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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 16 September 2015 — European Commission v Slovak Republic

(Case C-361/13) ([1])

(Failure of a Member State to fulfil obligations — Regulation No 883/2004 — Article 7 — Old-age benefit — Christmas bonus — Residence requirement)

(2015/C 371/02)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: A. Tokár, D. Martin and F. Schatz, acting as Agents)

Defendant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the European Commission to pay the costs.*

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (First Chamber) of 16 September 2015 — European Commission v Slovak Republic

(Case C-433/13) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EC) No 883/2004 — Article 7 — Article 21 — Sickness benefit — Care allowance, assistance allowance and compensatory allowance for extra costs — Residence requirement)

(2015/C 371/03)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: A. Tokár, D. Martin and F. Schatz, acting as Agents)

Defendant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the European Commission to pay the costs.*

([1]) OJ C 336, 16.11.2013.

Judgment of the Court (First Chamber) of 16 September 2015 (request for a preliminary ruling from the Anotato Dikastirio Kyprou — Cyprus) — Alpha Bank Cyprus Ltd v Dau Si Senh and Others

(Case C-519/13) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil or commercial matters — Service of judicial and extrajudicial documents — Regulation (EC) No 1393/2007 — Article 8 — Refusal to accept the document — Failure to provide a translation of one of the documents served — Failure to use the standard form set out in Annex II to that regulation — Consequences)

(2015/C 371/04)

Language of the case: Greek

Referring court

Anotato Dikastirio Kyprou

Parties to the main proceedings

Applicant: Alpha Bank Cyprus Ltd

Defendants: Dau Si Senh, Alpha Panareti Public Ltd, Susan Towson, Stewart Cresswell, Gillian Cresswell, Julie Gaskell, Peter Gaskell, Richard Wernham, Tracy Wernham, Joanne Zorani, Richard Simpson

Operative part of the judgment

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, must be interpreted as meaning that:

— *the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that regulation, and*

— *the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation.*

(1) OJ C 377, 21.12.2013.

Judgment of the Court (Fifth Chamber) of 17 September 2015 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — procedure brought by F.E. Familienprivatstiftung Eisenstadt

(Case C-589/13) (1)

(Reference for a preliminary ruling — Free movement of capital — Article 56 EC — Interim taxation of capital gains and income from the disposal of holdings by a national foundation — Refusal of right to deduct from the taxable amount gifts to non-resident beneficiaries exempt from tax in the Member State of the foundation under a double taxation convention)

(2015/C 371/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: F.E. Familienprivatstiftung Eisenstadt

Intervener: Unabhängiger Finanzsenat, Außenstelle Wien

Operative part of the judgment

Article 56 EC must be interpreted as precluding tax legislation of a Member State, such as that at issue in the main proceedings under which, as regards interim tax which is charged on capital gains and income from the disposal of holdings of a resident private foundation, that foundation has the right to deduct from its taxable amount only gifts made in the course of a given assessment period that have been the subject of a tax levied within that period on the beneficiaries of those gifts in the Member State in which the foundation is taxed, whereas such a deduction is excluded by that national tax legislation where the beneficiaries reside in another Member State and are exempt, on the basis of a double taxation convention, from a tax that is otherwise charged on gifts in the Member State in which the foundation is taxed.

(1) OJ C 71, 8.3.2014.

Judgment of the Court (Fifth Chamber) of 17 September 2015 — Total SA v European Commission

(Case C-597/13 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Paraffin waxes market — Slack wax market — Infringement committed by a subsidiary wholly owned by the parent company — Presumption of decisive influence exercised by the parent company over its subsidiary — Liability of the parent company arising solely from the unlawful conduct of its subsidiary — Judgment reducing the fine imposed on the subsidiary — Effects on the legal situation of the parent company)

(2015/C 371/06)

Language of the case: French

Parties

Appellant: Total SA (represented by: É. Morgan de Rivery and É. Lagathu, avocats)

Other party to the proceedings: European Commission (represented by: É. Gippini Fournier and P. Van Nuffel, acting as Agents)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the General Court of the European Union in Total v Commission (T-548/08, EU:T:2013:434) in so far as it did not bring the fine imposed on Total SA into line with the fine imposed on Total Raffinage Marketing SA by the judgment in Total Raffinage Marketing v Commission (T-566/08, EU:T:2013:423);*

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

3) *Sets the fine imposed on Total SA jointly and severally with Total Raffinage Marketing SA in Article 2 of Commission Decision C(2008) 5476 final of 1 October 2008 relating to a proceeding under Article [81 EC] and Article 53 of the EEA Agreement (Case COMP/39.181 — Candle waxes) at EUR 125 459 842;*

4) *Orders Total SA to bear three quarters of the costs of the European Commission and of its own costs relating to the present appeal and the proceedings at first instance;*

5) *Orders the European Commission to bear one quarter of its own costs and of the costs of Total SA relating to the present appeal and the proceedings at first instance.*

([1]) OJ C 45, 15.2.2014.

Judgment of the Court (Fifth Chamber) of 17 September 2015 — Total Marketing Services, successor in law to Total Raffinage Marketing v European Commission

(Case C-634/13 P) ([1])

(Appeals — Competition — Paraffin waxes market — Slack wax market — Duration of participation in an unlawful cartel — Cessation of the participation — Interruption of the participation — Absence of collusive contact established during a certain period of time — Continuation of the infringement — Burden of proof — Public distancing — Perception of the other participants in the cartel of the company's intention to distance itself — Obligation to state reasons — Principles of the presumption of innocence, equal treatment, effective judicial protection and that penalties must be specific)

(2015/C 371/07)

Language of the case: French

Parties

Appellant: Total Marketing Services, successor in law to Total Raffinage Marketing (represented by: A. Vandencasteele, C. Lemaire and S. Naudin, avocats)

Other party to the proceedings: European Commission (represented by: P. Van Nuffel and A. Biolan, acting as Agents, assisted by N. Coutrelis, avocat)

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Total Marketing Services SA to pay the costs.*

([1]) OJ C 45, 15.2.2014.

Judgment of the Court (Third Chamber) of 17 September 2015 (requests for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — J.B.G.T. Miljoen (C-10/14), X (C-14/14), Société Générale SA (C-17/14) v Staatssecretaris van Financiën

(Joined Cases C-10/14, C-14/14 and C-17/14) ([1])

(Reference for a preliminary ruling — Direct taxation — Articles 63 TFEU and 65 TFEU — Free movement of capital — Taxation of dividends from portfolios of shares — Withholding tax — Restriction — Final tax burden — Factors for comparing the tax burdens of resident and non-resident taxpayers — Comparability — Taking into account income tax or corporation tax — Conventions for the avoidance of double taxation — Neutralisation of the restriction by means of a convention)

(2015/C 371/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: J.B.G.T. Miljoen (C-10/14), X (C-14/14), Société Générale SA (C-17/14)

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

Articles 63 TFEU and 65 TFEU must be interpreted as precluding legislation of a Member State which imposes a withholding tax on dividends distributed by a resident company both to resident taxpayers and non-resident taxpayers and provides a mechanism for deducting or reimbursing the tax withheld only for resident taxpayers, while for non-resident taxpayers, both natural persons and companies, the tax withheld is a final tax, in so far as the final tax burden relating to those dividends, borne in that Member State by non-resident taxpayers, is greater than that borne by resident taxpayers, which it is for the referring court to determine in the main proceedings. For the purposes of determining those tax burdens, the referring court must take account, in Cases C-10/14 and C-14/14, of the taxation of residents in relation to all shares held in Netherlands companies in the calendar year, of capital which is exempt from tax under national legislation, and in Case C-17/14, of expenses which are directly linked to the actual payment of the dividends.

If the existence of a restriction on the movement of capital is established, it may be justified by the effects of a bilateral convention for the avoidance of double taxation concluded by the Member State of residence and the Member State in which the dividends are paid, provided that the difference in treatment, relating to the taxation of dividends, between taxpayers residing in the latter Member State and those residing in other Member States ceases to exist. In circumstances such as those at issue in Cases C-14/14 and C-17/14, and without prejudice to the determinations to be made by the referring court, the restriction on the free movement of capital, if established, cannot be regarded as justified.

(1) OJ C 129, 28.4.2014.

Judgment of the Court (Third Chamber) of 17 September 2015 — Mory SA, in liquidation, Mory Team, in liquidation, Superga Invest v European Commission

(Case C-33/14 P) (1)

(Appeal — State aid — Actions for annulment — Article 263 TFEU — Admissibility — Unlawful and incompatible aid — Obligation to recover — European Commission decision not to extend the recovery obligation to the successor of the aid beneficiary — Interest in bringing proceedings — Action for damages and for the recovery of aid before the national courts — Locus standi — Appellant not individually concerned)

(2015/C 371/09)

Language of the case: French

Parties

Appellants: Mory SA, in liquidation, Mory Team, in liquidation, Superga Invest (represented by: B. Vatier and F. Loubières, avocats)

Other party to the proceedings: European Commission (represented by: T. Maxian Rusche and B. Stromsky, acting as Agents)

Operative part of the judgment

The Court:

1) *Sets aside the Order of the General Court of the European Union in Mory and Others v Commission (T-545/12, EU:T:2013:607);*

2) *Dismisses as inadmissible the action for annulment brought by Mory SA, Mory Team and Superga Invest against Decision C(2012) 2401 final of the Commission of 4 April 2012 concerning the takeover of assets of the Sernam group as part of its composition with creditors;*

3) *Orders Mory SA, Mory Team, Superga Invest and the European Commission to bear their own costs relating both to the proceedings at first instance and to the appeal.*

(1) OJ C 102, 7.4.2014.

Judgment of the Court (Grand Chamber) of 15 September 2015 (request for a preliminary ruling from the Bundessozialgericht — Germany) — Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others

(Case C-67/14) (1)

(Reference for a preliminary ruling — Freedom of movement for persons — Citizenship of the Union — Equal treatment — Directive 2004/38/EC — Article 24(2) — Social assistance — Regulation (EC) No 883/2004 — Articles 4 and 70 — Special non-contributory cash benefits — Member State nationals who are job-seekers and resident in a different Member State — Excluded — Retention of the status of 'worker')

(2015/C 371/10)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Applicant: Jobcenter Berlin Neukölln

Defendants: Nazifa Alimanovic, Sonita Alimanovic, Valentina Alimanovic, Valentino Alimanovic

Operative part of the judgment

Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC and Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Article 14(4)(b) of that directive are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute 'social assistance' within the meaning of Article 24(2) of Directive 2004/38, although those benefits are granted to nationals of the Member State concerned who are in the same situation.

([1]) OJ C 142, 12.5.2014.

Judgment of the Court (Third Chamber) of 17 September 2015 (request for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — KPN BV v Autoriteit Consument en Markt (ACM)

(Case C-85/14) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Universal service and users' rights — Directive 2002/22/EC — Article 28 — Access to numbers and to services — Non-geographic numbers — Directive 2002/19/EC — Articles 5, 8 and 13 — Powers of the national regulatory authorities — Price control — Call transit services — National legislation requiring providers of telephone call transit services not to charge higher tariffs for calls to non-geographic numbers than for calls to geographic numbers — Undertaking without significant market power — Relevant national authority)

(2015/C 371/11)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: KPN BV

Defendant: Autoriteit Consument en Markt (ACM)

Intervening parties: UPC Nederland BV, UPC Nederland Business BV, Tele2 Nederland BV, BT Nederland NV

Operative part of the judgment

1) *EU law must be interpreted as allowing a relevant national authority to impose a tariff obligation, such as that at issue in the main proceedings, under Article 28 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, to remove an obstacle to calling non-geographic numbers within the European Union which is not technical in nature, but which results from the tariffs applied, without a market analysis having been carried out showing that the undertaking concerned has significant market power, if such an obligation constitutes a necessary and proportionate step to ensure that end-users are able to access services using non-geographic numbers within the European Union.*

It is for the national court to determine whether that condition is satisfied and whether the tariff obligation is objective, transparent, proportionate, non-discriminatory, based on the nature of the problem identified and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, and whether the procedures laid down in Articles 6, 7 and 7a of Directive 2002/21, as amended by Directive 2009/140, have been followed.

2) *EU law must be interpreted as meaning that a Member State may provide that a tariff obligation under Article 28 of Directive 2002/22, as amended by Directive 2009/136, such as that at issue in the main proceedings, be imposed by a national authority other than the national regulatory authority usually responsible for applying the European Union's new regulatory framework for electronic communications networks and services, provided that that authority satisfies the conditions of competence, independence, impartiality and transparency required by Directive 2002/21, as amended by Directive 2009/140, and that the decisions which it takes can form the subject of an effective appeal to a body independent of the interested parties, this being a matter for the referring court to determine.*

([1]) OJ C 151, 19.5.2014.

Judgment of the Court (First Chamber) of 16 September 2015 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Société des Produits Nestlé SA v Cadbury UK Ltd

(Case C-215/14) ([1])

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 3(3) — Concept of 'distinctive character acquired through use' — Three-dimensional mark — Kit Kat four finger chocolate-coated wafer — Article 3(1)(e) — Sign which consists of both the shape which results from the nature of the goods themselves and the shape which is necessary to obtain a technical result — Manufacturing process included in the technical result)

(2015/C 371/12)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Société des Produits Nestlé SA

Defendant: Cadbury UK Ltd

Operative part of the judgment

1. *Article 3(1)(e) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as precluding registration as a trade mark of a sign consisting of the shape of goods where that shape contains three essential features, one of which results from the nature of the goods themselves and two of which are necessary to obtain a technical result, provided, however, that at least one of the grounds for refusal of registration set out in that provision is fully applicable to the shape at issue.*

2. *Article 3(1)(e)(ii) of Directive 2008/95, under which registration may be refused of signs consisting exclusively of the shape of goods which is necessary to obtain a technical result, must be interpreted as referring only to the manner in which the goods at issue function and it does not apply to the manner in which the goods are manufactured.*

3. *In order to obtain registration of a trade mark which has acquired a distinctive character following the use which has been made of it within the meaning of Article 3(3) of Directive 2008/95, regardless of whether that use is as part of another registered trade mark or in conjunction with such a mark, the trade mark applicant must prove that the relevant class of persons perceive the goods or services designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular company.*

(1) OJ C 235, 21.7.2014.

Judgment of the Court (Ninth Chamber) of 17 September 2015 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Corina van der Lans v Koninklijke Luchtvaart Maatschappij NV

(Case C-257/14) (1)

(Reference for a preliminary ruling — Air transport — Passengers' rights in the event of delay or cancellation of a flight — Regulation (EC) No 261/2004 — Article 5(3) — Denied boarding and cancellation — Long flight delay — Compensation and assistance to passengers — Extraordinary circumstances)

(2015/C 371/13)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Corina van der Lans

Defendant: Koninklijke Luchtvaart Maatschappij NV

Operative part of the judgment

Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of 'extraordinary circumstances' within the meaning of that provision.

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Seventh Chamber) of 17 September 2015 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Kyowa Hakko Europe GmbH v Hauptzollamt Hannover

(Case C-344/14) ([1])

(Reference for a preliminary ruling — Tariff and statistical nomenclature — Classification of goods — Amino acid mixes used for the preparation of foodstuffs for infants and young children allergic to cow's milk proteins — Classification under tariff headings 2106 'food preparations' or 3003 'medicinal products')

(2015/C 371/14)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Kyowa Hakko Europe GmbH

Defendant: Hauptzollamt Hannover

Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1214/2007 of 20 September 2007, must be interpreted as meaning that amino acid mixes, such as those at issue in the main proceedings, which are used in the preparation of foodstuffs for infants and young children who are allergic to cow's milk proteins, must be classified under heading 2106 of that nomenclature as 'food preparations' since, because of their objective characteristics and properties, those goods do not have clearly defined therapeutic or prophylactic characteristics, with an effect concentrated on precise functions of the human organism and, accordingly, are not capable of being applied in the prevention or treatment of diseases or ailments and also are not naturally intended for medical use, which it is for the national court to ascertain.

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Third Chamber) of 17 September 2015 — European Commission v Italian Republic

(Case C-367/14) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid granted to firms located in Venice and Chioggia — Reduction of social security contributions — Failure to recover aid within the prescribed period — Judgment of the Court establishing that a Member State has failed to fulfil its obligations — Non-compliance — Article 260(2) TFEU — Pecuniary penalties — Penalty payment — Lump sum)

(2015/C 371/15)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Conte, D. Grespan and B. Stromsky, acting as Agents)

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

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the measures necessary to ensure compliance with the judgment in Commission v Italy (C-302/09, EU:C:2011:634) before the expiry of the period prescribed in the letter of formal notice sent by the European Commission on 21 November 2012, the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;*

2. *Orders the Italian Republic to pay a penalty payment of EUR 12 million to the European Commission, into the 'European Union own resources' account, for every six months of delay in implementing the necessary measures to comply with the judgment in Commission v Italy (C-302/09, EU:C:2011:634), from the day on which judgment is delivered in the present case until the judgment in Commission v Italy has been complied with.*

3. *Orders the Italian Republic to pay a lump sum of EUR 30 million to the European Commission, into the 'European Union own resources' account.*

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

([1]) OJ C 395, 10.11.2014

Judgment of the Court (Eighth Chamber) of 17 September 2015 (request for a preliminary ruling from the Commissione Tributaria Regionale di Mestre-Venezia — Italy) — Fratelli De Pra SpA, SAIV SpA v Agenzia Entrate — Direzione Provinciale Ufficio Controlli Belluno, Agenzia Entrate — Direzione Provinciale Ufficio Controlli Vicenza

(Case C-416/14) ([1])

(Reference for a preliminary ruling — Telecommunications networks and services — Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC — Free circulation of terminal equipment for terrestrial mobile telecommunications — Directive 1999/5/EC — Tax on the use of equipment — General authorisation or licence for use — Subscription contract equivalent to a general authorisation or licence — Differential treatment of users depending on whether or not they have a subscription contract)

(2015/C 371/16)

Language of the case: Italian

Referring court

Commissione tributaria regionale di Mestre-Venezia

Parties to the main proceedings

Applicants: Fratelli De Pra SpA, SAIV SpA

Defendants: Agenzia Entrate — Direzione Provinciale Ufficio Controlli Belluno, Agenzia Entrate — Direzione Provinciale Ufficio Controlli Vicenza

Operative part of the judgment

1. *Directives:*

— *1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, in particular Article 8 thereof;*

— *2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);*

— *2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009;*

— *2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive); and*

— *2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009*

must be interpreted as not precluding national rules on the application of a charge such as the charge paid for a government licence under which the use of terminal equipment for terrestrial mobile radio communication under a subscription contract is subject to a general authorisation or a licence and to the payment of such a charge, provided that the subscription contract itself is equivalent to a licence or general authorisation and, accordingly, no intervention is required in that regard by the public administrative authorities.

2. *Article 20 of Directive 2002/22, as amended by Directive 2009/136, and Article 8 of Directive 1999/5 must be interpreted as not precluding, for the purposes of the application of a charge such as the charge paid for a government licence, a subscription contract for mobile telephony services from being equated with a general authorisation or a radio station licence, which must moreover include details of the type of equipment concerned and the corresponding certification.*

3. *In a case such as that in the main proceedings, EU law, as laid down in Directives 1999/5, 2002/19, 2002/20, as amended by Directive 2009/140, 2002/21 and 2002/22, as amended by Directive 2009/136, and in Article 20 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding differential treatment of users of terminal equipment for terrestrial mobile radio communication, depending on whether they conclude a subscription contract for mobile telephony services or purchase those services in the form of pay-as-you-go or top-up cards, under which only the former are subject to rules such as those establishing the charge paid for a government licence.*

(1) OJ C 431, 1.2.2014.

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 3 August 2015 — New Wave CZ a.s. v Alltoys spol. s r. o.

(Case C-427/15)

(2015/C 371/17)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: New Wave CZ a.s.

Defendant: Alltoys spol. s r. o.

Question referred

Must Article 8(1) of Directive 2004/48/EC ([1]) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights be interpreted as meaning that it is in the context of proceedings concerning an infringement of an intellectual property right if, after the definitive termination of proceedings in which it was declared that an intellectual property right was infringed, the applicant in separate proceedings seeks information on the origin and distribution networks of the goods or services by which that intellectual property right is infringed (for example, for the purpose of being able to quantify the damage precisely and subsequently seek compensation for it)?

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

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 7 August 2015 — Odvolací finanční ředitelství v Pavlína Baštová

(Case C-432/15)

(2015/C 371/18)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Appellant: Odvolací finanční ředitelství

Other party to the proceedings: Pavlína Baštová

Questions referred

1a. Is the supply of a horse by its owner (who is a taxable person) to the organiser of a race for the purpose of the horse's running in a race a supply of services for consideration within the meaning of Article 2(1)(c) of Directive 2006/112/EC ([1]) on the common system of value added tax and thus a transaction subject to VAT?

1b. If the answer is in the affirmative, must the prize money obtained in the race (which not every horse taking part in the race obtains, however), or the acquisition of the service consisting in the opportunity for the horse to run in the race which the organiser of the race provides to the owner of the horse, or some other consideration, be regarded as the consideration?

1c. If the answer is in the negative, is that circumstance in itself a ground for reducing the deduction of input VAT on the taxable supplies acquired and used for the preparation of the breeder/trainer's own horses for races, or must the running of a horse in a race be regarded as a component of the economic activity of a person who operates in the field of breeding and training his own and other owners' racehorses, and the expense of breeding his own horses and running them in races be included in the overheads associated with that person's economic activity? If the answer to that part question is in the affirmative, must prize money be included in the taxable amount and output VAT accounted for, or is this income which does not affect the taxable amount for VAT at all?

2a. If for VAT purposes it is necessary to regard several part services as a single transaction, what are the criteria for determining their mutual relationship, that is, for determining whether they are supplies of equal status with each other or supplies in the relationship of a principal and an ancillary service? Does any hierarchy exist between those criteria as regards their ranking and weight?

2b. Must Article 98 of Directive 2006/112/EC on the common system of value added tax in conjunction with Annex III to that directive be interpreted as precluding the classification of a service under the reduced rate if it is composed of two part supplies which must be regarded for VAT purposes as a single supply and those supplies are of equal status with each other, and one of them may not in itself be classified in any of the categories set out in Annex III to Directive 2006/112/EC on the common system of value added tax?

2c. If the answer to Question 2b is in the affirmative, does the combination of the part service of the right to use sports facilities and the part service of a trainer of racehorses, in circumstances such as those of the present proceedings, preclude the classification of that service as a whole under the reduced rate of VAT mentioned in point 14 of Annex III to Directive 2006/112/EC on the common system of value added tax?

2d. If the application of the reduced rate of tax is not excluded on the basis of the answer to Question 2c, what influence on the classification under the relevant rate of VAT does the fact have that the taxable person provides, in addition to the service of the use of sports facilities and the service of a trainer, also stabling, feeding and other care of a horse? Must all those part supplies be regarded for VAT purposes as a single whole sharing the same tax treatment?

(1) OJ L 347, 11.12.2006, p. 1.

Action brought on 10 September 2015 — European Commission v Federal Republic of Germany

(Case C-481/15)

(2015/C 371/19)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls and F. Wilman, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to ensure the regular monitoring of certain common basic standards on aviation security to the extent necessary and with the required frequency and to appoint a sufficient number of auditors to implement quality control measures, the Federal Republic of Germany has infringed its obligations under Article 11 of Regulation (EC) No 300/2008 ([1]) and paragraphs 4.1, 4.2, 7.5 and 14 of Annex II to that regulation;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The applicant relies on the following in support of its action:

Article 11 of Regulation (EC) No 300/2008 and paragraphs 4.1, 4.2, 7.5 and 14 of Annex II to that regulation require each Member State to ensure the regular monitoring of certain common basic standards on aviation security to the extent necessary and with the required frequency and to appoint a sufficient number of auditors to implement quality control measures.

Germany fails to comply with that requirement.

([1]) Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ 2008 L 97, p. 72), as amended by Commission Regulation No 18/2010 of 8 January 2010 (OJ 2010 L 7, p. 3).

Appeal brought on 21 September 2015 by the European Commission against the judgment of the General Court (Ninth Chamber) delivered on 15 July 2015 in Case T-314/13 Portugal v Commission

(Case C-495/15 P)

(2015/C 371/20)

Language of the case: Portuguese

Parties

Appellant: European Commission (represented by: D. Recchia and P. Guerra e Andrade, acting as Agents)

Other party to the proceedings: Portuguese Republic

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 15 July 2015, delivered in Case T-314/13;

— refer the case back to the General Court for further adjudication;

— order the Portuguese State to pay the costs of the present proceedings.

Pleas in law and main arguments

Pleas in law: — The Commission submits, primarily, that the General Court erred in law in holding that the Commission must adopt the decision on financial corrections in the framework of the Cohesion Fund within the time limit prescribed by the basic legislative provision from the date on which the Member State was heard.

In the alternative, the Commission submits that the General Court erred in law in holding that the time limit for the Commission to adopt the decision on financial corrections is mandatory, failure to comply with which constitutes a material infringement, thus invalidating a decision adopted out of time.

Main arguments — The Commission submits, primarily, that, in the present case, Article 100 of Regulation No 1083/2006 ([1]) did not apply, but that Article H(2) of Annex II to Regulation No 1164/94 ([2]) did apply. In the Commission's opinion, the General Court's interpretation of Article 108 of Regulation No 1083/2006 is wrong. Article 108 applies only to co-financed projects, approved in accordance with the new rules (period 2007 to 2013). In the present case, by virtue of Article 105 of Regulation No 1083/2006, the applicable provision was Article H(2) of Annex II to Regulation No 1164/94. In the Commission's opinion, Regulation No 1164/94 makes no provision for a time limit within which the Commission must take the decision on financial corrections.

In the alternative, the Commission submits that the EU legislature did not lay down any mandatory time limit within which the Commission must adopt decisions on financial corrections. The essential purpose of a decision on financial corrections concerns the protection of the European Union's financial interests. The legislation does not make provision for any penalty or any consequence in connection with the failure to observe the time limit. Thus, the time limit for taking a decision on financial corrections is sequential in nature.

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210 p. 25).

([2]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, 25.5., p. 1).

GENERAL COURT

Judgment of the General Court of 18 September 2015 — Deutsche Post AG v Commission

(Case T-421/07 RENV) ([1])

(State Aid — Postal delivery — Measures taken by the German authorities in favour of Deutsche Post AG — Decision to initiate the procedure laid down in Article 88(2) EC — Interest in bringing proceedings — Reopening of a closed procedure — Effects of a judgment anulling a measure)

(2015/C 371/21)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Seddemund and T. Lübbig, lawyers)

Defendant: European Commission (represented by: B. Martenczuk, T Maxian Rusche and R Sauer, acting as Agents)

Intervener in support of the defendant: UPS Europe NV/SA (Brussels, Belgium); and UPS Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: T. Ottervanger, lawyer)

Re:

Application for annulment of the Commission decision of 12 September 2007 to initiate the procedure laid down in Article 88(2) [EC] concerning State aid granted by the Federal Republic of Germany in favour of Deutsche post AG (State aid C 36/07(ex NN 25/07)).

Operative part of the judgment

The Court:

1. *Annuls the Commission decision of 12 September 2007 to initiate the procedure laid down in Article 88(2) EC concerning State aid granted by the Federal Republic Of Germany in favour of Deutsche Post AG (State aid C 36/07(ex NN 25/07)) in so far as it initiated the formal investigation procedure in respect of the public measures concerned, with the exception of the State guarantees granted in favour of Deutsche Bundespost Postdienst and Deutsche Post;*

2. *Orders the European Commission, in addition to bearing its own costs, to pay those incurred by Deutsche Post in respect of the action for annulment, including those incurred in the appeal proceedings before the Court of Justice;*

3. *Orders UPS Europe NV/SA and UPS Deutschland Inc. & Co. OHG to pay their own costs.*

([1]) OJ C 22, 26.1.2008

Judgment of the General Court of 23 September 2015 — ClientEarth and International Chemical Secretariat v ECHA

(Case T-245/11) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents held by ECHA — Documents deriving from a third party — Time-limit for response to an application for access — Refusal of access — Exception relating to protection of the commercial interests of a third party — Exception relating to protection of the decision-making process — Overriding public interest — Environmental information — Emissions into the environment)

(2015/C 371/22)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom) and The International Chemical Secretariat (Gothenburg, Sweden) (represented by: P. Kirch, lawyer)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, A. Iber and T. Zbihlej, acting as Agents, and by D. Abrahams, Barrister)

Interveners in support of the defendant: European Commission (represented initially by E. Manhaeve, P. Oliver and C. ten Dam, and subsequently by E. Manhaeve, P. Oliver and F. Clotuche-Duvieusart, and latterly by E. Manhaeve, F. Clotuche-Duvieusart and J. Tomkim, acting as Agents); and European Chemical Industry Council (Cefic) (Brussels, Belgium) (represented by: Y. van Gerven and M. Bronckers, lawyers)

Re:

Application for the annulment of the ECHA decision of 4 March 2011 refusing access to information supplied in the context of the procedure for registration of certain chemical substances.

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the action for annulment of the decision of the European Chemicals Agency (ECHA) of 4 March 2011, in so far as it refused to disclose information requested by point 1 of the request for information, to the extent that point 1 concerns the names and contact details of 6 611 companies which were accessible over the Internet on 23 April 2014;*

2. *Annuls the ECHA decision of 4 March 2011 in so far as it refused to disclose information requested by point 1 of the request for information, to the extent that point 1 concerns information not yet disclosed on 23 April 2014;*

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

4. *Orders each party, including the European Commission and the European Chemical Industry Council (Cefic), to bear its own costs.*

([1]) OJ C 194, 2.7.2011.

Judgment of the General Court of 18 September 2015 — Oil Pension Fund Investment Company v Council

(Case T-121/13) ([1])

(Common foreign and security policy — Restrictive measures adopted against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Manifest error of assessment — Proportionality — Right to hold property — Adjustment of the temporal effects of an annulment)

(2015/C 371/23)

Language of the case: German

Parties

Applicant: Oil Pension Fund Investment Company (Tehran, Iran) (represented by: K. Kleinschmidt, lawyer)

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

Re:

Application for annulment of Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71) and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55) in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran in so far as it listed Oil Pension Fund Investment Company in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP;*

2. *Annuls Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran in so far as it listed Oil Pension Fund Investment Company in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010;*

3. *Orders the effects of Decision 2012/829 and Implementing Regulation No 1264/2012 to be maintained as regards Oil Pension Fund Investment Company until the expiry of the period for bringing an appeal stated in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union or, if an appeal has been brought within that period, until the dismissal of that appeal;*

4. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Oil Pension Fund Investment Company.*

([1]) OJ C 129, 4.5.2013.

Judgment of the General Court of 22 September 2015 — First Islamic Investment Bank v Council

(Case T-161/13) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Error of assessment — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Proportionality)

(2015/C 371/24)

Language of the case: English

Parties

Applicant: First Islamic Investment Bank Ltd (Labuan, Malaysia) (represented by: B. Mettetal and C. Wucher-North, lawyers)

Defendant: Council of the European Union (represented by: Á. de Elera-San Miguel Hurtado and M. Bishop, acting as Agents)

Re:

Application, first, for partial annulment of Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71) and of Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55) and, second, for annulment of the Council's decision to maintain the restrictive measures concerning the applicant.

Operative part of the judgment

The Court:

1. *Annuls, in so far as they concern First Islamic Investment Bank Ltd:*

   — *Point I of the Annex to Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;*

   — *Point I of the Annex to Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran;*

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

3. *Orders First Islamic Investment Bank to bear one half of its own costs and to pay one half of the costs of the Council of the European Union, and the Council to bear one half of its own costs and to pay one half of the costs of First Islamic Investment Bank.*

([1]) OJ C 141, 18.5.2013.

Judgment of the General Court of 18 September 2015 — IOC-UK v Council

(Case T-428/13) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Right to be heard — Obligation to state reasons — Rights of the defence — Manifest error of assessment — Proportionality — Right to property — Equal treatment and non-discrimination)

(2015/C 371/25)

Language of the case: English

Parties

Applicant: Iranian Oil Company UK Ltd (IOC-UK) (London, United Kingdom) (represented by: J. Grayston, Solicitor, P. Gjørtler, G. Pandey, D. Rovetta, M. Gambardella, D. Sellers and N. Pilkington, lawyers)

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

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by S. Behzadi-Spencer and V. Kaye, and subsequently by V. Kaye, acting as Agents, and by M. Gray, Barrister)

Re:

Application for annulment, first, of Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 156, p. 10), and, secondly, of Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 156, p. 3).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Iranian Oil Company UK Ltd (IOC-UK) to bear its own costs and to pay those incurred by the Council of the European Union;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 313, 26.10.2013.

Judgment of the General Court of 18 September 2015 — Wahlström v Frontex

(Case T-653/13 P) ([1])

(Appeal — Civil service — Temporary staff — Reports procedure — Career development report — 2010 assessment period — Annual dialogue with the reporting officer — Setting objectives)

(2015/C 371/26)

Language of the case: French

Parties

Appellant: Kari Wahlström (Espoo, Finland) (represented by: S. Pappas, lawyer)

Other party to the proceedings: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (represented by: S. Vuorensola and H. Caniard, acting as Agents, and A. Duron and D. Waelbroeck, lawyers)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union of 9 October 2013 in *Wahlström* v *Frontex* (F-116/12, ECR-SC, EU:F:2013:143), and seeking that that judgment be set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 9 October 2013 in Wahlström v Frontex (F-116/12, ECR-SC, EU:F:2013:143) to the extent that the Civil Service Tribunal rejected the second and third parts of the second ground for annulment relied on at first instance and the claim for compensation;*

2. *Dismisses the appeal for the remainder;*

3. *Annuls the assessment report for the year 2010 of Mr Kari Wahlström;*

4. *Orders the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) to pay EUR 2 000 to Mr Wahlström by way of compensation;*

5. *Orders Frontex to bear the entirety of the costs both at first instance and of the proceedings before the Civil Service Tribunal.*

([1]) OJ C 52, 22.2.2014.

Judgment of the General Court of 18 September 2015 — Federación Nacional de Cafeteros de Colombia v OHIM — Accelerate (COLOMBIANO COFFEE HOUSE)

(Case T-359/14) ([1])

(Community trade mark — Invalidity proceedings — Community figurative mark COLOMBIANO COFFEE HOUSE — Earlier protected geographical indication Café de Colombia — Articles 13 and 14 of Regulation (EC) No 510/2006 — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009)

(2015/C 371/27)

Language of the case: English

Parties

Applicant: Federación Nacional de Cafeteros de Colombia (Bogota, Colombia) (represented by: A. Pomares Caballero and M. Pomares Caballero, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Accelerate s.a.l. (Beirut, Lebanon)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 27 March 2014 (Case R 1200/2013-5) relating to invalidity proceedings between the Federación Nacional de Cafeteros de Colombia and Accelerate s.a.l.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 27 March 2014 (Case R 1200/2013-5) in so far as it rejected the application for a declaration of invalidity;*

2. *Orders OHIM to bear its own costs and to pay those incurred by the Federación Nacional de Cafeteros de Colombia.*

([1]) OJ C 253, 4.8.2014.

Action brought on 20 August 2015 — KV/EACEA

(Case T-484/15)

(2015/C 371/28)

Language of the case: English

Parties

Applicant: KV (Athens, Greece) (represented by: S. Pappas, lawyer)

Defendant: Education, Audiovisual and Culture Executive Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision EACEA/MH/OG/OKRAPF15D013150 of the Head of Unit of the Education, Audiovisual and Culture Executive Agency on the financing of Agreement N° 519177-LLP-1-2011-1-GR-KA3-KA3NW with regard to the project 'Facilitating and fostering digital competence through volunteers' project';

— order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment

   — The contested decision is vitiated by a manifest error of assessment in distinguishing between 'usual' and 'additional' service provided by the applicants' partners/shareholders during the project in question, as the EACEA manifestly disregarded the nature of the services provided by the partners, the clear will of the applicant's general assembly to address and regulate such services as it considered them to constitute a distinct category that was not falling under the provisions of the Statutes, and the fact that the services provided by the partners in the project in question met all the requirements of the aforementioned decision of the general assembly.

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

— The contested decision is vitiated by a manifest error of assessment as regards the reasoning of the decision relating to the link of subordination between the partners/shareholders and the applicant, the existence of which was clearly established in the evidence submitted to the EACEA.

Appeal brought on 26 August 2015 by the European Commission against the judgment of the Civil Service Tribunal of 18 June 2015 in Case F-5/14, CX v Commission

(Case T-493/15 P)

(2015/C 371/29)

Language of the case: French

Parties

Appellant: European Commission (represented by J. Currall and C. Ehrbar, acting as Agents)

Other party to the proceedings: CX (Enghien, Belgium)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 18 June 2015 in Case F-5/14 *CX* v *Commission*;

— refer the case to the Civil Service Tribunal in order that it may rule on the other pleas in law;

— reserve the costs.

Pleas in law and main arguments

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

1. First plea in law, relating to medical opinions produced in the framework of disciplinary proceedings, alleging errors of law due to a failure to take account of (i) the rules on the burden of proof, (ii) Annex IX to the Staff Regulations of Officials of the European Union ('the regulations'), (iii) Article 59 of the regulations and (iv) the powers of the Civil Service Tribunal.

2. Second plea in law, relating to the concept of a body of consistent evidence, alleging a failure to take account of the scope of obligations regarding the collection of evidence and defects in reasoning.

3. Third plea in law, alleging an error of law in the interpretation of the duty to care, since the Civil Service Tribunal held that, on the basis of the evidence available to it when it adopted the contested decision, the Commission had acted in breach of its duty of care by failing, for the third hearing, to invite the applicant at first instance before it on the ground that, first, the facts subject to the proceedings were relatively old, secondly, that the official was on sick leave and that, third, his lawyer had refused, for a second time, the invitation.

4. Fourth plea in law, alleging an error of reasoning as regards the consequences of the infringement of the right to be heard and substantive factual inaccuracy, in so far as the Civil Service Tribunal relied upon substantively inaccurate facts in order to conclude that hearing the applicant at first instance could have had an effect on the contested decision.

Appeal brought on 28 August 2015 by CX against the judgment of the Civil Service Tribunal of 18 June 2015 in Case F-27/13, CX v Commission

(Case T-496/15 P)

(2015/C 371/30)

Language of the case: French

Parties

Appellant: CX (Enghien, Belgium) (represented by: É. Boigelot, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— declare its appeal to be admissible and well-founded;

— consequently, set aside the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 18 June 2015, served on the same day as delivery, in Case F-27/13; and

— give judgment itself and uphold the appellant's initial requests and, therefore, the form of order sought at first instance, excluding any new form of order;

— in any event, order the defendant to pay the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringements of the rights of the defence and a failure by the Civil Service Tribunal to take those rights into consideration, a lack of substance to the alleged facts, a refusal on the part of both the Commission and the Civil Service Tribunal to carry out assessments essential to the establishment of the truth, and manifest errors of assessment.

2. Second plea in law, alleging an infringement of Articles 4 and 6 of the Staff Regulations of Officials of the European Union ('the regulations') and of Article 9 of Annex IX to the regulations, in so far as the Civil Service Tribunal acknowledges that the competent appointing authority does not have the power to penalise the official concerned by directly determining his 'classification' in a particular grade, but it has solely the power to downgrade him, without however properly deducing the consequences thereof.

3. Third plea in law, alleging an infringement of the principle of proportionality and manifest errors of assessment.

Action brought on 29 August 2015 — Hellenic Republic v Commission

(Case T-506/15)

(2015/C 371/31)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: G. Kanellopoulos, E. Leftheriotou, O. Tsircinidou and A.-E. Vasilopoulou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested Commission Implementing Decision of 22 June 2015 'excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2015) 4076) ([1])', to the extent that there is excluded from European Union financing expenditure which was incurred in the area of decoupled direct aid in the 2009, 2010 and 2011 claim years and in the area of cross-compliance in the 2011 claim year, and by reason of the Commission's failure to repay to the Hellenic Republic the sum of EUR 10 460 620,42, on the basis of the judgment of the General Court of 6 November 2014 in Case T-632/11 *Greece* v *Commission*, in accordance with the facts as set out in the application and the pleadings set out in the pleas of law in support of annulment; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

In particular, with respect to the financial correction which is imposed within the framework of the decoupled direct aid scheme, the Hellenic Republic relies on four pleas in support of annulment.

1. The first plea in support of annulment is raised with respect to the 25 % flat-rate correction imposed for weaknesses in the definition and checking of permanent pastures for the 2009, 2010 and 2011 claim years, based on the misinterpretation and misapplication of the provisions of Article 2(2) of Regulation No 796/2004 ([2]) (and the successor Article 2(c) of Regulation No 1120/2009 ([3])).

2. The second plea in support of annulment is also raised with respect to the 25 % flat-rate correction imposed for weaknesses in the definition and checking of permanent pastures for the 2009, 2010 and 2011 claim years, based on the misinterpretation and misapplication of the guidelines, with respect to whether the preconditions for the imposition of a 25 % financial correction were met — failure to state reasons — the fact that the Commission exceed the limits of its discretion and a breach of the principle of proportionality.

3. The third plea in support of annulment is raised in connection with the imposition of a flat-rate 5 % correction for weaknesses in the Land Parcel Identification System (LPIS) in the first year of its application (2009), based on the misinterpretation and misapplication of the guidelines — the fact that the Commission exceed the limits of its discretion and a breach of the principle of proportionality.

4. The fourth plea in support of annulment is raised with respect to the imposition of flat-rate corrections for weaknesses in on-the-spot inspections and, specifically, with respect to the 2 % correction as regards the ineffectiveness of risk analysis for the 2010 claim year, based on the misinterpretation and misapplication of Article 31(2) of Regulation No 1122/2009 ([4]) and of Article 27 of Regulation No 796/2004 — breach of the principle of protection of legitimate expectations.

Further, with regard to the remaining contested heads of the Commission's Implementing Decision the following two pleas in law in support of annulment are relied on:

5. The fifth plea in support of annulment relates to the financial correction at a flat-rate 2 % which is imposed in the context of the cross-compliance scheme for the 2011 claim year, based on the misinterpretation and misapplication of Article 11 of Regulation No 885/2006 ([5]) and of Article 31 of Regulation No 1290/2005 ([6]) — insufficient statement of reasons — errors as to the facts, with respect to the 2 % flat-rate correction for the 2011 claim year.

6. The sixth plea in support of annulment concerns the amount which is to be reimbursed to the Hellenic Republic in implementation of the judgment of the General Court of 6 November 2014 in Case T-632/11, based on infringement of Articles 266 and 280 TFEU in relation to the Commission's duty to take measures to ensure that the judgment of the General Court is complied with, and no reasons are stated for the failure to reimburse the sum of EUR 10 460 620,42 to the Hellenic Republic, following the judgment of the General Court in Case T-632/11.

([1]) OJ 2015 L 182, p. 39.
([2]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).
([3]) Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (OJ 2009 L 316, p. 1).
([4]) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65).
([5]) Commision Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90).
([6]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 2 September 2015 — Republic of Lithuania v European Commission

(Case T-508/15)

(2015/C 371/32)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, R. Krasuckaitė, M. Palionis and A. Petrauskaitė, Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul European Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it is addressed to the Republic of Lithuania and relates to the Scheme for early retirement from agricultural commodities production (budget item: 6711);

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging infringement of EU law:

By adopting the contested decision, the Commission infringed Article 52(2) of Regulation (EU) No 1306/2013 ([1]) in conjunction with the principle of proportionality, because:

(1) Without taking into account the nature of the infringement and the financial damage caused to the European Union, the Commission applied a flat-rate correction, although the information presented following the *ex-post* verification of all applications, carried out by Lithuania in an appropriate and reasonable manner, made it possible to determine with precision the financial damage actually caused to the European Union. The Government of the Republic of Lithuania asserts that the *ex-post* verifications carried out by the Lithuanian authorities are an appropriate means of determining the actual damage to the funds, because:

— the criteria chosen for the verifications are consistent with the concept of agricultural commodities production;

— the Commission wrongly linked the concept of agricultural commodities production with the concept of semi-subsistence farms;

— the Commission failed to take into account the objectives of the Republic of Lithuania and the measures which were set out clearly in the rural development programme documents.

(2) In any event, the Commission misapplied the excessive 5 % financial correction, since the application of that correction is provided for solely when the risk of loss to the EU budget is significant, whereas the verifications carried out and the information presented by the Republic of Lithuania proved that only a small financial risk to the EU budget could have arisen.

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

Action brought on 1 september 2015 — Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych/Commission

(Case T-514/15)

(2015/C 371/33)

Language of the case: English

Parties

Applicant: Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych (Warsaw, Poland) (represented by: P. Hoffman, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 12 June 2015, GESTDEM 2015/1291, refusing the applicant access to the detailed opinion issued by the European Commission in the framework of the notification procedure 2014/537/PL,

— annul the decision of the Commission of 17 July 2015, GESTDEM 2015/1291, refusing the applicant access to the detailed opinion issued by the Republic of Malta in the framework of the notification procedure 2014/537/PL,

— order the Commission to bear its own costs and to pay the costs of the applicant.

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 infringement of the third indent of Art. 4(2) of regulation (EC) no 1049/2001 ([1]) by refusing access to the detailed opinion of the Commission

   — The third indent of Art. 4(2) of regulation 1049/2001 cannot reasonably be construed as meaning that a document in the Commission's possession cannot be disclosed if this could undermine the purpose of any inspection, investigation or audit, even if the document was not drafted in the framework, or for the purposes, of such an inspection, investigation or audit.

   — No general presumption that disclosing a document would undermine the protection of the purpose of infringement proceedings can be applicable to a document produced in the framework of a notification procedure, given that no such general presumption exists with respect to such a procedure.

   — The Commission's claim that its opinion concerns a measure intended to remedy an infringement of EU law and that it includes references to the Commission's letter of formal notice initiating infringement proceedings and an appraisal of the notified measure in light of those proceedings, does not demonstrate the existence of any general presumption that the detailed opinion should not be disclosed.

   — The Commission's position is inconsistent insofar as it bases its decision on a general presumption, but at the same time relies on the specifics of 'this particular case'.

2. Second plea in law, alleging infringement of Art. 4(6) of regulation 1049/2001 and of Art. 296 TFEU by refusing partial access to the Commission's detailed opinion

— In any case, the Commission should have disclosed its detailed opinion in part, i.e. after having removed any references to the letter of formal notice concerning the infringement proceedings.

3. Third plea in law, alleging infringement of Art. 4(2) of regulation 1049/2001 by refusing access to the Commission's detailed opinion even though an overriding public interest in disclosure exists

— Given that the detailed opinion concerned a measure that was already being processed in Parliament and that it led to that measure being amended, its disclosure is necessary in order for members of Parliament to understand the reason why they are asked by the government to amend the bill presented to them. Therefore an overriding public interest in disclosure exists. The democratic process cannot function correctly if the Parliament is asked to implement the Commission's opinions, when these are not disclosed.

— Since the legality of the notification process and, therefore, the enforceability of the adopted bill may depend on the text of the Commission's opinion, an overriding public interest in its disclosure exists based on the right to legal certainty.

4. Fourth plea in law, alleging infringement of recital 3 and Art. 8(4) of directive 98/34/EC ([2]) by refusing access to the Commission's detailed opinion

— The refusal to disclose the detailed opinion is incompatible with the nature of directive 98/34, which is based on transparency; this is especially true where the Member State concerned did not invoke the confidentiality clause under Art. 8(4) of the directive.

5. Fifth plea in law, alleging infringement of the third indent of Art. 4(2), of Art. 4(5) and of Art. 4(6) of regulation 1049/2001 by refusing access to Malta's detailed opinion

— The refusal to grant access to the opinion may not be based on the mere fact that the Commission intends to take Malta's detailed opinion into account when taking a decision as to ongoing infringement proceedings, or that it has placed that opinion in the file of those proceedings.

6. Sixth plea in law, alleging infringement of Art. 296 TFEU by refusing access to Malta's detailed opinion.

— The Commission originally refused to rule on the disclosure of Malta's opinion on grounds that could only be interpreted as meaning that the decision will depend on whether the Commission accepts the judgment of the General Court in case T-402/12, Carl Schlyter v Commission, under which detailed opinions are subject to disclosure, or rejects and, consequently, appeals it. However, the Commission did not appeal that judgment and refused disclosure on grounds that have nothing to do with it which the Commission itself must have considered insufficient, because otherwise it should have issued a negative decision even before the appeal period in case T-402/12 expired.

([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)

([2]) 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)

Action brought on 1 September 2015 — Almaz-Antey/Council

(Case T-515/15)

(2015/C 371/34)

Language of the case: English

Parties

Applicant: OAO Concern PVO Almaz-Antey (Moscow, Russia) (represented by: C. Stumpf and A. Haak, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2015/971 of 22 June 2015 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2015 L 157, p. 50), insofar as the contested decision applies to the applicant, and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council's decision infringes the principle of proportionality.

2. Second plea in law, alleging that the Council infringed, without justification or proportion, the applicant's fundamental rights, namely the respect of the rights of the defence and the right to effective judicial protection.

3. Third plea in law, alleging that the Council failed to give adequate or sufficient reasons for including the applicant in the list of persons, entities and bodies subject to restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

4. Fourth plea in law, alleging that the Council failed to establish evidence that the applicant is involved in the destabilisation of Ukraine or has any influence regarding the successful implementation of the Minsk Agreements.

5. Fifth plea in law, alleging that the Council has manifestly erred in considering that any of the criteria for listing in the contested measure were fulfilled in the applicant's case.

6. Sixth plea in law, alleging that in consequence of the annulment of Council Decision 2015/971/CFSP, Council Regulation (EU) No 833/2014 lacks a sufficient legal basis which means that the listing of the applicant in Council Regulation (EU) No 833/2014 by virtue of Council Implementing Regulation (EU) No 826/2014 will no longer have any effect.

Action brought on 7 September 2015 — NICO/Council

(Case T-524/15)

(2015/C 371/35)

Language of the case: English

Parties

Applicant: Naftiran Intertrade Co. (NICO) Sàrl (Pully, Suisse) (represented by: J. Grayston, P. Gjørtler, G. Pandey, and D. Rovetta, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— order the Council, under measures of organization of the procedure, to disclose the full version of Annex 1 to document 7228/14 EXT 1 of 23 January 2015 concerning 'I/A ITEM NOTE' from the General Secretariat of the Council to the Permanent Representative Committee as well as any other document concerning the applicant,

— annul the decision of the Council contained in the letter of 26 June 2015, addressed to the applicant's lawyers, concerning review of the list of designated persons and entities in Annex II to Council Decision 2010/413/CFSP ([1]) concerning restrictive measures against Iran, as amended by Council Decision 2012/635/CFSP of 15 October 2012, and in Annex IX to Regulation (EU) No 267/2012 ([2]) concerning restrictive measures against Iran, as implemented by Council Implementing Regulation (EU) No 945/2012 of 15 October 2012, in so far as the contested decision constitutes a refusal to remove the applicant from the list of persons and entities made subject to the restrictive measures,

— order the Council to bear the costs of the proceedings

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of the rights of defence and right to be heard, a breach of Article 41 of the Charter of Fundamental Rights, and a breach of the principle of sound administration

   — The applicant during the review procedure has only just been informed that a negative decision against it has already been adopted by the Council. It has not been given any possibility to comment and rely on its rights of defence. Instead, it has only been given a deadline by which to send comments which, far from being taken into account before deciding, the Council will only examine in a separate, future administrative review delisting process.

2. Second plea in law, alleging an insufficient statement of reasons

   — The review decision does not contain a proper statement of reasons which would allow the applicant to understand why its administrative application for delisting has been refused.

3. Third plea in law, alleging a manifest error of assessment and a breach of essential procedural and substantive requirements

— The Council clearly relied upon documents and evidence related to previous phases of the administrative proceedings in order to justify the challenged decision.

4. Fourth plea in law, alleging a breach of essential procedural and substantive requirements, a breach of article 41 of the Charter of Fundamental Rights, and a lack of competence of the person signing the challenged decision.

— The challenged Council letter of 26 June 2015 containing the decision not to delist it is formally defective. Such defects in the form of the act at issue also give rise to substantive breaches of the applicant's rights.

([1]) Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

([2]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1).

Action brought on 07 September 2015 — Petro Suisse Intertrade/Council

(Case T-525/15)

(2015/C 371/36)

Language of the case: English

Parties

Applicant: Petro Suisse Intertrade Co. SA (Pully, Suisse) (represented by: J. Grayston, P. Gjørtler, G. Pandey, and D. Rovetta, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2015/1008 of 25 June 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2015 L 161, p. 19) and Council Implementing Regulation (EU) 2015/1001 of 25 June 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 161, p. 1), insofar as these acts include the applicant in the category of persons and entities made subject to the restrictive measures,

— annul the Council Decision contained in the letter of 26 June 2015, addressed to the lawyers of the applicant, concerning review of the list of designated persons and entities in Annex II to Decision 2010/413/CFSP and Annex IX to Regulation (EU) No 267/2012, in so far as this decision constitutes a refusal to remove the applicant from the list of persons and entities made subject to the restrictive measures,

— order the Council to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an insufficient statement of reasons

   — The decision of 26 June 2015 (the 'contested review decision') also served as the letter of notification for the Council Decision (CFSP) 2015/1008 and the Council Implementing Regulation (EU) 2015/1001 (the 'contested acts'), but no statement of reasons is given in the letter for the adoption of the contested acts.

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

   — Although owned by NIOC, the applicant constitutes a separate legal entity that is established in Switzerland and operates legitimately as a local service company with a very limited turnover.

3. Third plea in law, alleging a violation of the rights of defence

   — By allowing a single unidentified Member State in effect to direct the Council to take a decision without examination of any relevant documents or evidence in support, the Council has unilaterally introduced a new decision making procedure that has no legal basis in Article 215 TFEU or elsewhere in the Treaties. This way of proceeding disrupts the balance between the investigating and decision making powers of the Council and the right of judicial protection of the applicant.

4. Fourth plea in law, alleging a breach of fundamental right to property

   — The Council has not in any substantial manner provided reasons for the restrictions imposed on the applicant. The listing of the applicant, a Swiss company with limited activities as a local service company, cannot in any way contribute to the maintenance of international peace and security, and the Council can provide no evidence to the contrary.

Action brought on 07 September 2015 — HK Intertrade/Council

(Case T-526/15)

(2015/C 371/37)

Language of the case: English

Parties

Applicant: HK Intertrade Co. Ltd (Wanchai, Hong-Kong) (represented by: J. Grayston, P. Gjørtler, G. Pandey, and D. Rovetta, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2015/1008 of 25 June 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2015 L 161, p. 19) and Council Implementing Regulation (EU) 2015/1001 of 25 June 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 161, p. 1), insofar as these acts include the applicant in the category of persons and entities made subject to the restrictive measures,

— annul the Council Decision contained in the letter of 26 June 2015, addressed to the lawyers of the applicant, concerning review of the list of designated persons and entities in Annex II to Decision 2010/413/CFSP and Annex IX to Regulation (EU) No 267/2012, in so far as this decision constitutes a refusal to remove the applicant from the list of persons and entities made subject to the restrictive measures,

— order the Council to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an insufficient statement of reasons

— The decision of 26 June 2015 (the 'contested review decision') also served as the letter of notification for the Council Decision (CFSP) 2015/1008 and the Council Implementing Regulation (EU) 2015/1001 (the 'contested acts'), but no statement of reasons is given in the letter for the adoption of the contested acts. Besides, the statement of reasons provided by the Council does not meet the standard defined by the case-law.

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

— Although owned by NIOC, the applicant constitutes a separate legal entity that is established in Hong Kong and is active in the separate market of Asia that is far removed from any alleged control exercised by NIOC over the activities of the applicant.

3. Third plea in law, alleging a violation of the rights of defence

— By allowing a single unidentified Member State in effect to direct the Council to take a decision without examination of any relevant documents or evidence in support, the Council has unilaterally introduced a new decision making procedure that has no legal basis in Article 215 TFEU or elsewhere in the Treaties. This way of proceeding disrupts the balance between the investigating and decision making powers of the Council and the right of judicial protection of the applicant.

4. Fourth plea in law, alleging a breach of fundamental right to property

— The Council has not in any substantial manner provided reasons for the restrictions imposed on the applicant. The listing of the applicant, a Hong Kong based company active in the Asian market, cannot in any way contribute to the maintenance of international peace and security, and the Council can provide no evidence to the contrary.

Action brought on 8 September 2015 — Intesa Sanpaolo v OHIM (START UP INITIATIVE)

(Case T-529/15)

(2015/C 371/38)

Language of the case: Italian

Parties

Applicant: Intesa Sanpaolo SpA (Turin (TO), Italy) (represented by: P. Pozzi and F. Braga, lawyers)

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

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word elements 'START UP INITIATIVE' — Application for registration No 13 011 838

Contested decision: Decision of the First Board of Appeal of OHIM of 29 June 2015 in Case R 2777/2014-1

Form of order sought

The applicant claims that the Court should:

— declare that there was a breach and incorrect application of Article 7(1)(b) and (2) of Regulation No 207/2009;

— declare that there was a breach of Article 75 of Regulation No 207/2009;

— annul the contested decision;

— order OHIM to pay the costs and fees incurred for the present proceedings.

Pleas in law

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

— Infringement of Article 75 of Regulation No 207/2009.

Action brought on 16 September 2015 — LG Electronics v OHIM — Cyrus Wellness Consulting (Viewty GT)

(Case T-534/15)

(2015/C 371/39)

Language in which the application was lodged: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cyrus Wellness Consulting GmbH (Berlin, Germany)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'Viewty GT' — Community trade mark application No 9 017 237

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 12 June 2015 in Joined Cases R 1937/2014-2 and R 1564/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 15 September 2015 — CBM v OHIM — ÏD Group (Fashion ID)

(Case T-535/15)

(2015/C 371/40)

Language in which the application was lodged: English

Parties

Applicant: CBM Creative Brands Marken GmbH (Zürich, Switzerland) (represented by: U. Lüken, J. Bärenfänger, lawyers)

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

Other party to the proceedings before the Board of Appeal: ÏD Group (Roubaix, France)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'Fashion ID' — Application for registration No 10 638 658

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 14 July 2015 in Case R 2470/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision as far as it upheld the decision of the Opposition Division to reject the CTM No 10 638 658 with regard to the opposed goods and services in Classes 9, 14, 18, 25 and 35;

— annul the corresponding decision of the Opposition Division of OHIM of 28 July 2014 (Case B 2 038 399) as far as the Opposition Division upheld the opposition to reject the CTM No 10 638 658;

— dismiss the Opposition dated 26 June 2012 against the CTM No 10 638 658 in its entirety;

— order OHIM to pay the costs.

Plea(s) in law

— The Opposition Division and the Board of Appeal failed to regard the long-standing case law of the General Court and of the Court of Justice according to which the overall impression of signs has to be compared, focusing on the contested CTM as a whole, instead of a comparison of single elements.

Action brought on 15 September 2015 — CBM v OHIM — ÏD Group (Fashion ID)

(Case T-536/15)

(2015/C 371/41)

Language in which the application was lodged: English

Parties

Applicant: CBM Creative Brands Marken GmbH (Zürich, Switzerland) (represented by: U. Lüken, J. Bärenfänger, lawyers)

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

Other party to the proceedings before the Board of Appeal: ÏD Group (Roubaix, France)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'Fashion ID' — Application for registration No 11 589 082

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 14 July 2015 in Case R 2472/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision as far as it upheld the decision of the Opposition Division to reject the CTM No 11 589 082 with regard to the opposed goods and services in Classes 16 and 41;

— annul the corresponding decision of the Opposition Division of OHIM of 28 July 2014 (Case B 2 197 401) as far as the Opposition Division upheld the opposition to reject the CTM No 11 589 082;

— dismiss the Opposition dated 7 June 2012 against the CTM No 11 589 082 in its entirety;

— order OHIM to pay the costs.

Plea(s) in law

— The Opposition Division and the Board of Appeal failed to regard the long-standing case law of the General Court and of the Court of Justice according to which the overall impression of signs has to be compared, focusing on the contested CTM as a whole, instead of a comparison of single elements.

Action brought on 14 September 2015 — Deutsche Post v OHIM — Verbis Alfa (InPost)

(Case T-537/15)

(2015/C 371/42)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: M. Viefhues and T. Heitmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Verbis Alfa sp. z o.o. (Krakow, Poland), EasyPack sp. z o.o. (Krakow, Poland)

Details of the proceedings before OHIM

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

Trade mark at issue: Community figurative mark containing the word element 'InPost' — Registration No 11 049 558

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 26 June 2015 in Case R 546/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, insofar as it dismissed the applicant's appeal in respect of identical services;

— order OHIM to pay the costs.

Pleas in law

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

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

Action brought on 17 September 2015 — Regent University v OHIM — Regent's College (REGENT UNIVERSITY)

(Case T-538/15)

(2015/C 371/43)

Language in which the application was lodged: English

Parties

Applicant: Regent University (Virginia Beach, United States) (represented by: D. Wilkinson, Solicitor and E. Himsworth, Barrister)

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

Other party to the proceedings before the Board of Appeal: Regent's College (London, United Kingdom)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'REGENT UNIVERSITY' — Community trade mark registration No 4 711 594

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of OHIM of 6 July 2015 in Case R 1859/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— remit the matter for further consideration by the Board;

— order the defendant to pay the costs of the proceedings, including the costs incurred by the applicant before the Board;

— order the cancellation applicant to pay the costs of the proceedings, including the costs incurred by the applicant before the Board, in the event that the cancellation applicant becomes an intervening party in these proceedings.

Plea in law

— Infringements of Article 53(1) in conjunction with Article 8(1)(b) of Regulation No 207/2009.

Action brought on 22 September 2015 — Pi-Design v OHIM — Nestlé (PRESSO)

(Case T-545/15)

(2015/C 371/44)

Language in which the application was lodged: German

Parties

Applicant: Pi-Design AG (Triengen, Switzerland) (represented by: M. Apelt, lawyer)

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

Other party to the proceedings before the Board of Appeal: Société des produits Nestlé SA (Vevey, Switzerland)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the mark 'PRESSO' — International registration designating the European Union No 1 093 132

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 2 July 2015 in Case R 428/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs of the proceedings.

Pleas in law

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

Appeal brought on 16 September 2015 by Fernando De Esteban Alonso against the order of the Civil Service Tribunal of 15 July 2015 in Case F-35/15, De Esteban Alonso v Commission

(Case T-557/15 P)

(2015/C 371/45)

Language of the case: French

Parties

Appellant: Fernando De Esteban Alonso (Saint-Martin-de-Seignanx, France) (represented by: C. Huglo, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside order F-35/15 of 15 July 2015, by which the President of the European Union Civil Service Tribunal dismissed his application;

— set aside the decision of the Appointing Authority of 21 November 2014, received on 3 December 2014, rejecting Complaint No R/865/14 brought by the appellant on 5 August 2014;

— order the European Commission to pay the sum of EUR 17 242,51, adjusted to the sum of EUR 24 242,51 on the date of the appeal;

— order the European Commission to pay the sum of EUR 3 000 in respect of the non-recoverable costs, to be adjusted if necessary, and to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a denial of justice, in that the Civil Service Tribunal ('the CST') gave its decision by means of an order, without permitting a fresh exchange of pleadings or a public hearing.

2. Second plea in law, alleging an infringement of the principle of *audi alteram partem* and of the rights of defence, in that the CST gave its decision by means of an order, without permitting a fresh exchange of pleadings or a public hearing.

3. Third plea in law, alleging an error of law, in that the CST added a new condition to the conditions laid down for institutional assistance by Article 24 of the Staff Regulations of Officials of the European Union.

Action brought on 24 September 2015 — Paglieri Sell System v OHIM (APOTEKE)

(Case T-563/15)

(2015/C 371/46)

Language of the case: Italian

Parties

Applicant: Paglieri Sell System SpA (Pozzolo Formigaro, Italy) (represented by: P. Pozzi and F. Braga, lawyers)

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

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word element 'APOTEKE' — Application for registration No 13 014 691

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 23 July 2015 in Case R 2428/2014-5

Form of order sought

The applicant claims that the Court should:

— declare that there was a breach and incorrect application of Article 7(1)(b) and (c) and (2) of Regulation No 207/2009;

— declare that there was a breach of Article 75 of Regulation No 207/2009;

— annul the contested decision;

— order OHIM to pay the costs and fees incurred for the present proceedings.

Pleas in law

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

— Infringement of Article 7(2) of Regulation No 207/2009;

— Infringement of Article 75 of Regulation No 207/2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (First Chamber) of 30 September 2015 — Schönberger v Court of Auditors

(Case F-14/12 RENV)

(Civil Service — Officials — Referral back to the Tribunal after setting aside — Promotion — 2011 promotion year — Refusal of promotion — Action in part manifestly inadmissible and in part manifestly unfounded)

(2015/C 371/47)

Language of the case: German

Parties

Applicant: Peter Schönberger (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: European Court of Auditors (represented by: B. Schäfer and Í. Ní Riagáin Düro, acting as Agents)

Re:

Application for annulment of the defendant's decision not to promote the applicant to grade AD 13 in the 2011 promotion year.

Operative part of the order

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly unfounded.*

2. *In Cases F-14/12 and F-14/12 RENV, Mr Schönberger shall bear his own costs and pay the costs incurred by the European Court of Auditors.*

3. *In Case T-26/14 P, the European Court of Auditors shall bear its own costs and pay the costs incurred by Mr Schönberger.*

Order of the Civil Service Tribunal (Second Chamber) of 28 September 2015 — Kriscak v Europol

(Case F-73/14) ([1])

(Civil Service — Europol staff — Europol Convention — Staff Regulations of Europol — Annex 1 to the Staff Regulations of Europol — List of the posts given in bold characters which may be occupied only by a person recruited from a competent authority within the meaning of Article 2(4) of the Europol Convention — Restricted posts — Europol Decision — Posts which may be occupied only by a person recruited from a competent authority within the meaning of Article 3 of the Europol Decision — Application of the CEOS to Europol staff — Non-renewal of a fixed-term temporary contract — Refusal to grant a temporary contract of undetermined duration — Action for annulment — Action for compensation)

(2015/C 371/48)

Language of the case: French

Parties

Applicant: Christiana Kriscak (The Hague, Netherlands) (represented by: M. Velardo, lawyer)

Defendant: European Police Office (Europol) (represented by: D. Neumann, J. Arnould and C. Falmagne, acting as Agents)

Re:

Application for annulment of the decision not to renew the applicant's contract and for compensation for the material and non-material harm allegedly suffered.

Operative part of the order

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

2. *The European Police Office shall bear its own costs and shall pay one third of the costs incurred by Ms Kriscak.*

3. *Ms Kriscak shall bear two thirds of her own costs.*

([1]) OJ C 380, 27.10.2014, p. 27.

Order of the Civil Service Tribunal (First Chamber) of 30 September 2015 — Nunes v Court of Auditors

(Case F-54/15)

(Civil Service — Contract staff — Dispute concerning the terms of employment — Claim out of time — Failure to comply with the pre-litigation procedure — Manifest inadmissibility)

(2015/C 371/49)

Language of the case: French

Parties

Applicant: Carlos Nunes (Luxembourg, Luxembourg) (represented by: M. Petit, lawyer)

Defendant: European Court of Auditors

Re:

Application for annulment of the decision adopted by the European Court of Auditors in April 2009 to amend the applicant's employment status and remuneration and application retroactively to adjust his remuneration from April 2009.

Operative part of the order

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

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

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