Case R 169/2014-5) relating to an application for registration of a figurative sign representing a blue sphere as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Wm. Wrigley Jr. Company shall pay the costs.*

([1]) OJ C 351, 6.10.2014.

Action brought on 12 June 2015 — IR v OHIM — Pirelli Tyre (popchrono)

(Case T-132/15)

(2015/C 311/53)

Language in which the application was lodged: English

Parties

Applicants: IR (Caen, France) (represented by: C. de Marguerye, lawyer)

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

Other party to the proceedings before the Board of Appeal: Pirelli Tyre SpA (Milan, Italy)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'popchrono' — Community trade mark No 4 177 267

Procedure before OHIM: Revocation proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 13 February 2015 in Case R 217/2014-5

Form of order sought

The applicant claims that the Court should:

— receive its conclusions;

— rescind the decision of 13 February 2015 of the Board of Appeal;

— confirm the property rights of the trademark POPCHRONO;

— order OHIM to pay the costs.

Pleas in law

— Infringement of the right to be heard;

— Narrow interpretation of 'genuine use' by the Board of Appeal;

— Resumption of genuine use of a community trademark in question should have been examined by OHIM according to pieces submitted by the applicant, including a prior license agreement for more than three months before the introduction of the revocation request;

— OHIM's failure to take account of the contempt of elementary rules of competition and not considered the will of obstruction of a party against the other party.

Action brought on 30 June 2015 — Papapanagiotou v Parlement

(Case T-351/15)

(2015/C 311/54)

Language of the case: English

Parties

Applicant: Papapanagiotou AVEEA (Serres, Greece) (represented by: S. Pappas and I. Ioannidis, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the Decision D(2015)12887 of 27 April 2015 of the Director-General of the Directorate-General for Infrastructure and Logistics, whereby the tender submitted by the applicant for Lots 1, 2 and 4 of tendering procedure 'Office Furniture' No INLO.AO-2012-017-LUX-UAGBI-02 *'for the acquisition of standard, executive and high-end office furniture and accessories'* was rejected and with which the Director-General informed the applicant that, for the evaluation of all the tenders in the above tender procedure, he had not taken into consideration one of the award criteria specified in the tender documents;

— order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is unlawful, due to the exclusion of the 'construction (resistance to breakage, abrasion, scratching and decolouration)' award subcriterion during the tender procedure, which violates the tender specifications, Articles 110(1) and 113(1) Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the European Union ('the Financial Regulation') and the general principles of equal treatment and transparency.

2. Second plea in law, alleging a failure of the contracting authority to state reasons, namely the characteristics and relative advantages of the successful tenders, in violation of Article 113(2) of the Financial Regulation, Article 161(3) of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union ('Rules of Application of the Financial Regulation'), Article 41 of the Charter of Fundamental Rights of the European Union and Article 296 TFUE.

3. Third plea in law, alleging a violation of the principle of transparency according to Article 102 of the Financial Regulation and Article 15(3) TFUE, as the contracting authority failed to provide information and evidence on whether the samples provided by the tenders for the re-evaluation of the tenders were identical to the samples originally evaluated in the first evaluation procedure that was subsequently cancelled.

Action brought on 26 June 2015 — NeXovation v Commission

(Case T-353/15)

(2015/C 311/55)

Language of the case: English

Parties

Applicant: NeXovation, Inc. (Hendersonville, USA) (represented by: A. von Bergwelt, F. Henkel and M. Nordmann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul the decision C(2014) 3634 final of the European Commission of 1 October 2014 (in the form of the corrigendum decision of 13 April 2015) on the State aid SA.31550 implemented by Germany for Nürburgring, in so far as:

— it comes to the decision that the sale of assets of Nürburgring GmbH, Motorsport Resort Nürburgring GmbH and Congress- und Motorsport Hotel Nürburgring GmbH does not constitute State aid as stated in the first bullet point of recital 285 of the contested decision;

— it comes to the decision that the sale of assets of Nürburgring GmbH, Motorsport Resort Nürburgring GmbH and Congress- und Motorsport Hotel Nürburgring GmbH does not lead to economic continuity between Nürburgring GmbH, Motorsport Resort Nürburgring GmbH and Congress- und Motorsport Hotel Nürburgring GmbH and Capricorn NÜRBURGRING Besitzgesellschaft GmbH, the new owner of the assets, or its subsidiaries as stated in the first sentence of the second bullet of recital 285 of the contested decision;

— it thus comes to the decision that any potential recovery of incompatible State aid will not concern Capricorn NÜRBURGRING Besitzgesellschaft GmbH, the buyer of the assets sold following the tender process, or its subsidiaries as stated in Article 3(2) of the operative part of the contested decision, following the second sentence of the second bullet point of recital 285 of the contested decision;

— order the Commission to pay its own costs and those incurred by the Applicant.

Pleas in law and main arguments

The applicant contests the Commission decision of 1 October 2014 (with a corrigendum of 13 April 2015) as it decides that the sale of the assets of the Nürburgring complex does not constitute State aid, that the sale of the assets does not lead to a financial/economic continuity between the sellers and the acquirer of the assets and that any potential recovery of incompatible State aid will not concern the buyer of the assets.

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

1. First plea in law, alleging an erroneous application of Article 107(1) TFUE by the Commission as the Commission misunderstood the meaning of an open, transparent and non-discriminatory tender procedure with the sale to the highest bidder and further failed to investigate the State involvement in the sale process appropriately;

2. Second plea in law, alleging an erroneous application of Article 107(1) TFUE by the Commission when it comes to the conclusion that the temporary lease contract of the ring's asset does not lead to State aid and that the sellers did not illegitimately influence the further sale of the assets to a Russian investor;

3. Third plea in law, alleging an erroneous application of the principle of financial/economic continuity by the Commission;

4. Fourth plea in law, alleging a failure to initiate a formal investigation procedure by the Commission;

5. Fifth plea in law, alleging an infringement of the applicant's rights under Article 20(2) of Regulation No 659/1999 by the Commission;

6. Sixth plea in law, alleging an infringement of the principles of an impartial and diligent investigation by the Commission;

7. Seventh plea in law, alleging an erroneous application of Article 296(2) TFUE by the Commission.

Appeal brought on 9 July 2015 by CJ against the judgment of the Civil Service Tribunal of 29 April 2015 in joined cases F-159/12 and F-161/12, *CJ* v *ECDC*

(Case T-370/15 P)

(2015/C 311/56)

Language of the case: English

Parties

Appellant: CJ (Agios Stefanos, Greece) (represented by: V. Kolias, lawyer)

Other party to the proceedings: European Centre for Disease Prevention and Control (ECDC)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the European Union Civil Service Tribunal of 29 April 2015 in Joined Cases F-159/12 and F-161/12, *CJ* v *ECDC*, insofar as it:

  — dismissed the action in Case F-159/12 in part and ordered the appellant to bear his own costs;

  — dismissed the action in Case F-161/12 in whole and ordered the appellant to bear his own costs and pay those incurred by the ECDC;

— ordered the appellant to pay the Tribunal a sum of EUR 2 000 in order to refund part of the avoidable expenditure which the Tribunal was forced to incur;

— consequently, in the event that the appeal is declared well founded:

— annul the contested decision of 24 February 2012;

— order the ECDC to pay compensation, assessed ex aequo et bono at EUR 80 000, for the non-material harm sustained by the appellant and alleged in the first head of claim in Case F-161/12;

— order the ECDC to pay compensation, assessed ex aequo et bono at EUR 56 800 for the non-material harm sustained by the appellant and alleged in the incidental claims for compensation brought during the trial at first instance;

— order the ECDC to pay all costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Tribunal infringed the principle *audi et alteram partem* in rejecting the appellant's statement of reply as inadmissible because its body and annexes did not directly relate to certain annexes of the ECDC defence;

2. Second plea in law, alleging that the Tribunal failed to adjudicate incidental heads of claim raised for the first time in the course of the proceedings, for compensation of non-material harm caused by certain statements made in the ECDC defence;

3. Third plea in law, alleging that the Tribunal infringed Article 91(1) of the Staff Regulations in considering itself barred from examining the verity of allegations of financial mismanagement at ECDC inasmuch as they had previously been examined by OLAF;

4. Fourth plea in law, alleging that the Tribunal misinterpreted;

— Article 47(b)(ii), read in conjunction with Article 86, of the Condition of Employment of Other Servants of the European Union ('CEOS') in holding that the appellant could be summarily dismissed for insubordination without a disciplinary process;

— Article 41(2)(a) of the Charter of Fundamental Rights of the European Union in relation to the time allowed for the appellant to put his view before being dismissed;

— Article 48(1) of the Charter of Fundamental Rights of the European Union in accepting as proven accusations that the appellant had engaged in criminal conduct, although he had been neither charged with, nor convicted of, such conduct before a criminal court;

— The employer's duty of care in holding that ECDC did not need to afford the appellant certain rights of defence during an administrative inquiry under Annex IX to the Staff Regulations;

5. Fifth plea in law, alleging that the Tribunal misinterpreted, the first, fifth and eight plea in law and the order sought;

6. Sixth plea in law, alleging that the Tribunal made an erroneous legal classification of certain facts;

7. Seventh plea in law, alleging that the Tribunal distorted certain evidence.

Action brought on 9 July 2015 — Preferisco Foods v OHIM — Piccardo & Savore' (PREFERISCO)

(Case T-371/15)

(2015/C 311/57)

Language in which the application was lodged: English

Parties

Applicant: Preferisco Foods Ltd (Vancouver, Canada) (represented by: G. Macias Bonilla, P. López Ronda, G. Marín Raigal, E. Armero, lawyers)

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

Other party to the proceedings before the Board of Appeal: Piccardo & Savore' Srl (Chiusavecchia, Italy)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word element 'PREFERISCO' — Community trade mark No 10 974 616

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 15 April 2015 in Case R 2598/2013-2

Form of order sought

The applicant claims that the Court should:

— partially annul the contested decision of the Second Board of Appeal of the OHIM dated 15 April 2015, in Case R-2598/2013-2, in particular regarding the rejection of the CTM application No 10974616 'PREFERISCO' for the goods applied for in classes 29 and 30;

— order that costs of the proceedings be borne by the Defendant, including the costs those incurred in the proceedings before the Opposition Division and the Second Board of Appeal of the OHIM.

Plea in law

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

Action brought on 16 July 2015 — Perfetti Van Melle Benelux v OHIM — PepsiCo (3D)

(Case T-390/15)

(2015/C 311/58)

Language in which the application was lodged: English

Parties

Applicant: Perfetti Van Melle Benelux BV (Breda, Netherlands) (represented by: P. Testa, lawyer)

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

Other party to the proceedings before the Board of Appeal: PepsiCo, Inc. (New York, United States)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community black and white figurative mark containing the word elements '3D' — Application for registration No 9 384 041

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 08/05/2015 in Case R 465//2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, admitting application No 009384041 to registration for the following goods: chocolate; pastry; confectionary; candies; chew candies; drops; gumdrops; caramel; chewing gum; bubble gums; lollipops; licorice; jellies (confectionery); toffee; mints; sweets

— order PepsiCo, Inc. to pay the costs.

Plea in law

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

Action brought on 13 July 2015 — Università del Salento v Commission

(Case T-393/15)

(2015/C 311/59)

Language of the case: Italian

Parties

Applicant: Università del Salento (Lecce, Italy) (represented by F. Vetrò, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul the contested measures, and consequently direct the payment of all amounts owing to the Dipartimento di Ingegneria dell'Innovazione dell'Università del Salento (Department of Innovative Engineering of the University of Salento) in relation to the contract entitled *'Support for training of career researchers' 'Grant Agreement No 6102350, Explaining the nature of technological innovation in Chinese enterprises'*, with all legal consequences, including as regards the costs of the present proceedings.

Pleas and main arguments

The present action is brought against the measure of the European Commission, DG Budget, Budget Implementation (General Budget and EDFs) Recovery of loans, of 4 May 2015, Ref. N. D/CA — B.2 — 005,817, and the debit note attached thereto. That measure offset the amount receivable by the Department of Innovative Engineering of the University of Salento from the Commission, for the performance of a 'Support for training career of researchers", Grant Agreement n. 6102350, Explaining the nature of technological innovation in Chinese enterprises', against a debt which, according to the Commission, the Dipartimento di Scienze giuridiche (Department of Legal Science) of the University of Salento owed to the Commission in relation to the contract entitled *'Agreement JUST/2010/JPEN/AG/1540 — Judicial Training and Research on EU crimes against environment and maritime pollution.*'

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

1. First plea, alleging infringement of Articles 3 and 24 of the Italian Constitution, abuse of power, misuse of power due to an erroneous assumption, failure to conduct a proper investigation, error of fact and infringement and misapplication of Article 81 of the Financial Regulation of the European Union.

   — The applicant argues in that regard that the offsetting is implemented in contradiction of the European rules relating to the certainty of the amount, whether that amount is liquid and whether it is payable. In the present case, the alleged debt is contested by the debtor, as is clear from the correspondence attached. The Commission's decision is unilateral and, as such, infringes the principle of equality.

2. Second plea in law, alleging infringement and misapplication of the principle of effectiveness of Community law, infringement and misapplication of the principle of sound financial management and misuse of power due to failure to conduct a proper investigation.

   — The applicant argues in that regard that the amounts allocated for the research project of the Department of Innovative Engineering had to be used only to carry out the research for which they had been allocated and could not be the offset against debt relating to activities other than those established by the aforementioned research project, lest it infringe the principle of effectiveness. The contested measures infringe the principle of sound financial management since the Commission, by implementing the offset, did not use the money granted in accordance with its intended purpose.

3. Third plea in law, alleging infringement and misapplication of Article 296 TFEU.

   — The applicant argues in that regard that the contested act did comply with the obligation to state reasons in the provision referred to above, since it fails to state the source, the reasons, or the legal grounds for the decision to offset the sums owed to the Department of Innovative Engineering against those owed to the Department of Legal Science.

Appeal brought on 14 July 2015 by European Centre for Disease Prevention and Control (ECDC) against the judgment of the Civil Service Tribunal of 29 April 2015 in joined cases F-159/12 and F-161/12, *CJ v ECDC*

(Case T-395/15 P)

(2015/C 311/60)

Language of the case: English

Parties

Appellant: European Centre for Disease Prevention and Control (ECDC) (represented by: J. Mannheim and A. Daume, agents, D. Waelbroeck and A. Duron, lawyers)

Other party to the proceedings: CJ (Agios Stefanos, Greece)

Form of order sought by the appellant

The appellant claims that the Court should:

— annul the judgment of the Civil Service Tribunal of 29/04/2015 in joined cases F-159/12 and F-161/12, in respect of the plea challenged in the appeal, and

— to order the Respondent to pay the costs.

Pleas in law and main arguments

In support of the appeal, the Appellant relies on two pleas in law.

1. First plea in law, alleging an error in law on behalf of the Civil Service Tribunal with regards to the scope of the right to be heard.

   — Without relying on any case-law nor providing specific reasoning, the Civil Service Tribunal adopted an extensive interpretation of the scope of the right to be heard, applicable not only to allegations made vis-à-vis an individual, but also to the consequences ascribed to the behavior of that individual. Besides, the approach taken by the Civil Service Tribunal as to the scope of the right to be heard is contradicted by its very findings in the contested judgment.

2. Second plea in law, alleging an error of law on behalf of the Tribunal in the conclusion it reached further to the assessment as to whether in the absence of this alleged irregularity, the procedure might have led to a different result.

   — The Civil Service Tribunal having acknowledged that the relationship of trust between the Respondent and the Appellant was irreparably broken, the absence of the alleged irregularity would not have led to a different result.

Action brought on 20 July 2015 — Morgan & Morgan v OHIM — Grupo Morgan & Morgan (Morgan & Morgan)

(Case T-399/15)

(2015/C 311/61)

Language in which the application was lodged: English

Parties

Applicant: Morgan & Morgan International Insurance Brokers S.r.l. (Conegliano, Italy) (represented by: F. Gatti and F. Caricato, lawyers)

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

Other party to the proceedings before the Board of Appeal: Grupo Morgan & Morgan (Ciudad de Panamá, Panama)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'Morgan & Morgan' — Application for registration No 11 596 087

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 7 May 2015 in Case R 1657/2014-1

Form of order sought

The applicant claims that the Court should:

— recognize and declare that the recourse presented by the Appellant is admissible and well founded;

— reform the contested decision;

— give way to a definitive registration of the Community Trademark no. 11 596 087 in the name of Morgan & Morgan International Insurance Brokers s.r.l. in class 36;

— order OHIM to pay fees and cost of the three proceedings.

Plea in law

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

Action brought on 22 July 2015 — Republic of Poland v European Commission

(Case T-402/15)

(2015/C 311/62)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

— annul the decision of the European Commission of 11 May 2015 (notified under document C(2015) 3228) concerning the refusal to make a financial contribution from the European Regional Development Fund to the major project 'European Shared Services Centre — Intelligent Logistics Systems' forming part of the operational programme 'Innovative Economy' for structural assistance under the Convergence objective in Poland;

— order the European 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: infringement of Article 41(1) in conjunction with Articles 56(3) and 60(a) of Regulation (EC) No 1083/2006 and of the principle of sincere cooperation, by carrying out an appraisal of the project in a way going beyond the selection criteria laid down by the Monitoring Committee even though those criteria had not been questioned by the Commission at the time of their adoption, and infringement of Article 41(2) of Regulation (EC) No 1083/2006, by seriously exceeding the time-limit for appraising the project.

2. Second plea in law: incorrect interpretation of the conditions for allowing co-financing from the European Regional Development Fund (ERDF), by the assumption that only investments with the greatest potential for diffusion of innovation could be co-financed, and incorrect assessment of the project by the assumption that it did not guarantee compliance with the operational programme 'Innovative Economy' because of lack of innovative character.

3. Third plea in law: incorrect interpretation of the conditions for allowing co-financing from the ERDF, by the assumption that only investments creating highly qualified jobs could be co-financed, and incorrect assessment of the project by the assumption that it did not create highly qualified jobs.

4. Fourth plea in law: incorrect assessment of the project, by the assumption that it did not guarantee the realisation of the aims of the operational programme 'Innovative Economy' because of lack of added value and lack of incentive effect.

Action brought on 22 July 2015 — JYSK v Commission

(Case T-403/15)

(2015/C 311/63)

Language of the case: English

Parties

Applicant: JYSK sp. z o.o. (Radomsko, Poland) (represented by: H. Sønderby Christensen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision C(2015) 3228 final of 11 May 2015 regarding a financial contribution from the European Regional Development Fund (ERDF) to the major project 'European Shared Service Centre — Intelligent Logistics Systems', forming part of the operational program 'Innovative Economy' for assistance from the ERDF under the Convergence objective in Poland.

Pleas in law and main arguments

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

1. First plea in law, alleging JYSK met the set requirements by the Polish Government and the purposes of both the Operational Program Innovative Economy 2007-2013 (OP IE) and of EU law.

2. Second plea in law, alleging that the project is in line with the OP IE and with the EU law.

   — The applicant puts forward that in its decision, the Commission does not question that the set criteria in Submeasure 4.5.2. (annex 2) are in line with the OP IE and EU law. Furthermore, the applicant alleges that the Commission does not question the fact that the project is in line with the set criteria and/or that JYSK was entitled to the score of 60,5 points.

3. Third plea in law, alleging the essence of this lawsuit.

   — The applicant puts forward that this lawsuit — in reality — got nothing to do with JYSK — as all parties — even the Commission — agree to the fact that JYSK did in fact meet the set criteria. According to the applicant, this lawsuit is therefore solely a dispute of lawfulness between the Polish administration on the one side and the Commission on the opposite side. That should not make JYSK become a victim.

4. Fourth plea in law, alleging that the Commission representative confirmed that the Polish administration is in line with EU law and with the OP IE.

   — According to the applicant, it is clear that the Commission agreed to all the set requirements and that it accepted the OP IE and the concrete implementation.

5. Fifth plea in law, alleging that the Commission infringes the division of competences between the Commission and the Polish administration and infringes the principle of subsidiarity and proportionality.

   — The applicant puts forward that the Commission is not entitled to decline national support on grounds that are for the Polish administration to decide — because of the latters` close experience with the area. According to the applicant, the Commission is furthermore not entitled to decline on grounds that were known to it at the time of JYSK application. The 'Scoreboard' (Submeasure 4.5.2.) allegedly expresses exactly the goals and purposes in the OP IE and both were known to the Commission representative in the Monitoring Committee at the time of the JYSK application. The correct understanding/interpretation of the OP IE, so the applicant claims, shall take into account the specific knowledge of the Polish administration concerning work places and skills of workers in Radomsko, and it is not for the Commission to override in all details the assessment of the Polish administration when implementing the program, nor is it correct to consider any intention or 'goal' of the OP IE to be decisive as the Commission does. According to the applicant, the correct understanding of the OP IE and EU law shall be based upon the fact that some of the provisions are of greater importance than others — illustrated in the scoreboard (Submeasure 4.5.2.).

6. Sixth plea in law, alleging the arguments of the Commission.

   — The applicant puts forward that none of the three main arguments were in force and/or decisive in the sense the Commission claims and within the understanding that the Commission refers to at the time of JYSK application (July 2008). According to the applicant, they can therefore not be relevant in this case and, to the extent the court finds them relevant, they were not decisive.

Action brought on 27 July 2015 — Monster Energy v OHIM — Hot-Can Intellectual Property (HotoGo self-heating can technology)

(Case T-407/15)

(2015/C 311/64)

Language in which the application was lodged: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Hot-Can Intellectual Property Sdn Bhd (Cheras, Malaysia)

Details of the proceedings before OHIM

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

Trade mark at issue: Figurative mark containing the word elements 'HotoGo self-heating can technology' — Application for registration No 11 418 101

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 4 May 2015 in Case R 1028/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 21 February 2014 in Opposition No B2178567;

— reject the opposed mark in its entirety;

— order OHIM to pay its own costs and those of the applicant.

Pleas in law

— Infringement of Articles 8(1)(b) of Regulation No 207/2009;

— Infringement of Article 8(5) of Regulation No 207/2009.

Order of the General Court of 12 June 2015 — Matrix Energetics International v OHIM (MATRIX ENERGETICS)

(Case T-573/12) ([1])

(2015/C 311/65)

Language of the case: English

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

([1]) OJ C 63, 2.3.2013.

Order of the General Court of 29 June 2015 — InterMune UK and Others v EMA

(Case T-73/13) ([1])

(2015/C 311/66)

Language of the case: English

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

([1]) OJ C 114, 20.4.2013.

Order of the General Court of 17 June 2015 — PRS Mediterranean v OHIM — Reynolds Presto Products (NEOWEB)

(Case T-166/14) ([1])

(2015/C 311/67)

Language of the case: English

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

([1]) OJ C 142, 12.5.2014.

Order of the General Court of 29 June 2015 — PSL v OHIM — Consortium Ménager Parisien (Representation of a watch)

(Case T-212/14) ([1])

(2015/C 311/68)

Language of the case: English

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

([1]) OJ C 245, 28.7.2014.

Order of the General Court of 10 June 2015 — Aalto-korkeakoulusäätiö v OHIM (APPCAMPUS)

(Case T-255/14) ([1])

(2015/C 311/69)

Language of the case: English

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

([1]) OJ C 235, 21.7.2014.

Order of the General Court of 30 June 2015 — PAN Europe and Unaapi v Commission

(Case T-729/14) ([1])

(2015/C 311/70)

Language of the case: English

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

([1]) OJ C 7, 12.1.2015.

Order of the General Court of 29 June 2015 — Closet Clothing v OHIM — Closed Holding (CLOSET)

(Case T-815/14) ([1])

(2015/C 311/71)

Language of the case: English

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

([1]) OJ C 65, 23.2.2015.

Order of the General Court of 26 June 2015 — Navitar v OHIM — Elukuva (NaviTar)

(Case T-93/15) ([1])

(2015/C 311/72)

Language of the case: English

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

([1]) OJ C 127, 20.4.2015.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN