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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 21 January 2016 — Galp Energía España SA, Petróleos de Portugal (Petrogal) SA, Galp Energía SGPS SA v European Commission

(Case C-603/13 P) ([1])

(Appeal — Article 81 EC — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Market sharing and price coordination — Excessive length of the proceedings before the General Court — Article 261 TFEU — Regulation (EC) No 1/2003 — Article 31 — Unlimited jurisdiction — Article 264 TFEU — Annulment, in whole or in part, of the Commission's decision)

(2016/C 098/02)

Language of the case: English

Parties

Appellants: Galp Energía España SA, Petróleos de Portugal (Petrogal) SA, Galp Energía SGPS SA (represented by: M. Slotboom, advocaat, and G. Gentil Anastácio, advogado)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents, and by J. Rivas Andrés, avocat, and G. Eclair-Heath, Solicitor)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 16 September 2013 in Galp Energía España and Others v Commission (T-462/07, EU:T:2013:459) in so far as it fixes, in paragraph 3 of its operative part, the new amount of the fines imposed on GALP Energía España SA, Petróleos de Portugal SA and GALP Energía SGPS SA by taking account of the finding, made incorrectly by the General Court in the exercise of its unlimited jurisdiction in the grounds of that judgment, that GALP Energía España SA, Petróleos de Portugal SA and GALP Energía SGPS SA were aware of the participation of the other members of the cartel in the compensation mechanism and that they could also foresee the participation of those other members in the monitoring system, and, therefore, that the appellants could be held liable in that regard;*

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

3. *Fixes the amount of the fine imposed jointly and severally on GALP Energía España SA and Petróleos de Portugal SA in Article 2 of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/38.710 — Bitumen (Spain) at EUR 7,7 million, of which GALP Energía SGPS SA is held jointly and severally liable for EUR 5,72 million;*

4. *Orders GALP Energía España SA, Petróleos de Portugal SA and GALP Energía SGPS SA to bear two thirds of the costs of the European Commission and to pay two thirds of their own costs incurred in the context of the appeal, and to bear their own costs relating to the proceedings at first instance;*

5. *Orders the European Commission to bear one third of its own costs and to pay one third of those of GALP Energía España SA, Petróleos de Portugal SA and GALP Energía SGPS SA connected with the appeal proceedings, and to bear its own costs relating to the proceedings at first instance.*

(1) OJ C 24, 25.1.2014.

Judgment of the Court (Fifth Chamber) of 21 January 2016 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — 'Eturas' UAB and Others v Lietuvos Respublikos konkurencijos taryba

(Case C-74/14) (1)

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Concerted practice — Travel agencies using a common computerised booking system — Automatic restriction of the discount rates available for online bookings — System administrator's message in relation to that restriction — Tacit agreement capable of being characterised as a concerted practice — Constituent elements of an agreement and of a concerted practice — Assessment of evidence and standard of proof — Procedural autonomy of the Member States — Principle of effectiveness — Presumption of innocence)

(2016/C 098/03)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicants: 'Eturas' UAB, 'AAA Wrislit' UAB, 'Baltic Clipper' UAB, 'Baltic Tours Vilnius' UAB, 'Daigera' UAB, 'Ferona' UAB, 'Freshtravel' UAB, 'Guliverio kelionės' UAB, 'Kelionių akademija' UAB, 'Kelionių gurmanai' UAB, 'Kelionių laikas' UAB, 'Litamicus' UAB, 'Megaturas' UAB, 'Neoturas' UAB, 'TopTravel' UAB, 'Travelonline Baltics' UAB, 'Vestekspress' UAB, 'Visveta' UAB, 'Zigzag Travel' UAB, 'ZIP Travel' UAB

Defendant: Lietuvos Respublikos konkurencijos taryba

Intervening parties: 'Aviaeuropa' UAB, 'Grand Voyage' UAB, 'Kalnų upė' UAB, 'Keliautojų klubas' UAB, 'Smaragdas travel' UAB, '700LT' UAB, 'Aljus ir Ko' UAB, 'Gustus vitae' UAB, 'Tropikai' UAB, 'Vipauta' UAB, 'Vistus' UAB

Operative part of the judgment

Article 101(1) TFEU must be interpreted as meaning that, where the administrator of an information system, intended to enable travel agencies to sell travel packages on their websites using a uniform booking method, sends to those economic operators, via a personal electronic mailbox, a message informing them that the discounts on products sold through that system will henceforth be capped and, following the dissemination of that message, the system in question undergoes the technical modifications necessary to implement that measure, those economic operators may — if they were aware of that message — be presumed to have participated in a concerted practice within the meaning of that provision, unless they publicly distanced themselves from that practice, reported it to the administrative authorities or adduce other evidence to rebut that presumption, such as evidence of the systematic application of a discount exceeding the cap in question.

It is for the referring court to examine — on the basis of the national rules governing the assessment of evidence and the standard of proof — whether, in view of all the circumstances before it, the dispatch of a message, such as that at issue in the main proceedings, may constitute sufficient evidence to establish that the addressees of that message were aware of its content. The presumption of innocence precludes the referring court from considering that the mere dispatch of that message constitutes sufficient evidence to establish that its addressees ought to have been aware of its content.

(1) OJ C 142, 12.5.2014.

Judgment of the Court (Third Chamber) of 14 January 2016 — European Commission v Republic of Bulgaria

(Case C-141/14) (1)

(Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Kaliakra and Belite Skali special protection areas — Directive 92/43/EEC — Conservation of natural habitats and wild species — Kompleks Kaliakra site of Community importance — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Temporal applicability of the system of protection — Deterioration of natural habitats of species and disturbance of species — Wind power — Tourism)

(2016/C 098/04)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: E. White, C. Hermes and P. Mihaylova, acting as Agents)

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

Operative part of the judgment

The Court:

1. *Declares that:*

— *by failing to include all the territories of the important bird areas in the special protection area covering the Kaliakra region, the Republic of Bulgaria has failed to classify as special protection areas the most suitable territories in number and size for the conservation, first, of the biological species listed in Annex I to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and, secondly, of the migratory species not listed in that annex but regularly occurring in the geographical sea and land area where that directive applies, with the result that that Member State has failed to fulfil its obligations under Article 4(1) and (2) of that directive;*

— *by approving the implementation of the projects 'AES Geo Energy', 'Disib' and 'Longman Investment' in the territory of the important bird area covering the Kaliakra region which was not classified as a special protection area, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of Directive 2009/147;*

— *by approving the implementation of the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna' and 'Vertikal — Petkov & Cie', and of the 'Thracian Cliffs Golf & Spa Resort', in the territory of the special protection areas covering the regions of Kaliakra and Belite Skali respectively, the Republic of Bulgaria has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

— *by failing, first, to assess properly the cumulative effect of the projects 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment' in the territory of the important bird area covering the Kaliakra region which was not classified as a special protection area, although it should have been, and, secondly, by none the less authorising the implementation of the 'Longman Investment' project, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(2) and (3) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and point 1(b) of Annex III to that directive, and under Article 2(1) of that directive, respectively;*

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

3. *Orders the Republic of Bulgaria to pay the costs.*

(1) OJ C 159, 26.5.2014.

Judgment of the Court (Fifth Chamber) of 14 January 2016 — European Commission v Kingdom of Belgium

(Case C-163/14) (1)

(Failure of a Member State to fulfil obligations — Article 343 TFEU — Protocol on the privileges and immunities of the European Union — Article 3 — Tax exemptions — Brussels-Capital Region — Contributions in respect of the supply of electricity and gas)

(2016/C 098/05)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Clotuche-Duvieusart and I. Martínez del Peral, Agents)

Defendant: Kingdom of Belgium (represented by: J.-C Halleux, S. Vanrie and T. Materne, Agents, assisted by G. Block, D. Remy and H. Delahaije, avocats)

Operative part of the judgment

The Court:

1. *Declares that by not exempting the EU institutions from the contributions laid down by Article 26 of the Order concerning the organisation of the electricity market in the Brussels-Capital Region and by Article 20 of the Order concerning the organisation of the gas market in the Brussels-Capital Region, as amended, and by objecting to the refund of the contributions thereby collected by the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under the second paragraph of Article 3 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Union, originally annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities, and subsequently under the Treaty of Lisbon, as Protocol No 7, annexed to the TEU, the TFEU and the Euratom Treaty;*

2. *Orders the Kingdom of Belgium to pay the costs.*

(1) OJ C 184, 16.6.2014.

Judgment of the Court (First Chamber) of 14 January 2016 (request for a preliminary ruling from the Augstākās tiesa — Latvia) — 'Ostas celtnieks' SIA v Talsu novada pašvaldība, Iepirkumu uzraudzības birojs

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

(Reference for a preliminary ruling — Public procurement contracts — Directive 2004/18/EC — Economic and financial standing — Technical and/or professional ability — Articles 47(2) and 48(3) — Tender specifications laying down the obligation for a tenderer to conclude a cooperation agreement or to set up a partnership with the entities on whose capacities it relies)

(2016/C 098/06)

Language of the case: Latvian

Referring court

Augstākās tiesa

Parties to the main proceedings

Applicant: 'Ostas celtnieks' SIA

Defendant: Talsu novada pašvaldība, Iepirkumu uzraudzības birojs

Operative part of the judgment

Articles 47(2) and 48(3) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that they preclude a contracting authority, in the tender specifications relating to the award of a public contract, from imposing on a tenderer which relies on the capacities of other entities the obligation, before the contract is awarded, to conclude a cooperation agreement with those entities or to form a partnership with them.

([1]) OJ C 212, 7.7.2014.

Judgment of the Court (Tenth Chamber) of 21 January 2016 — Società per l'aeroporto civile di Bergamo-Orio al Serio (SACBO) SpA v European Commission, Innovation and Networks Executive Agency (INEA)

(Case C-281/14 P) ([1])

(Appeal — Trans-European Transport Network — Financial aid — Closure — Decision declaring certain costs to be ineligible and establishing the final account — Fourth paragraph of Article 263 TFEU — Action for annulment — Challengeable act — Locus standi — Person other than the beneficiary of the aid)

(2016/C 098/07)

Language of the case: Italian

Parties

Appellant: Società per l'aeroporto civile di Bergamo-Orio al Serio (SACBO) SpA (represented by: G. Greco, M. Muscardini and G. Carullo, avvocati)

Other parties to the proceedings: European Commission (represented by: J. Hottiaux and E. Montaguti, acting as Agents, and by D. Gullo, avvocato), Innovation and Networks Executive Agency (INEA) (represented by: I. Ramallo, D. Silhol and Z. Szilvássy, acting as Agents, and by A. Lanzi and M. Bozzo, avvocati)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Società per l'aeroporto civile di Bergamo-Orio al Serio (SACBO) SpA to pay the costs.*

(1) OJ C 292, 1.9.2014.

Judgment of the Court (Fifth Chamber) of 21 January 2016 (request for a preliminary ruling from the Cour d'appel de Mons — Belgium) — Les Jardins de Jouvence SCRL v État belge

(Case C-335/14) (1)

(Reference for a preliminary ruling — Taxation — Value Added Tax — Sixth VAT Directive — Exemptions — Article 13A(1)(g) — Exemption for the supply of services closely linked to welfare and social security work, provided by bodies governed by public law or by other organisations recognised as charitable — 'Supply of services and of goods closely linked to welfare and social security work' — Organisations recognised as charitable — Serviced residence)

(2016/C 098/08)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Les Jardins de Jouvence SCRL

Defendant: État belge

Intervening party: AXA Belgium SA

Operative part of the judgment

Article 13A(1)(g) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that, among the services provided by a serviced residence, such as that at issue in the main proceedings, whose charitable nature must be assessed by the referring court in the light of, in particular, the factors mentioned in the present judgment, those consisting of the provision of dwellings adapted for elderly persons may benefit from the exemption referred to in that provision. The other services provided by that serviced residence may also benefit from that exemption, provided in particular that the services which serviced residences are obliged to offer pursuant to the relevant national legislation are intended to achieve the support and care of elderly persons and correspond to the services which old people's homes are also obliged to offer in accordance with national legislation.

It is irrelevant in this respect whether or not the operator of a serviced residence such as that at issue in the main proceedings receives a subsidy or any other form of advantage or financial support from public authorities.

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Fourth Chamber) of 21 January 2016 (request for a preliminary ruling from the Vilniaus miesto apylinkės teismas, Lietuvos Aukščiausiasis Teismas — Lithuania) — 'ERGO Insurance' SE, represented by 'ERGO Insurance' SE Lietuvos filialas v 'If P&C Insurance' AS, represented by 'IF P&C Insurance' AS filialas (C-359/14), 'Gjensidige Baltic' AAS, represented by 'Gjensidige Baltic' AAS Lietuvos filialas v 'PZU Lietuva' UAB DK (C-475/14)

(Joined Cases C-359/14 and C-475/14) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Choice of applicable law — Regulation (EC) No 864/2007 and Regulation (EC) No 593/2008 — Directive 2009/103/EC — Accident caused by a tractor unit coupled with a trailer, each of the vehicles being insured by different insurers — Accident which occurred in a Member State other than that in which the insurance contracts were concluded — Action for indemnity between the insurers — Applicable law — Definitions of 'contractual obligations' and 'non-contractual obligations')

(2016/C 098/09)

Language of the case: Lithuanian

Referring court

Vilniaus miesto apylinkės teismas, Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicants: 'ERGO Insurance' SE, represented by 'ERGO Insurance' SE Lietuvis filialas (C-359/14), 'Gjensidige Baltic' AAS, represented by 'Gjensidige Baltic' AAS Lietuvos filialas (C-475/14)

Defendants: 'If P&C Insurance' AS, represented by 'IF P&C Insurance' AS filialas (C-359/14), 'PZU Lietuva' UAB DK (C-475/14)

Operative part of the judgment

Article 14(b) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability must be interpreted as meaning that that provision does not contain any specific conflict-of-law rule intended to determine the law applicable to the action for indemnity between insurers in circumstances such as those at issue in the main proceedings.

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted to the effect that the law applicable to an action for indemnity between the insurer of a tractor unit, which has compensated the victims of an accident caused by the driver of that vehicle, against the insurer of the trailer coupled to it at the time of that accident, is to be determined in accordance with Article 7 of Regulation No 593/2008 if the rules of liability in tort, delict and quasi-delict applicable to that accident by virtue of Article 4 et seq of Regulation No 864/2007 provide for an apportionment of the obligation to compensate for the damage.

([1]) OJ C 329, 22.9.2014.
OJ C 7, 12.1.2015.

Judgment of the Court (Second Chamber) of 20 January 2016 — Toshiba Corporation v European Commission

(Case C-373/14 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Article 101(1) TFEU — Power transformers market — Oral market-sharing agreement ('Gentlemen's Agreement') — Restriction of competition 'by object' — Barriers to entry — Presumption of participation in an unlawful cartel — Fines — Guidelines on the method of setting fines (2006) — Point 18)

(2016/C 098/10)

Language of the case: English

Parties

Appellant: Toshiba Corporation (represented by: J. MacLennan, Solicitor, A. Schulz, Rechtsanwalt, and by J. Jourdan and P. Berghe, avocats)

Other party to the proceedings: European Commission (represented by: F. Ronkes Agerbeek, J. Norris-Usher and K. Mojzesowicz, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Toshiba Corporation to pay the costs.*

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Third Chamber) of 14 January 2016 (request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court — Germany)) — Vodafone GmbH v Bundesrepublik Deutschland

(Case C-395/14) ([1])

(Reference for a preliminary ruling — Common regulatory framework for electronic communications networks and services — Directive 2002/21/EC — Article 7(3) — Procedure for consolidating the internal market for electronic communications — Directive 2002/19/EC — Articles 8 and 13 — Operator designated as having significant market power on a market — Obligations imposed by national regulatory authorities — Price control and cost accounting obligations — Authorisation of mobile call termination fees)

(2016/C 098/11)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Vodafone GmbH

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 7(3) 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) must be interpreted as meaning that, when an national regulatory authority has required an operator which has been designated as having significant market power to provide mobile call termination services and has made the fees charged for this subject to authorisation following the procedure laid down in that provision, that national regulatory authority is required to carry out the procedure again before each authorisation of those fees to that operator, where that authorisation is likely to affect trade between the Member States within the meaning of that provision.

([1]) OJ C 372, 20.10.2014.

Judgment of the Court (Third Chamber) of 14 January 2016 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Grüne Liga Sachsen eV and Others v Freistaat Sachsen

(Case C-399/14) ([1])

(Reference for a preliminary ruling — Directive 92/43/EEC — Article 6(2) to (4) — Site included in the list of sites of Community importance after a project was authorised but before it began to be carried out — Review of the project after the site was included in that list — Rules governing that review — Consequences of the completion of the project for the choice of alternatives)

(2016/C 098/12)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Grüne Liga Sachsen eV and Others

Defendant: Freistaat Sachsen

Interveners: Landeshauptstadt Dresden, Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

1. *Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site, and authorised, following a study that did not meet the requirements of Article 6(3) of that directive, before the site in question was included in the list of SCIs must be the subject of a subsequent review, by the competent authorities, of its implications for that site if that review constitutes the only appropriate step for avoiding that the implementation of the plan or project referred to results in deterioration or disturbance that could be significant in view of the objectives of that directive. It is for the referring court to verify whether those conditions are met.*

2. *Article 6(2) of the Habitats Directive must be interpreted as meaning that if, in circumstances such as those in the main proceedings, a subsequent review of the implications for the site concerned of a plan or project which began to be put in hand after that site was included in the list of SCIs proves necessary, that review must be carried out in accordance with the requirements of Article 6(3) of that directive. Such a review must take into account all factors existing at the date of that inclusion and all implications arising or likely to arise following the partial or total implementation of the plan or project on the site in question after that date as well.*

3. *The Habitats Directive must be interpreted as meaning that, where a new assessment of the implications for a site carried out in order to rectify errors identified in relation to the prior assessment conducted before the inclusion of that site in the list of SCIs or in relation to the subsequent review under Article 6(2) of the Habitats Directive, even though the plan or project has already been implemented, the requirements of a check made in the context of such a review may be amended on account of the fact that the planning decision approving that plan or project was immediately enforceable, that an application for interim measures had been dismissed and that that dismissal decision was no longer open to appeal. Moreover, that review must take into account the risks of deterioration or disturbance that could be significant, within the meaning of Article 6(2) of that directive, which may have arisen because the plan or project has been carried out.*

Article 6(4) of the Habitats Directive must be interpreted as meaning that the requirements of the check made in the context of the review of alternative solutions may not be amended on account of the fact that the plan or project has already been implemented.

([1]) OJ C 448, 15.12.2014.

Judgment of the Court (Second Chamber) of 20 January 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — DHL Express (Italy) Srl, DHL Global Forwarding (Italy) SpA v Autorità Garante della Concorrenza e del Mercato

(Case C-428/14) ([1])

(Reference for a preliminary ruling — Competition policy — Article 101 TFEU — Regulation (EC) No 1/2003 — International freight forwarding sector — National competition authorities — Legal status of instruments of the European Competition Network — Model Leniency Programme of that network — Application for immunity submitted to the Commission — Summary application for immunity submitted to national competition authorities — Relationship between those two applications)

(2016/C 098/13)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: DHL Express (Italy) Srl, DHL Global Forwarding (Italy) SpA

Defendant: Autorità Garante della Concorrenza e del Mercato

Interveners: Schenker Italiana SpA, Agility Logistics Srl

Operative part of the judgment

1. *EU law, in particular Article 101 TFEU and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 [TFEU] and 102 [TFEU], must be interpreted as meaning that the instruments adopted in the context of the European Competition Network, in particular the Model Leniency Programme of that network, are not binding on national competition authorities.*

2. *EU law, in particular Article 101 TFEU and Regulation No 1/2003, must be interpreted as meaning that there is no legal link between the application for immunity which an undertaking submits or is preparing to submit to the European Commission and the summary application submitted to a national competition authority in respect of the same cartel, requiring that authority to assess the summary application in the light of the application for immunity. Whether or not the summary application accurately reflects the content of the application for immunity submitted to the Commission is, in that respect, irrelevant.*

Where the summary application submitted to a national competition authority has a more limited material scope than the application for immunity submitted to the Commission, that national authority is not required to contact the Commission or the undertaking itself, in order to establish whether that undertaking has found specific examples of unlawful conduct in the sector allegedly covered by the application for immunity, but which is not covered by the summary application.

3. *EU law, in particular Article 101 TFEU and Regulation No 1/2003, must be interpreted as not precluding a national competition authority from accepting, in circumstances such as those at issue in the main proceedings, a summary application for immunity from an undertaking which had not submitted an application for full immunity to the Commission, but rather an application for reduction of the fine.*

([1]) OJ C 462, 22.12.2014.

Judgment of the Court (Fifth Chamber) of 21 January 2016 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — Valsts ieņēmumu dienests v Artūrs Stretinskis

(Case C-430/14) ([1])

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 29(1)(d) — Determination of the customs value — Regulation (EEC) No 2454/93 — Article 143(1)(h) — Definition of 'related persons' for the purposes of determining the customs value — Kinship relationship between the buyer, a natural person, and the director of the company which sold the goods)

(2016/C 098/14)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: Valsts ieņēmumu dienests

Defendant: Artūrs Stretinskis

Operative part of the judgment

Article 143(1)(h) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that a buyer, who is a natural person, and a seller, which is a legal person, within which a kin of that buyer actually has the power to influence the sales price of goods for the benefit of that buyer, must be regarded as being related persons within the meaning of Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996.

([1]) OJ C 421, 24.11.2014.

Judgment of the Court (Fourth Chamber) of 21 January 2016 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Vorarlberger Gebietskrankenkasse, Alfred Knauer v Landeshauptmann von Vorarlberg

(Case C-453/14) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 883/2004 — Article 5 — Meaning of 'equivalent benefits' — Equal treatment of old-age benefits of two Member States of the European Economic Area — National legislation taking into account old-age benefits received in other Member States for the purpose of calculating social security contributions)

(2016/C 098/15)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellants: Vorarlberger Gebietskrankenkasse, Alfred Knauer

Respondent: Landeshauptmann von Vorarlberg

Other party to the proceedings: Rudolf Mathis

Operative part of the judgment

Article 5(a) 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 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, old-age benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State — both schemes being within the scope of that regulation — are equivalent benefits within the meaning of that provision, where both categories of benefits have the same aim of ensuring that their recipients maintain a standard of living commensurate with that which they enjoyed prior to retirement.

([1]) OJ C 462, 22.12.2014.

Judgment of the Court (First Chamber) of 21 January 2016 — European Commission v Republic of Cyprus

(Case C-515/14) ([1])

(Failure of a Member State to fulfil obligations — Freedom of movement for persons — Workers — Articles 45 TFEU and 48 TFEU — Old-age benefits — Difference of treatment on the ground of age — Civil servants from a Member State under the age of 45 who leave that Member State to take up employment in another Member State or within an EU institution)

(2016/C 098/16)

Language of the case: Greek

Parties

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

Defendant: Republic of Cyprus (represented by: N. Ioannou and D. Kalli, acting as Agents)

Operative part of the judgment

The Court:

1) *Declares that by failing to repeal, with retroactive effect from 1 May 2004, the age-related criterion in Article 27 of Law 97 (I)/1997 on Pensions which deters workers from leaving their Member State of origin in order to work in another Member State, or within an EU institution, or other international organisation and which has the effect of creating unequal treatment between migrant workers including those who work within the EU institutions or within another international organisation, on the one hand, and civil servants who have worked in Cyprus, on the other, the Republic of Cyprus has failed to fulfil its obligations under Articles 45 TFEU and 48 TFEU and under Article 4(3) TEU;*

2) *Orders the Republic of Cyprus to pay the costs.*

([1]) OJ C 65, 23.2.2015.

Judgment of the Court (Fourth Chamber) of 21 January 2016 (request for a preliminary ruling from the Korkein oikeus — Finland) — SOVAG — Schwarzmeer und Ostsee Versicherungs-Aktiengesellschaft v If Vahinkovakuutusyhtiö Oy

(Case C-521/14) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 6(2) — Jurisdiction — Action on a warranty or guarantee or other third party proceedings brought by a third party against a party to judicial proceedings before the court seised of the original proceedings)

(2016/C 098/17)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: SOVAG — Schwarzmeer und Ostsee Versicherungs-Aktiengesellschaft

Defendant: If Vahinkovakuutusyhtiö Oy

Operative part of the judgment

Article 6(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted to the effect that its scope includes an action brought by a third party, in accordance with national law, against the defendant in the original proceedings, and closely linked to those original proceedings, seeking reimbursement of compensation paid by that third party to the applicant in those original proceedings, provided that the action was not instituted solely with the object of removing that defendant from the jurisdiction of the court which would be competent in the case.

([1]) OJ C 34, 2.2.2015.

Judgment of the Court (Sixth Chamber) of 21 January 2016 — Kurt Hesse v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Hubert Ampferl, as insolvency administrator of Lutter & Partner GmbH, formerly Lutter & Partner GmbH, Dr. Ing. h.c. F. Porsche AG

(Case C-50/15 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) and (5) — Word mark Carrera — Opposition by the proprietor of the national and Community word marks CARRERA — Likelihood of confusion — Reputation acquired by the earlier mark)

(2016/C 098/18)

Language of the case: German

Parties

Appellant: Kurt Hesse (represented by: M. Krogmann, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Schifko, acting as Agent), Hubert Ampferl, as insolvency administrator of Lutter & Partner GmbH, formerly Lutter & Partner GmbH, Dr. Ing. h.c. F. Porsche AG (represented by: E. Stolz, Rechtsanwalt)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Kurt Hesse to pay the costs.*

([1]) OJ C 138, 27.4.2015.

Judgment of the Court (Tenth Chamber) of 14 January 2016 — European Commission v Hellenic Republic

(Case C-66/15) ([1])

(Failure of a Member State to fulfil obligations — Freedom to provide services — Motor vehicles — Hiring or leasing of a motor vehicle by a resident of a Member State from a supplier established in another Member State — Taxation of that vehicle at the time it is registered in the first Member State — Levy of the full amount of vehicle registration tax)

(2016/C 098/19)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: Wasmeier and D. Triantafyllou, acting as Agents)

Defendant: Hellenic Republic (represented by: K. Boskovits and V. Karrá, acting as Agents)

Operative part of the judgment

The Court:

1) *Declares that, by levying the full amount of registration tax provided for under its national legislation at the time of registration of a vehicle hired or leased by a customer resident in its territory from a supplier established in another Member State, without taking into consideration the duration of the hire or lease contract and the duration of use of that vehicle in the national territory of Greece, the Hellenic Republic failed to fulfil its obligations under Articles 56 to 62 TFEU;*

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

(1) OJ C 138, 27.4.2015.

Judgment of the Court (Second Chamber) of 21 January 2016 (request for a preliminary ruling from the Markkinaoikeus — Finland) — Viiniverla Oy v Sosiaali- ja terveysalan lupa- ja valvontavirasto

(Case C-75/15) (1)

(Reference for a preliminary ruling — Protection of geographical indications of spirit drinks — Regulation (EC) No 110/2008 — Article 16(b) — Evocation — Cider spirits produced in Finland and placed on the market as 'Verlados' — Protected geographical indication 'Calvados')

(2016/C 098/20)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicant: Viiniverla Oy

Defendant: Sosiaali- ja terveysalan lupa- ja valvontavirasto

Operative part of the judgment

1. *Article 16(b) of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 must be interpreted as meaning that, in order to assess whether there is an 'evocation' within the meaning of that provision, the national court is required to refer to the perception of the average consumer who is reasonably well informed and reasonably observant and circumspect, that concept being understood as covering European consumers and not only consumers of the Member State in which the product giving rise to the evocation of the protected geographical indication is manufactured.*

2. *Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that, in order to assess whether the name 'Verlados' constitutes an 'evocation' within the meaning of that provision of the protected geographical indication 'Calvados' with respect to similar products, the referring court must take into consideration the phonetic and visual relationship between those names and any evidence that may show that such a relationship is not fortuitous, so as to ascertain whether, when the average European consumer, reasonably well informed and reasonably observant and circumspect, is confronted with the name of a product, the image triggered in his mind is that of the product whose geographical indication is protected.*

3. *Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that the use of a name classified as an 'evocation' within the meaning of that provision of a geographical indication referred to in Annex III to that regulation may not be authorised, even in the absence of any likelihood of confusion.*

(1) OJ C 138, 27.4.2015.

Request for a preliminary ruling from the Zalaegerszegi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 15 June 2015 — EURO 2004. Hungary Kft v Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-291/15)

(2016/C 098/21)

Language of the case: Hungarian

Referring court

Zalaegerszegi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: EURO 2004. Hungary Kft

Defendant: Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága

Question referred

Must Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 be interpreted as precluding a practice of a Member State whereby the customs value is determined on the basis of the 'transaction value of similar goods' if it is considered that the declared transaction value, in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods, is unreasonably low and, consequently, incorrect, despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted additional evidence to demonstrate the transaction value?

Action brought on 20 November 2015 — European Commission v Federal Republic of Germany

(Case C-616/15)

(2016/C 098/22)

Language of the case: German

Parties

Applicant: European Commission (represented by: M. Owsiany-Hornung and B.-R. Killmann, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

1. declare that, by restricting, to groups whose members exercise a limited number of professions, the exemption from VAT for the supply by independent groups of persons carrying on an activity which is exempt from VAT, or in relation to which they are not taxable persons, of services to their members for the direct purposes of the exercise of that activity where those groups merely claim from their members exact reimbursement of their share of the joint expenses, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of the VAT directive; ([1])

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

Pleas in law and main arguments

In support of the action, the applicant relies on the following:

Germany restricts to certain well-defined professions the exemption from VAT for the supply of services by independent groups of persons carrying on an activity which is exempt from VAT, or in relation to which they are not taxable persons, for the direct purposes of the exercise of that activity. The exemption under the German law on VAT covers solely groups whose members are either doctors or health professionals and hospitals or establishments similar to hospitals.

This is incompatible with Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. Neither the wording, purpose, nor preparatory work leading to the adoption of Article 132(1)(f) of Directive 2006/112/EC justifies such a restriction of the exemption from VAT to groups from certain professions. The exemption should, however, apply to groups from all professions provided that they exercise tax-exempt professions.

The restriction under the German law on VAT is also not justified by a potential general distortion of competition. This is because, as far as tax exemptions are concerned, the presence or absence of a distortion of competition can only apply with regard to the specific facts of a given case. Distortions of competition cannot be assessed in the abstract for certain professions of a group and services provided in connection with those professions.

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

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 30 November 2015 — Eko-Tabak s.r.o. v Generální ředitelství cel

(Case C-638/15)

(2016/C 098/23)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant (applicant at first instance): Eko-Tabak s.r.o.

Other party to the proceedings (defendant at first instance): Generální ředitelství cel

Questions referred

1. Where dried, flat, irregular, partly stripped leaf tobacco and/or parts thereof which have undergone primary drying and controlled dampening and in which the presence of glycerine is detected are capable of being smoked after simple preparation (by means of crushing or hand-cutting), can they be regarded as manufactured tobacco within the meaning of Article 2(1)(c)(ii) or, as the case may be, Article 5(1)(a) of Council Directive 2011/64/EU ([1]) on the structure and rates of excise duty applied to manufactured tobacco (codification)?

2. If the answer to the first question is in the negative, does Article 5, in conjunction with Article 2, of Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco (codification) preclude national legislation of a Member State which extends excise duty on manufactured tobacco to tobacco that is not referred to in Articles 2 and 5 of Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco (codification) and that, while not intended for smoking, can be smoked (is capable of and appropriate for being smoked) and has been prepared for sale to the final consumer?

([1]) OJ 2011 L 176, p. 24.

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 7 December 2015 — Robeco Hollands Bezit NV and Others v Stichting Autoriteit Financiële Markten (AFM)

(Case C-658/15)

(2016/C 098/24)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Robeco Hollands Bezit NV, Robeco Duurzaam Aandelen NV, Robeco Safe Mix NV, Robeco Solid Mix NV, Robeco Balanced Mix NV, Robeco Growth Mix NV, Robeco Life Cycle Funds NV, Robeco Afrika Fonds NV, Robeco Global Stars Equities, Robeco All Strategy Euro Bonds, Robeco High Yield Bonds, Robeco Property Equities

Respondent: Stichting Autoriteit Financiële Markten (AFM)

Question referred

Must a system in which multiple fund agents and brokers participate who, within that system, represent respectively 'open end' investment funds and investors in commercial transactions, and which, in fact, facilitates exclusively those 'open end' investment funds in their obligation to execute the purchase and selling orders for shares placed by investors, be regarded as a regulated market within the meaning of Article 4(1).14 of the MiFID ([1]) and, if so, what characteristics are determinant in that regard?

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 4 December 2015 — X BV; Other party: Staatssecretaris van Financiën

(Case C-661/15)

(2016/C 098/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X BV

Other party: Staatssecretaris van Financiën

Questions referred

1. (a) Should Article 145(2) of the Regulation implementing the Community Customs Code (CCIP), ([1]) read in conjunction with Article 29(1) and (3) of the Community Customs Code (CCC), ([2]) be interpreted as meaning that the rule laid down therein also applies in a case where it is established that, at the time of acceptance of the declaration for specific goods, there was a manufacture-related risk that a component of the goods might become defective during use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk?

1. (b) In the event that the rule laid down in Article 145(2) of the CCIP does not apply in the case referred to above, are the provisions of Article 29(1) and (3) of the CCC, read in conjunction with Article 78 of the CCC, sufficient, without more, to reduce the declared customs value after the aforementioned price reduction has been granted?

2. Is the condition laid down in Article 145(3) of the CCIP for adjustment of the customs value referred to therein, namely that the adjustment of the price actually paid or payable for the goods must have been made within a period of twelve months following the date of acceptance of the declaration for entry to free circulation, contrary to the provisions of Articles 78 and 236 of the CCC, read in conjunction with Article 29 of the CCC?

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Action brought on 18 December 2015 — European Commission v Grand Duchy of Luxembourg

(Case C-684/15)

(2016/C 098/26)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Heller and K.-Ph. Wojcik, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

— declare that, by not adopting every law, regulation and administrative provision necessary for compliance with Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council, ([1]) or, in any event, by not notifying those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 130(1) of that directive;

— impose on the Grand Duchy of Luxembourg, in accordance with Article 260(3) TFEU, a penalty payment of EUR 6 700 per day from the date of delivery of the judgment in the case for failure to fulfil the obligation to communicate the transposition measures of Directive 2014/59/EU;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of Directive 2014/59/EU expired on 31 December 2014.

([1]) OJ 2014 L 173, p. 190.

Request for a preliminary ruling from the Cour administrative d'appel de Douai (France) lodged on 21 December 2015 — Wenceslas de Lobkowicz v Ministère des Finances et des Comptes publics

(Case C-690/15)

(2016/C 098/27)

Language of the case: French

Referring court

Cour administrative d'appel de Douai

Parties to the main proceedings

Applicant: Wenceslas de Lobkowicz

Defendant: Ministère des Finances et des Comptes publics

Question referred

Is there any principle of EU law which precludes an official of the European Commission being subject to the *contribution sociale généralisée* (general social contribution), the *prélèvement social* (social levy), and additional contributions to that levy at the rate of 0.3 % and 1.1 % on income from real estate received in a Member State of the European Union?

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 28 December 2015 — Secretary of State for the Home Department v David Davis, Tom Watson, Peter Brice, Geoffrey Lewis

(Case C-698/15)

(2016/C 098/28)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendants: David Davis, Tom Watson, Peter Brice, Geoffrey Lewis

Questions referred

1. Does the judgment of the Court of Justice in Joined Cases C-293/12 and C-594/12 Digital Rights Ireland and Seitlinger, ECLI:EU:C:2014:238 ('Digital Rights Ireland') (including, in particular, paragraphs 60 to 62 thereof) lay down mandatory requirements of EU law applicable to a Member State's domestic regime governing access to data retained in accordance with national legislation, in order to comply with Articles 7 and 8 of the EU Charter ('the EU Charter')?

2. Does the judgment of the Court of Justice in Digital Rights Ireland expand the scope of Articles 7 and/or 8 of the EU Charter beyond that of Article 8 of the European Convention of Human Rights ('ECHR') as established in the jurisprudence of the European Court of Human Rights ('ECtHR')?

Request for a preliminary ruling from the Audiencia Provincial de A Coruña (Spain) lodged on 4 January 2016 — Abanca Corporación Bancaria, S.A. v María Isabel Vázquez Rosende

(Case C-1/16)

(2016/C 098/29)

Language of the case: Spanish

Referring court

Audiencia Provincial de A Coruña

Parties to the main proceedings

Applicant: Abanca Corporación Bancaria, S.A.

Defendant: María Isabel Vázquez Rosende

Questions referred

1. Can Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 ([1]) on unfair terms in consumer contracts be interpreted as meaning that the restitutory effects of a declaration, on grounds of unfairness, of the nullity of a 'floor clause' in a loan agreement do not apply retroactively as far back as the date of conclusion of the agreement but only to a later date?

2. Is the criterion that those concerned must act in good faith, which operates as a basis for limiting the retroactive effect deriving from a declaration of nullity of an unfair term, an autonomous concept of EU law that must be interpreted uniformly throughout the Member States?

3. If the answer to that question is in the affirmative, what circumstances must be taken into account in order for it to be determined whether those concerned acted in good faith?

4. At all events, is it compatible with Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 2013 to interpret the concept of the good faith of those concerned as meaning that there may be good faith in the actions of a seller or supplier who, in creating the agreement, has been the cause of the want of transparency making the term unfair?

5. Is it compatible with Articles 6 and 7 of Directive 93/13/EEC of 5 April 2013 to interpret the concept of the good faith of those concerned as meaning that the good faith of the seller or supplier may be assessed *in abstracto* or, on the contrary, must it be assessed in the light of the conduct of the seller or supplier in the circumstances of the particular contract?

6. Is the risk of serious difficulties, which operates as a basis for limiting the retroactive effect [of declaring void] an unfair term, an autonomous concept of EU law that must be interpreted uniformly throughout the Member States?

7. If so, what criteria must be taken into account?

8. At all events, is it compatible with Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 2013 for the risk of serious difficulties to be assessed by taking account solely of the risk which may arise for the seller or supplier, or must account also be taken of the loss caused to a consumer by the failure to reimburse in full the sums paid under the 'floor clause'?

9. In accordance with Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 2013, in an individual action brought by a consumer must the risk of serious difficulties with implications for the economic public order be assessed having regard solely to the financial effects of that specific action, or having regard to the financial effects of the potential bringing of individual actions by a large number of consumers?

(1) OJ 1993 L 95, p. 29.

Action brought on 4 January 2016 — Republic of Poland v European Parliament and Council of the European Union

(Case C-5/16)

(2016/C 098/30)

Language of the case: Polish

Parties

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

Defendants: European Parliament, Council of the European Union

Form of order sought

— annul Decision (EU) 2015/1814 of the European Parliament and of the Council concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC; (1)

— order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Republic of Poland seeks the annulment of Decision (EU) 2015/1814 of the European Parliament and of the Council concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC, and an order that the European Parliament and the Council of the European Union pay the costs.

The declared aim of the contested decision is to tackle the structural imbalances between the supply of greenhouse gas emission allowances on the EU market and the demand for them, imbalances which result in emission allowances not reaching prices on the market that accord with the expectations of the EU legislature. The fundamental means of attaining that aim is the establishment of a market stability reserve (MSR) mechanism, which is to consist in reducing the number of emission allowances available on the market by placing them in the reserve if there is a significant surplus of emission allowances on the market and specified conditions are met and, on the other hand, if the number of emission allowances available on the market falls below 400 million, in increasing the auction volumes of emission allowances.

The Republic of Poland puts forward the following pleas against the contested decision.

First, a plea of infringement of Article 192(1) TFEU, in conjunction with Article 192(2)(c) TFEU, by the adoption of the contested decision in accordance with the ordinary legislative procedure, despite the fact that that decision is a measure significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

In the opinion of the Republic of Poland, the contested decision will significantly affect the choice of energy sources and the general structure of energy supply in Poland. In accordance with Article 192(2)(c) TFEU, such a decision must therefore be adopted by the Council unanimously in a special legislative procedure.

Secondly, a plea of infringement of the principle of sincere cooperation and of infringement of the powers of the European Council defined in Article 15 TEU by the adoption of measures contrary to the conclusions of the European Council of 23 and 24 October 2014.

In accordance with the conclusions of the European Council of 2014, the main EU instrument for achieving the targeted level of emission reductions was to be a well-functioning, reformed emissions trading system (EU ETS) with an instrument to stabilise the market in line with the Commission proposal, which specified the year 2021 as being when the market stability reserve mechanism would come into effect. The adoption in the contested decision of the year 2019 as when the market stability reserve mechanism would come into effect was contrary to what was established by the European Council in 2014.

Thirdly, a plea of infringement of the principle of legal certainty and of the principle of the protection of legitimate expectations by the adoption of measures which interfere with the emission allowance trading system during the trading period and in particular in the final years of that period.

By the contested decision, 900 million allowances withdrawn from the market in 2014-16 — which were to return to the market in 2019-20 — are placed directly in the stability reserve, which means that ultimately they will not return to the market. The pool of allowances that is available to market participants in the current trading period is consequently lower than was expected. Market participants had a legitimate expectation that the temporarily withdrawn allowances would return again to the market between 2019 and 2020 and based their business plans on that. The principles of operation of the system, such as the rules defining the number of emission allowances available, should not be subject to change during the trading period, which sets the temporal perspective for the planning of various activities by the undertakings participating in the system. Those principles constitute fundamental premisses which determine the undertakings' investment activity.

Fourthly, a plea of infringement of the principle of proportionality by the adoption of measures which lead to the achievement of higher emission reduction targets than those resulting from the European Union's international commitments and than required to attain the aim of Directive 2003/87/EC.

As a result of the adoption of the contested decision, the European Union will achieve targets higher than currently proposed at international level in the context of the second period of the Kyoto Protocol, agreed in December 2012 in Doha.

Fifthly, a plea of infringement of the obligation to carry out an appropriate analysis of the effect of the contested decision on individual Member States and of infringement of the obligation to present an adequate assessment of the effects that adoption of the contested decision will have on the emission allowance trading market.

(1) OJ 2015 L 264, p. 1.

Request for a preliminary ruling from the Rechtbank Den Haag zittingsplaats Haarlem (Netherlands) lodged on 13 January 2016 — K v Staatssecretaris van Veiligheid en Justitie

(Case C-18/16)

(2016/C 098/31)

Language of the case: Dutch

Referring court

Rechtbank Den Haag zittingsplaats Haarlem

Parties to the main proceedings

Applicant: K

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

Is Article 8(3) (a) and (b) of the Reception Directive ([1]) valid in the light of Article 6 of the Charter ([2]):

(1) in a situation where a third-country national is detained under Article 8(3)(a) and (b) of the Reception Directive and, under Article 9 of the Asylum Procedures Directive, ([3]) has the right to remain in a Member State until a decision on his asylum application has been made at first instance, and

(2) given the Explanation (OJ 2007 C 303, p. 17) that the limitations which may legitimately be imposed on the rights in Article 6 of the Charter may not exceed those permitted by the ECHR in the wording of Article 5(1)(f), and the interpretation by the European Court of Human Rights of the latter provision in, inter alia, the judgment of 22 September 2015, *Nabil and Others* v *Hungary*, 62116/12, that the detention of an asylum-seeker is contrary to the aforementioned Article 5(1)(f) if such detention was not imposed with a view to deportation?

([1]) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013, L 180, p. 96).
([2]) Charter of Fundamental Rights of the European Union (OJ 2007, C 303, p. 1).
([3]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013, L 180, p. 60).

Action brought on 15 January 2016 — European Commission v Republic of Poland

(Case C-23/16)

(2016/C 098/32)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: J. Hottiaux, acting as Agent)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to set up a national electronic register of road transport undertakings and to connect it up with the national electronic registers of the other Member States, the Republic of Poland has failed to fulfil its obligations under Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC ([1]);

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The national electronic register must be created and connected up with the national electronic registers of the other Member States by 31 December 2012 at the latest.

(1) OJ 2009 L 300, p. 51.

Appeal brought on 26 January 2016 by d.d. Synergy Hellas Anonymi Emporiki Etaireia Parochis Ypiresion Pliroforikis against the judgment of the General Court (Fourth Chamber) delivered on 18 November 2015 in Case T-106/13 *Synergy Hellas Anonymi Emporiki Etaireia Parochis Ypiresion Pliroforikis* v *European Commission*

(Case C-45/16 P)

(2016/C 098/33)

Language of the case: Greek

Parties

Appellant: d.d. Synergy Hellas Anonymi Emporiki Etaireia Parochis Ypiresion Pliroforikis (represented by: Konstantinos Damis, lawyer)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside in its entirety the judgment of the General Court of the European Union of 18 November 2015 in Case T-l06/13 *d.d.Synergy Hellas Anonymi Emporiki Etaireia Parochis Ypiresion Pliroforikis* v *European Commission*;

— uphold the company's action of 20.2.2013 in its entirety;

— order the Commission to pay the appellant's costs.

Grounds of appeal and main arguments

1. Misapplication of the principle of good faith in the performance of the contract at issue.

   The General Court erred in its assessment of Article 1134 of the Belgian Civil Code, with respect to the application of the principle of good faith in the performance of the contract.

2. Misinterpretation and misapplication of the terms of the contract and manifestly erroneous assessment of the evidence.

   The General Court erred in the application of Article II.22 Financial Audits and Controls in Annex II to the signed ARTreat — 224297 agreement, being the contract at issue.

3. Manifestly erroneous assessment of the evidence and deficient statement of reasons.

   Insufficient and contradictory statement of reasons for the findings of the judgment.

   The General Court erroneously and manifestly distorted the evidence adduced.

GENERAL COURT

Judgment of the General Court of 4 February 2016 — Heitkamp BauHolding v Commission

(Case T-287/11) ([1])

(State aid — German tax legislation concerning loss carry-forward to future tax years (Sanierungsklausel) — Decision declaring the aid incompatible with the internal market — Action for annulment — Individual concern — Admissibility — Concept of State aid — Selectivity — Nature and general scheme of the tax system)

(2016/C 098/34)

Language of the case: German

Parties

Applicant: Heitkamp BauHolding GmbH (Herne, Germany) (represented initially by W. Niemann, M. Kiera-Nöllen and S. Geringhoff, and subsequently by W. Niemann, S. Geringhoff and P. Dodos, lawyers)

Defendant: European Commission (represented initially by R. Lyal, T. Maxian Rusche and M. Adam, and subsequently by R. Lyal, T. Maxian Rusche and C. Egerer, acting as Agents)

Intervener in support of the applicant: Federal Republic of Germany (represented by: T. Henze and K. Petersen, acting as Agents)

Re:

Application for annulment of Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel) (OJ 2011 L 235, p. 26).

Operative part of the judgment

The Court:

1. *Rejects the objection of inadmissibility;*

2. *Dismisses the action as unfounded;*

3. *Orders Heitkamp BauHolding GmbH to bear its own costs and to pay two thirds of the European Commission's costs, and orders the Commission to bear one third of its own costs;*

4. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 238, 13.8.2011.

Judgment of the General Court of 28 January 2016 — Slovenia v Commission

(Case T-507/12) ([1])

(State aid — Manufacture of leisure equipment — Restructuring aid — Decision declaring the aid to be incompatible with the internal market and ordering its recovery — Obligation to state reasons — Whether imputable to the State — Private investor test)

(2016/C 098/35)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: V. Klemenc and A. Grum, acting as Agents)

Defendant: European Commission (represented by: É. Gippini Fournier, T. Maxian Rusche, M. Kocjan and B. Rous Demiri, acting as Agents, assisted initially by M. Ulčar and M. Ménard, and subsequently by M. Ménard, P. Božičko and A. Krošel, lawyers)

Re:

Application for annulment of Commission Decision 2014/273/EU of 19 September 2012 on the measures SA.26379 (C 13/10) (ex NN 17/10) implemented by Slovenia in favour of Elan d.o.o. (OJ 2014 L 144, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Slovenia to pay the costs, including those incurred in the proceedings for interim measures.*

([1]) OJ C 32, 2.2.2013.

Judgment of the General Court of 28 January 2016 — Zafeiropoulos v Cedefop

(Case T-537/12) ([1])

(Public service contracts — Tendering procedure — Provision of medical services for the benefit of Cedefop staff — Rejection of the bid of one tenderer and award of the contract to another tenderer — Refusal to allow access to certain documents concerning other tenderers who participated in the tendering procedure — Obligation to state reasons — Protection of commercial interests and reputation — Personal data protection — Protection of the decision-making process — Non-contractual liability)

(2016/C 098/36)

Language of the case: Greek

Parties

Applicant: Panteleimon Zafeiropoulos (Thessaloniki, Greece) (represented by: M. Kontogiorgos, lawyer)

Defendant: European Centre for the Development of Vocational Training (Cedefop) (represented by: M. Fuchs, acting as Agent, assisted initially by E. Petritsi and subsequently by P. Anestis, lawyers)

Re:

Application, first, for annulment of (i) the decision of Cedefop of 8 October 2012 rejecting the tender submitted by the applicant in response to the contract notice of 19 June 2012 published in the *Supplement to the Official Journal of the European Union* (OJ 2012/S 115-189528) concerning the provision of medical services to Cedefop staff in Thessaloniki (Greece); (ii) the decision of Cedefop of 9 October 2012 awarding the contract set out in that contract notice to a tenderer other than the applicant; and (iii) the decision of Cedefop rejecting the applicant's request for access to certain documents relating to the contract award procedure; and, secondly, for compensation for the harm suffered by the applicant as a result of the infringements allegedly committed by Cedefop.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Centre for the Development of Vocational Training (Cedefop) of 8 October 2012 rejecting the tender submitted by Mr Panteleimon Zafeiropoulos in response to the contract notice dated 19 June 2012 concerning the provision of medical services to Cedefop staff in Thessaloniki (Greece) and the decision of Cedefop of 9 October 2012 awarding the contract set out in that contract notice to a tenderer other than* **Mr** *Zafeiropoulos;*

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

3. *Orders Cedefop to bear its own costs and to pay one third of the costs incurred by Mr Zafeiropoulos;*

4. *Orders Mr Zafeiropoulos to bear two thirds of his own costs.*

([1]) OJ C 46, 16.2.2013.

Judgment of the General Court of 2 February 2016 — Benelli Q.J. Srl v OHIM — Demharter (MOTO B)

(Case T-169/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark MOTO B — Earlier non-registered national figurative marks MOTOBI — Relative ground for refusal — Evidence that the earlier non-registered marks are well known — Article 8(2)(c) of Regulation (EC) No 207/2009 — Article 6bis of the Paris Convention — Evidence submitted in support of the opposition after the expiry of the period set for that purpose — Failure to take account thereof — Discretion of the Board of Appeal — Provision to the contrary — Circumstances precluding additional or supplementary evidence from being taken into account — Article 76(2) of Regulation No 207/2009 — Rules 19 and 20 of Regulation (EC) No 2868/95 — Rule 50(1), third subparagraph, of Regulation No 2868/95 — First sentence of Article 75 of Regulation No 207/2009 — Obligation to state reasons)

(2016/C 098/37)

Language of the case: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi and B. Bozóki, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially F. Mattina and subsequently P. Bullock, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Demharter GmbH (Dillingen, Germany) (represented by: A. Kohn, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 January 2013 (Case R 95/2012-2), relating to opposition proceedings between Benelli Q.J. Srl and Demharter GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Benelli Q.J. Srl to pay the costs.*

([1]) OJ C 147, 25.5.2013.

Judgment of the General Court of 2 February 2016 — Benelli Q.J. v OHIM — Demharter (MOTOBI)

(Case T-170/13) ([1])

(Community trade mark — Revocation proceedings — Community word mark MOTOBI — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009)

(2016/C 098/38)

Language of the case: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi and B. Bozóki, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially F. Mattina and subsequently P. Bullock, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Demharter GmbH (Dillingen, Germany) (represented by: A. Kohn, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 January 2013 (Case R 2080/2011-2), relating to revocation proceedings between Demharter GmbH and Benelli Q.J. Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Benelli Q.J. Srl to pay the costs.*

([1]) OJ C 147, 25.5.2013.

Judgment of the General Court of 2 February 2016 — Benelli Q.J. v OHIM — Demharter (MOTOBI B PESARO)

(Case T-171/13) ([1])

(Community trade mark — Revocation proceedings — Community figurative mark MOTOBI B PESARO — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 — Evidence submitted against the application for revocation after the expiry of the period set for that purpose — Failure to take account thereof — Discretion of the Board of Appeal — Provision to the contrary — Circumstances precluding additional or supplementary evidence from being taken into account — Article 76(2) of Regulation No 207/2009 — Rule 50(1), third subparagraph, of Regulation (EC) No 2868/95)

(2016/C 098/39)

Language of the case: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi and B. Bozóki, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially F. Mattina and subsequently P. Bullock, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Demharter GmbH (Dillingen, Germany) (represented by: A. Kohn, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 January 2013 (Case R 2590/2011-2), relating to revocation proceedings between Demharter GmbH and Benelli Q.J. Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Benelli Q.J. Srl to pay the costs.*

(1) OJ C 147, 25.5.2013.

Judgment of the General Court of 28 January 2016 — Agriconsulting Europe v Commission

(Case T-570/13) (1)

(Public service contracts — Tendering procedure — Operational technical assistance to set up and manage a network facility for the implementation of the European Innovation Partnership 'Agricultural Productivity and Sustainability' — Rejection of a tenderer's bid — Award of the contract to another tenderer — Abnormally low tender — Non-contractual liability)

(2016/C 098/40)

Language of the case: Italian

Parties

Applicant: Agriconsulting Europe SA (Brussels, Belgium) (represented by: R. Sciaudone, lawyer)

Defendant: European Commission (represented by: L. Capelletti and L. Di Paolo, acting as Agents)

Re:

Application for compensation for the harm suffered as a result of alleged irregularities on the part of the Commission in the tender procedure 'Establishing a network facility for the implementation of the European Innovation Partnership (EIP) "Agricultural Productivity and Sustainability"' (AGRI-2012-EIP-01).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Agriconsulting Europe SA to bear its own costs and to pay those incurred by the European Commission.*

(1) OJ C 367, 14.12.2013.

Judgment of the General Court of 28 January 2016 — Sto v OHIM Fixit Trockenmörtel Holding (CRETEO)

(Case T-640/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark CRETEO — Earlier national word marks StoCretec and STOCRETE — Relative ground for refusal — Distinctive character acquired through use — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/41)

Language of the case: German

Parties

Applicant: Sto SE & Co. KGaA, formerly Sto AG (Stühlingen, Germany (represented by: K. Kern and J. Sklepek, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Fixit Trockenmörtel Holding AG (Baar, Switzerland) (represented by: K. Lochner and C. Thomas, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 September 2013 (Case R 905/2012-4), relating to opposition proceedings between Sto AG and Fixit Trockenmörtel Holding AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sto SE & Co. KGaA to pay the costs.*

([1]) OJ C 39, 8.2.2014.

Judgment of the General Court of 2 February 2016 — Brammer v OHIM — Office Ernest T. Freylinger (EUROMARKER)

(Case T-683/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark EUROMARKER — Earlier Community word mark EURIMARK — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/42)

Language of the case: German

Parties

Applicant: Brammer GmbH (Vienna, Austria) (represented by: R. Kornfeld, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider and H. Kunz, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Office Ernest T. Freylinger SA (Strassen, Luxembourg)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 October 2013 (Case R 1653/2012-1), relating to opposition proceedings between Office Ernest T. Freylinger SA and Brammer GmbH

Operative part of the judgment

The Court:

1. *Annuls, in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 October 2013 (Case R 1653/2012-1) in so far as it was found in that decision that there was a likelihood of confusion as regards the services 'providing access to database services for searching for the availability and specifications of community trademarks and designs' in Class 38 covered by the mark applied for;*

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

3. *Orders Brammer GmbH and OHIM to bear their own costs.*

([1]) OJ C 61, 1.3.2014.

Judgment of the General Court of 28 January 2016 — Bristol Global v OHIM — Bridgestone (AEROSTONE)

(Case T-194/14) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark AEROSTONE — Earlier Community word marks STONE and BRIDGESTONE — Earlier non-registered national figurative mark BRIDGESTONE — Relative ground for refusal — Partial refusal of registration)

(2016/C 098/43)

Language of the case: English

Parties

Applicant: Bristol Global Co. Ltd (Birmingham, United Kingdom) (represented by: F. Bozhinova, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Bridgestone Corp. (Tokyo, Japan) (represented initially by M. Blair, Solicitor, and subsequently by S. Malynicz, Barrister, and C. Balme and K. Gilbert, Solicitors)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 12 December 2013 (Case R 916/2013-2), relating to opposition proceedings between Bridgestone Corp. and Bristol Global Co. Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bristol Global Co. Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by Bridgestone Corp.*

(1) OJ C 151, 19.5.2014.

Judgment of the General Court of 26 January 2016 — LR Health & Beauty Systems v OHIM — Robert McBride (LR nova pure.)

(Case T-202/14) (1)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LR nova pure. — Earlier international word mark NOVA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/44)

Language of the case: English

Parties

Applicant: LR Health & Beauty Systems GmbH (Ahlen, Germany) (represented by: N. Weber and L. Thiel, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Robert McBride Ltd (Manchester, United Kingdom)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 January 2014 (Case R 272/2013-2) relating to opposition proceedings between Robert McBride Ltd and LR Health & Beauty Systems GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LR Health & Beauty Systems GmbH to pay the costs.*

(1) OJ C 235, 21.7.2014.

Judgment of the General Court of 28 January 2016 — Azarov v Council

(Case T-331/14) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

(2016/C 098/45)

Language of the case: German

Parties

Applicant: Mykola Yanovych Azarov (Kiev, Ukraine) (represented by: G. Lansky and A. Egger, lawyers)

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

Interveners in support of the defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent) and European Commission (represented by: S. Bartelt, D. Gauci and T. Scharf, acting as Agents)

Re:

Application for annulment, first, of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1) and, secondly, of Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119 (OJ 2015 L 24, p. 16) and of Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as they concern Mr Mykola Yanovych Azarov;*

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

3. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Azarov in relation to the claim for annulment made in the application;*

4. *Orders Mr Azarov to bear his own costs and to pay those incurred by the Council in relation to the claim for annulment made in the statement modifying the form of order sought;*

5. *Orders the Republic of Poland and the European Commission to bear their own costs.*

([1]) OJ C 223, 14.7.2014.

Judgment of the General Court of 28 January 2016 — Azarov v Council

(Case T-332/14) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

(2016/C 098/46)

Language of the case: German

Parties

Applicant: Oleksii Mykolayovych Azarov (Kiev, Ukraine) (represented by: G. Lansky and A. Egger, lawyers)

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

Intervener in support of the defendant: European Commission (represented by: S. Bartelt, D. Gauci and T. Scharf, acting as Agents)

Re:

Application for annulment, first, of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1) and, secondly, of Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119 (OJ 2014 L 111, p. 91), of Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation No 208/2014 (OJ 2014 L 111, p. 33), of Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119 (OJ 2015 L 24, p. 16) and of Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended by Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119, and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended by Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation No 208/2014, in so far as they concern Mr Oleksii Mykolayovych Azarov;*

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

3. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Azarov in relation to the claim for annulment made in the application;*

4. *Orders Mr Azarov to bear his own costs and to pay those incurred by the Council in relation to the claim for annulment made in the statement modifying the form of order sought;*

5. *Orders the European Commission to bear its own costs.*

([1]) OJ C 223, 14.7.2014.

Judgment of the General Court of 28 January 2016 — Davó Lledó v OHIM — Administradora y Franquicias América and Inversiones Ged (DoggiS)

(Case T-335/14) ([1])

(Community trade mark — Invalidity proceedings — Community figurative mark DoggiS — Prior national figurative marks DoggiS — Prior national word marks DOGGIS and DOGGIBOX — Prior national figurative marks representing a person in the shape of a hot-dog — Additional evidence adduced for the first time before the Board of Appeal — Article 76 of Regulation (EC) No 207/2009 — Bad faith — Article 52(1)(b) of Regulation No 207/2009 — Evidence adduced for the first time before the General Court)

(2016/C 098/47)

Language of the case: Spanish

Parties

Applicant: José-Manuel Davó Lledó (Cartagena, Spain) (represented by: J.-V. Gil Martí, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Administradora y Franquicias América, SA (Santiago, Chile) and Inversiones Ged Ltda (Santiago)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 13 March 2014 (Case R 1824/2013-1) concerning invalidity proceedings between, on the one hand, Administradora y Franquicias América, SA and Inversiones Ged Ltda and, on the other, Mr José-Manuel Davó Lledó

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr José-Manuel Davó Lledó to pay the costs.*

([1]) OJ C 253, 4.8.2014.

Judgment of the General Court of 28 January 2016 — Klyuyev v Council

(Case T-341/14) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

(2016/C 098/48)

Language of the case: English

Parties

Applicant: Sergiy Klyuyev (Donetsk, Ukraine) (represented by: R. Gherson, T. Garner, Solicitors, and B. Kennelly, Barrister)

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

Intervener in support of the defendant: European Commission (represented by: D. Gauci and T. Scharf, acting as Agents)

Re:

Application for annulment of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26), Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), Council Decision (CFSP) 2015/876 of 5 June 2015 amending Decision 2014/119 (OJ 2015 L 142, p. 30) and Council Implementing Regulation (EU) 2015/869 of 5 June 2015 implementing Regulation (EU) No 208/2014 (OJ 2015 L 142, p. 1), in so far as the applicant's name was included on the list of persons, entities and bodies covered by those restrictive measures.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as Mr Sergiy Klyuyev's name was included on the list of persons, entities and bodies covered by those restrictive measures;*

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

3. *Orders the Council of the European Union to bear its own costs, and to pay those incurred by Mr Klyuyev, in relation to the claim for annulment made in the application;*

4. *Orders Mr Klyuyev to bear his own costs, and to pay those incurred by the Council, in relation to the claim for annulment made in the statement modifying the form of order sought;*

5. *Orders the European Commission to bear its own costs.*

(1) OJ C 261, 11.8.2014.

Judgment of the General Court of 28 January 2016 — Arbuzov v Council

(Case T-434/14) (1)

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

(2016/C 098/49)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kiev, Ukraine) (represented by: M. Machytková and P. Radošovský, lawyers)

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

Re:

Application for annulment of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and of Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119 (OJ 2014 L 111, p. 91), in so far as the applicant's name was included on the list of persons, entities and bodies covered by those restrictive measures.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended by Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119 in so far as it applies to Mr Sergej Arbuzov;*

2. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Arbuzov.*

(1) OJ C 282, 26.8.2014.

Judgment of the General Court of 2 February 2016 — Bon Net v OHIM — Aldi (Bon Appétit!)

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

(Community trade mark — Opposition proceedings — Application for Community figurative mark Bon Appétit! — Prior national figurative marks Бон Апетúт and Bon Apetí — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/50)

Language of the case: German

Parties

Applicant: Bon Net OOD (Sofia, Bulgaria) (represented by: A. Ivanova, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: L, Kolks, C. Fürsen, N. Lützenrath and U. Rademacher, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 14 April 2014 (Case R 1199/2013-2) concerning opposition proceedings between Bon Net OOD and Aldi GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bon Net OOD to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by Aldi GmbH & Co. KG.*

([1]) OJ C 261, 11.8.2014.

Judgment of the General Court of 28 January 2016 –Stavytskyi v Council

(Case T-486/14) ([1])

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

(2016/C 098/51)

Language of the case: English

Parties

Applicant: Edward Stavytskyi (Brussels, Belgium) (represented by: J. Grayston, Solicitor, and by P. Gjørtler, G. Pandey, D. Rovetta and M. Gambardella, lawyers)

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

Re:

Application for annulment of Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 111, p. 91) and of Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 111, p. 33), in so far as the applicant's name was included on the list of persons, entities and bodies covered by those restrictive measures.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as they concern Mr Edward Stavytskyi;*

2. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Stavytskyi.*

([1]) OJ C 303, 8.9.2014.

Judgment of the General Court of 2 February 2016 — Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris v OHIM — Vicente Gandía Pla (ILLIRIA)

(Case T-541/14) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark ILLIRIA — Earlier Community word mark CASTILLO DE LIRIA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/52)

Language of the case: English

Parties

Applicant: Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris Srl (Salice Salentino, Italy) (represented by: D. Russo and V. Wellens, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Vicente Gandía Pla, SA (Chiva, Spain) (represented by: I. Temiño Ceniceros, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 May 2014 (Case R 917/2013-4) concerning opposition proceedings between Vicente Gandía Pla, SA and Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris Srl to pay the costs.*

([1]) OJ C 303, 8.9.2014.

Judgment of the General Court of 28 January 2016 — Slovenia v Commission

(Case T-667/14) ([1])

(EAGGF — 'Guarantee' Section — EAGF and EAFRD — Expenditure excluded from financing — Verification of small parcels — Lack of evidence of serious and reasonable doubt — Extrapolation of on-site inspection results)

(2016/C 098/53)

Language of the case: Slovene

Parties

Applicant: The Republic of Slovenia (represented by: L. Bembič, acting as Agent)

Defendant: European Commission (represented by: B. Rous Demiri and D. Triantafyllou, acting as Agents)

Re:

Application for partial annulment of Commission implementing decision 2014/459/EU of 9 July 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the 'Guarantee' Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 205, p. 62), insofar as it excludes certain expenditure incurred by the Republic of Slovenia.

Operative part of the judgment

The Court:

1. *Annuls Commission implementing decision 2014/459/EU of 9 July 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the 'Guarantee' Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), insofar as it excludes from European Union financing, so far as concerns the Republic of Slovenia, the sum of EUR 85 780,08 for the financial year 2010, of EUR 115 956,46 for the financial year 2011 and of EUR 131 269,23 for the financial year 2012;*

2. *Dismisses the remainder of the application;*

3. *Orders the European Commission to bear its own costs, and to pay nine-tenths of those incurred by the Republic of Slovenia;*

4. *Orders the Republic of Slovenia to bear one-tenth of its own costs.*

([1]) OJ C 395, 10.11.2014.

Judgment of the General Court of 28 January 2016 — Novomatic v OHIM — Simba Toys (African SIMBA)

(Case T-687/14) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark African SIMBA — Prior national figurative mark Simba — Duty to state reasons — Article 75 of Regulation (EC) No 207/2009 — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2016/C 098/54)

Language of the case: German

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Simba Toys GmbH & Co. KG (Fürth, Germany) (represented by: O. Ruhl, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 July 2014 (Case R 2098/2013-4) concerning opposition proceedings between Simba Toys GmbH & Co. KG and Novomatic AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 409, 17.11.2014.

Judgment of the General Court of 27 January 2016 — Montagut Viladot v Commission

(Case T-696/14 P) ([1])

(Appeal — Staff cases — Recruitment — Competition to constitute a reserve from which to recruit grade AD 5 administrators — Decision of the selection board not to place the applicant's name on the reserve list — Diploma which does not satisfy the conditions in the notice of competition — Dismissal of the action at first instance)

(2016/C 098/55)

Language of the case: Spanish

Parties

Appellant: Bernat Montagut Viladot (Schaerbeek, Belgium) (represented by: F.A. Rodríguez-Gigirey Pérez and J.A. Simón Sánchez, lawyers)

Other party to the proceedings: European Commission (represented by: I. Galindo Martín and G. Gattinara, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 15 July 2014 in *Montagut Viladot* v *Commission* (F-160/12, ECR-SC, EU:F:2014:190), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Bernat Montagut Viladot to pay the costs.*

([1]) OJ C 409, 17.11.2014.

Judgment of the General Court of 28 January 2016 — TVR Automotive v OHIM — Cardoni (TVR ENGINEERING)

(Case T-781/14) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark TVR ENGINEERING — Earlier Community figurative mark TVR — Relative ground for refusal — No similarity between the signs — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 098/56)

Language of the case: English

Parties

Applicant: TVR Automotive Ltd (Whiteley, United Kingdom) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Fabio Cardoni (Milan, Italy)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 September 2014 (Case R 2532/2013-4) relating to opposition proceedings between TVR Automotive Ltd and Fabio Cardoni.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TVR Automotive Ltd to pay the costs.*

([1]) OJ C 26, 26.1.2015.

Order of the General Court of 21 January 2016 — Proforec v Commission

(Case T-120/15) ([1])

(Action for annulment — Registration of a protected geographical indication — Focaccia di Recco col formaggio — Lack of legal interest in bringing proceedings — Inadmissibility)

(2016/C 098/57)

Language of the case: Italian

Parties

Applicant: Proforec Srl (Recco, Italy) (represented by: G. Durazzo, M. Mencoboni and G. Pescatore, lawyers)

Defendant: European Commission (represented by: D. Bianchi and J. Guillem Carrau, acting as Agents)

Re:

Application for annulment of Commission Implementing Regulation (EU) 2015/39 of 13 January 2015 entering a name in the register of protected designations of origin and protected geographical indications (Focaccia di Recco col formaggio (PGI)) (OJ 2015 L 8, p. 7).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the applications for leave to intervene made by the Italian Republic and the Consorzio della Focaccia di Recco col formaggio.*

3. *Proforec Srl shall bear its own costs and pay those incurred by the European Commission other than those relating to the applications for leave to intervene.*

4. *Proforec, the Commission, the Italian Republic and the Consorzio della Focaccia di Recco col formaggio shall each bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 138, 27.4.2015.

Order of the General Court of 15 January 2016 — TMG Landelijke Media and Willems v Commission

(Case T-189/15) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Correspondence between the Dutch authorities and the Commission concerning the annual adjustment of the Netherlands' contribution to the EU budget, made on the basis of gross national income — Partial refusal of access — No need to adjudicate)

(2016/C 098/58)

Language of the case: Dutch

Parties

Applicants: TMG Landelijke Media BV (Amsterdam, Netherlands) and Menzo Willems (Voorburg, Netherlands) (represented by: R.S. Le Poole and L. Broers, lawyers)

Defendant: European Commission (represented by: F. Clotuche-Duvieusart and F. Ronkes Agerbeek, acting as Agents)

Re:

Application for annulment of the Commission's decision of 17 February 2015 refusing, in part, to grant Mr Willems access to the documents relating to correspondence between the Commission and the Dutch authorities concerning the annual adjustment of the Netherlands' contribution to the European Union budget.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission shall bear its own costs and pay those incurred by TMG Landelijke Media BV and Mr Menzo Willems.*

([1]) OJ C 190, 8.6.2015.

Order of the General Court of 11 January 2016 — Oase v OHIM — Compo France (AlGo)

(Case T-300/15) ([1])

(Community trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2016/C 098/59)

Language of the case: German

Parties

Applicant: Oase GmbH (Hörstel, Germany) (represented by: T. Weeg, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Compo France SAS (Roche-Lez-Beaupré, France) (represented by: J. Meyer, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 February 2015 (Case R 1409/2013-1) concerning opposition proceedings between Compo France SAS and Oase GmbH.

Operative part of the order

1. *There is no longer any need to adjudicate in the action.*

2. *Oase GmbH shall bear its own costs and shall pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM). Compo France SAS shall bear its own costs.*

([1]) OJ C 262, 10.8.2015.

Action brought on 15 December 2015 — Blaž Jamnik and Blaž v Parliament

(Case T-726/15)

(2016/C 098/60)

Language of the case: Slovenian

Parties

Applicants: Jožica Blaž Jamnik (Ljubljana, Slovenia) and Brina Blaž (Ljubljana) (represented by: D. Mihevc, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare that the selection of the tenderer in the procedure INLO.AO-2013-051-LUX-UGIMBI-06 is unlawful;

— annul the selection of the tenderer;

— select the applicants as the best tenderer;

— in the alternative, award the applicants damages amounting to EUR 3 852 384,60 in the event that they are not selected as the best tenderer in the procedure INLO.AO-2013-051-LUX-UGIMBI-06;

— reimburse the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of Article 113 of Regulation (EU, Euratom) No 966/2012 ([1])

   According to the applicants, the selection of the best tenderer was made in breach of Article 113 of the regulation in question, since the predetermined criteria set out in the tender specifications were not taken into consideration.

2. Second plea in law: the selection procedure was conducted unlawfully

   In that regard, the applicants assert that none of the plans, graphic documentation and statistical calculations which they appended to their tender was examined, since they were not forwarded by the office in Ljubljana for the decision in Luxembourg.

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

Appeal brought on 18 December 2015 by DI against the order of the Civil Service Tribunal of 15 October 2015 in Case F-113/13 DI v EASO

(Case T-730/15 P)

(2016/C 098/61)

Language of the case: English

Parties

Appellant: DI (Bucharest, Romania) (represented by: I. Vlaic and G. Iliescu, lawyers)

Other party to the proceedings: European Asylum Support Office (EASO)

Form of order sought by the appellant

The appellant claims that the Court should:

— annul in its entirety the order of the Civil Service Tribunal of 15 October 2015 in case F-113/13;

— admit the current appeal;

— annul the EASO decision to dismiss the appellant, and consequently to oblige EASO to annul all legal effects of the said decision and to re-do the factual status accordingly;

— oblige the EASO to pay the appellant the amount of EUR 90 000 as material damages, and the amount of EUR 500 000 as moral damages; and

— oblige EASO to pay all costs of the appellant related to the legal representation in front of the Civil Service Tribunal concerning the case F-113/13, and related to the present appeal.

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 that the application of the appellant was admissible and grounded as it respects the correspondence between the pleas, reasons and facts mentioned within the complaint sent during the administrative procedure and the ones presented in detail to the Civil Service Tribunal.

2. Second plea in law, alleging a breach of the principle for access for a fair trial and lack of fair analysis in the pre-litigation phase. The complaint of the appellant during the administrative procedure was rejected by the same person who initially decided to dismiss the appellant.

3. Third plea in law, alleging a breach of the equal treatment principle by the Civil Service Tribunal.

Action brought on 31 December 2015 — Sony and Sony Electronics v Commission

(Case T-762/15)

(2016/C 098/62)

Language of the case: English

Parties

Applicants: Sony Corporation (Tokyo, Japan), and Sony Electronics, Inc (San Diego, United States) (represented by: N. Levy and E. Kelly, Solicitors, and R. Snelders, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Commission of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFEU and Article 53 EEA Agreement, in so far as it relates to the applicants;

— alternatively, in the exercise of its unlimited jurisdiction, reduce the fines imposed on the applicants pursuant to that decision; and

— order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision errs in fact and in law in finding that the applicants engaged in an infringement of Article 101 TFEU by object.

   — The evidence cited against the applicants is insufficient to support the finding that the applicants participated in a single and continuous infringement of Article 101 TFEU by object.

   — The decision's alternative finding according to which the applicants engaged in separate infringements of Article 101 TFEU by object is unproven and infringed the applicants' rights of defence because it is made for the first time in the decision.

2. Second plea in law, alleging, in the alternative, that the contested decision errs in fact and law and is based on inadequate reasoning.

— The decision errs in double-counting revenues that were passed on by the applicants to another addressee of the decision.

— The decision errs by failing to acknowledge the applicants' substantially more limited conduct as compared to certain other addressees of the decision and thus by failing to apply to the applicants a lower gravity multiplier and lower additional amount and/or a mitigating circumstances discount.

— The decision errs in imposing a deterrence multiplier.

Action brought on 31 December 2015 — Sony Optiarc and Sony Optiarc America v Commission

(Case T-763/15)

(2016/C 098/63)

Language of the case: English

Parties

Applicants: Sony Optiarc, Inc (Atsugi, Japan), and Sony Optiarc America, Inc (San Jose, United States) (represented by: N. Levy and E. Kelly, Solicitors, and R. Snelders, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Commission of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFEU and Article 53 EEA Agreement, in so far as it relates to the applicants;

— alternatively, in the exercise of its unlimited jurisdiction, reduce the fines imposed on the applicants pursuant to that decision; and

— order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision errs in fact and in law in finding that the applicants engaged in an infringement of Article 101 TFEU by object.

— The evidence cited against the applicants is insufficient to support the finding that the applicants participated in a single and continuous infringement of Article 101 TFEU by object.

— The decision's alternative finding according to which the applicants engaged in separate infringements of Article 101 TFEU by object is unproven and infringed the applicants' rights of defence because it is made for the first time in the decision.

2. Second plea in law, alleging, in the alternative, that the contested decision errs in fact and law and is based on inadequate reasoning.

   — The decision errs in double-counting revenues that were passed on by the applicants to another addressee of the decision.

   — The decision errs by failing to acknowledge the applicants' substantially more limited conduct as compared to certain other addressees of the decision and thus by failing to apply to the applicants a lower gravity multiplier and lower additional amount and/or a mitigating circumstances discount.

Action brought on 29 December 2015 — Quanta Storage v Commission

(Case T-772/15)

(2016/C 098/64)

Language of the case: English

Parties

Applicant: Quanta Storage, Inc. (Taoyuan City, Taiwan) (represented by: B. Hartnett, Barrister, O. Geiss, lawyer, and W. Sparks, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission decision of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFEU and Article 53 EEA Agreement, in so far as it relates to the applicant;

— in the alternative, reduce the fine imposed on 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 five pleas in law.

1. First plea in law, alleging that the Commission violated the applicant's rights of defence, the duty to state reasons and the right to good administration.

   — The contested decision is based on a finding of infringements that had not been put to the applicant in the administrative procedure.

   — The contested decision is based on assumptions regarding transparency in the market which the Commission has failed to investigate fully.

2. Second plea in law, alleging that the discrepancy between the operative part of the contested decision and the Commission's reasoning as regards the duration of the infringement in relation to Hewlett Packard results in a manifest error in law and breaches the duty to state reasons.

3. Third plea in law, alleging that the Commission failed to prove and provide adequate reasoning that the applicant participated in a single and continuous infringement.

   — The applicant did not participate in the infringement alleged between 14 February 2008 and 9 April 2008.

— The applicant did not participate in the infringement alleged between 10 April 2008 and 27 October 2008.

— The applicant did not participate in an infringement on 28 October 2008.

— There is insufficient evidence to show that the applicant was aware either of the cartel's overall plan or of its general scope and essential characteristics.

— Legal consequences of the Commission's failure to prove the infringement alleged.

4. Fourth plea in law, alleging that the Commission failed to establish, to the requisite legal and evidential standard, that it had jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement.

5. Fifth plea in law, alleging that the Commission committed manifest errors of fact and law in calculating the amount of the fine, and breached the duty to state its reasons.

— The Commission erred in fact and in law when calculating the basic amount, and failed to state its reasons.

— The Commission failed to use the best available figures on the value of the applicant's sales.

— The Commission violated the principle of equal treatment when calculating the basic amount.

— The Commission committed errors of assessment in considering gravity and mitigating circumstances.

Action brought on 4 January 2016 — Hitachi-LG Data Storage and Hitachi-LG Data Storage Korea v Commission

(Case T-1/16)

(2016/C 098/65)

Language of the case: English

Parties

Applicants: Hitachi-LG Data Storage, Inc. (Tokyo, Japan), and Hitachi-LG Data Storage Korea, Inc. (Seoul, Republic of Korea) (represented by: L. Gyselen and N. Ersbøll, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— reduce the amount of the fine imposed on the applicants by Article 2(d) of the decision of the Commission of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFUE and Article 53 EEA Agreement, thereby reflecting the particularities of the case; and

— order the costs of the proceedings to be borne by the Commission.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the principle of good administration and its duty to state reasons by failing to respond to the applicants' request pursuant to point 37 of the Commission's 2006 guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ([1]) (the 'Fining Guidelines').

   — In the course of the administrative procedure before the Commission, the applicants submitted a request to the Commission for a reduction of the fine in light of 'particular circumstances' within the meaning of point 37 of the Fining Guidelines. The Commission's case team did not respond to this request and the Commission did not address it in its decision. The applicants must assume that the Commission's services have either not assessed its request at all or that they have not shared any such assessment with the advisory committee and the college of commissioners for their review. As a consequence, it cannot be excluded that, had they done so, the fine ultimately imposed on the applicants might have been lower. The Commission has thus infringed the principle of good administration and its duty to state reasons.

2. Second plea in law, alleging that the Commission erred by failing to depart from the methodology in the Fining Guidelines in order to reduce the fine imposed on the applicants in light of the particularities of the case and the role of the applicants. The 'particular circumstances' within the meaning of point 37 of the Fining Guidelines are as follows:

   — the applicants, who derive the majority of their revenue from one product (optical disk drives), diversified their business in 2014, the year used by the Commission as reference year for the calculation of the 10 % cap set forth in Article 23(2) of Regulation No 1/2003;

   — the applicants are the only among the companies fined that remain committed to the optical disk drives market and the level of the fine imposed on them will adversely affect their capacity to serve the customers in this market in a sustainable fashion; and

   — the applicants face a precarious financial situation, while at the same time deploying significant efforts to overcome their financial difficulties.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1 p. 1).

Action brought on 7 January 2016 — Awg Allgemeine Warenvertriebs v OHIM — Takko (Southern Territory 23°48'25"S)

(Case T-6/16)

(2016/C 098/66)

Language in which the application was lodged: German

Parties

Applicant: Awg Allgemeine Warenvertriebs GmbH (Köngen, Germany) (represented by: T. Sambuc, lawyer)

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

Other party to the proceedings before the Board of Appeal: Takko Holding GmbH (Telgte, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Awg Allgemeine Warenvertriebs GmbH

Trade mark at issue: Community word mark 'Southern Territory 23°48'25"S' –Community trade mark No 10 099 554

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 10 November 2015 in Case R 735/2015-4

Form of order sought

The applicant claims that the Court should:

— amend the contested decision by declaring that the application for the invalidity of Community word mark 10 099 554 Southern Territory 23°48'25"S is rejected.

Plea in law

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

Action brought on 5 January 2016 — Toshiba Samsung Storage Technology and Toshiba Samsung Storage Technology Korea v Commission

(Case T-8/16)

(2016/C 098/67)

Language of the case: English

Parties

Applicants: Toshiba Samsung Storage Technology Corp. (Tokyo, Japan), and Toshiba Samsung Storage Technology Korea Corp. (Gyeonggi-do, Republic of Korea) (represented by: M. Bay, J. Ruiz Calzado, A. Aresu and A. Scordamaglia-Tousis, lawyers)

Defendants: European Commission

Form of order sought

The applicants claim that the Court should:

— annul, in whole or in part, the decision of the Commission of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFEU and Article 53 EEA Agreement;

— further, or in the alternative, substantially reduce the amount of the fine imposed on the applicants;

— order the Commission to pay the costs; and

— make any other order as may be appropriate in the circumstances of the case.

Pleas in law and main arguments

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

1. First plea in law, alleging a breach of essential procedural requirements and of the applicants' rights of defence, resulting from the inconsistent legal characterisation of the conduct, the contradictory, or the very least, insufficient reasoning regarding the legal characterisation of the alleged infringement, the failure to give access to exculpatory evidence, and the reliance on several legal and factual elements in the contested decision that were not addressed in the statement of objections.

2. Second plea in law, alleging errors of fact and law in the application of Article 101 TFEU in relation to the finding of an effect on trade between Members States.

3. Third plea in law, alleging errors of fact and law in the determination of the geographic scope of the infringement of Article 101 TFEU.

4. Fourth plea in law, alleging errors of fact and law in the application of Article 101 TFEU in relation to the finding of a single infringement.

5. Fifth plea in law, alleging errors of fact and law in respect of the applicants' alleged awareness of the whole single infringement and, more specifically, of the participation of all other addresses.

6. Sixth plea in law, alleging errors of fact and law regarding the starting date of the applicants' alleged participation to whole single infringement.

7. Seventh plea in law, alleging errors of fact and law in relation to the scope of the infringement imputed to the applicants by finding that the applicants were involved in anticompetitive 'agreements'.

8. Eighth plea in law, alleging a breach of the right to good administration and of related general principles of EU law resulting from the manifestly excessive duration of the investigation.

9. Ninth plea in law, in the alternative, alleging errors in the calculation of the fine, resulting from:

— the Commission's failure to take account of the fact that (a) the applicants are a single-product undertaking, (b) additional circumstances limiting the gravity of the applicants' individual conduct and mitigating circumstances; and

— the Commission's failure to give proper weight to the specific circumstances of the infringement in setting the level of the general gravity multiplier and the entry fee.

Action brought on 11 January 2016 — Skechers USA France v OHIM — IM Production (Shoes)

(Case T-9/16)

(2016/C 098/68)

Language in which the application was lodged: French

Parties

Applicant: Skechers USA France (Paris, France) (represented by: J. Horn, lawyer)

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

Other party to the proceedings before the Board of Appeal: IM Production SAS (Paris)

Details of the proceedings before OHIM

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

Design at issue: Community design 1 221 584-0023

Contested decision: Decision of the Third Board of Appeal of OHIM of 23 September 2015 in Case R 2429/2013-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

Pleas in law

— Infringement of the rights of the defence and the principles of due process;

— Infringement of Articles 4, 5, 6 and of Article 25(1)(b) of Regulation No 6/2002.

Action brought on 15 January 2016 — Slovenia v Commission

(Case T-12/16)

(2016/C 098/69)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: L. Bembič, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2015/2098 of 13 November 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) 7716) (OJ 2015 L 303, p. 35), in so far as it concerns the Republic of Slovenia, and particularly in so far as it relates to

the lack of a control procedure (or surveillance procedure) regarding land parcels created artificially, in relation to which a correction of the decoupled direct aids at issue was made amounting to EUR 42 615,90for the 2013 accounting year (claim year 2012), EUR 45 519,08for the 2014 accounting year (claim year 2013), and EUR 34 211,94for the 2015 accounting year (claim year 2014);

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law regarding the checks on the land parcels, namely: a manifest error of assessment; an inadequate statement of reasons for the decision; and infringement of the principle of legality.

In the applicant's opinion, the Commission incorrectly held that there is not yet an adequate system in Slovenia for checking the smallest eligible areas. In that regard, the applicant observes that the small land parcels in Slovenia are a consequence of the natural features and historical fragmentation of its agricultural structures. Furthermore, those areas were not created artificially in order to meet the requirements for obtaining aid from the support scheme. Lastly, during its examination, the Commission did not establish or prove any breach, since the areas in question meet all the requirements necessary to be defined as agricultural areas and land parcels.

Action brought on 18 January 2016 — Advanced Drainage Systems v OHIM (THE MOST ADVANCED NAME IN WATER MANAGEMENT SOLUTIONS)

(Case T-19/16)

(2016/C 098/70)

Language of the case: English

Parties

Applicant: Advanced Drainage Systems, Inc. (Wilmington, United States) (represented by: C. Sleep, Solicitor)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'THE MOST ADVANCED NAME IN WATER MANAGEMENT SOLUTIONS' — Application for registration No 13 405 188

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 5 November 2015 in Case R 1501/2015-4

Form of order sought

The applicant claims that the Court should:

— overturn the decision and allow the application to proceed to registration.

— in the alternative, allow this appeal and overturn the Decision and remit the application back to the Examination division;

— grant an award of costs.

Plea in law

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

Action brought on 19 January 2016 — Karl Conzelmann v OHIM (LIKE IT)

(Case T-21/16)

(2016/C 098/71)

Language of the case: German

Parties

Applicant: Karl Conzelmann GmbH & Co. KG (Albstadt, Germany) (represented by: J. Klink, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'LIKE IT' — Application No 13 180 104

Contested decision: Decision of the First Board of Appeal of OHIM of 11 November 2015 in Case R 223/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs, including the costs incurred in the course of the appeal proceedings.

Plea in law

— Infringement of 7(1)(b) of Regulation No 207/2009 in conjunction with Article 7(2) of that regulation.

Action brought on 26 January 2016 — Germany v Commission

(Case T-28/16)

(2016/C 098/72)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and A. Lippstreu, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1 and the annex to Commission Implementing Decision (EU) 2015/2098 of 13 November 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 the payments incurred by the competent authorities of the Federal Republic of Germany under the EAFRD in the total amount of EUR 7 719 920,30 are excluded from EU financing;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 71(2) read in conjunction with Article 2(e) of Regulation (EC) No 1698/2005, ([1]) in so far as the Commission required selection criteria to be applied not only to a concrete 'operation' within the meaning of Article 2(e) of Regulation No 1698/2005, but also to preliminary phases of the national land reorganisation and village renewal procedures, and in so far as the Commission misconstrued the conditions applicable to selection criteria.

2. Second plea in law: Infringement of the partnership principle set out in Article 6 of Regulation (EC) No 1698/2005, the principle of sincere cooperation (the first paragraph of Article 4(3) TEU) and the principle that legitimate expectations be protected, in so far as the Commission based its corrective decision on an approach that the Commission itself had approved or had not called into question.

3. Third plea in law: Infringement of the principle of subsidiarity (Article 5 TEU), in so far as the Commission encroached upon the procedural autonomy and the planning prerogatives of the Member States.

4. Fourth plea in law: Infringement of Article 52(2) of Regulation (EU) No 1306/2013, ([2]) of Article 31(2) of Regulation No 1290/2005 ([3]) and of the principle of proportionality, since, by a flat-rate correction of 10 %, the Commission did not have due regard to the nature and, in any event, limited extent of a potential infringement in connection with the selection criteria and did not take into account the circumstance that the European Union did not suffer any actual financial loss nor was there ever any real risk that it would suffer loss.

([1]) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).
([2]) 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).
([3]) 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 25 January 2016 — Czech Republic v Commission

(Case T-32/16)

(2016/C 098/73)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek and J. Vláčil, acting as Agents)

Defendant: European Commission

Form of order sought

— annul Commission Implementing Decision (EU) 2015/2098 of 13 November 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 excludes expenditure of a total of EUR 584 299,25 incurred by the Czech Republic,

— order the European Commission to pay the costs.

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 infringement of Article 52(1) of 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.

   — The Commission decided to exclude the expenditure from EU financing although there was no breach of EU or national law. It wrongly assumed that the application of a lower maximum age in the case of support for early retirement required a change of a rural development programme within the meaning of Article 19 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development.

2. Should the Court not uphold the first plea in law, the applicant puts forward a second plea in law, alleging infringement of Article 52(2) of Regulation No 1306/2013.

— Even if the application of a lower maximum age in the case of support for early retirement without a change to a rural development programme constituted an infringement of Regulation No 1698/2005 (*quod non*), the Commission incorrectly assessed the importance of that infringement and the financial damage to the European Union. The importance of any infringement is minimal and there was no financial damage to the European Union.

Action brought on 2 February 2016 — Sigma Orionis v REA

(Case T-47/16)

(2016/C 098/74)

Language of the case: French

Parties

Applicant: Sigma Orionis SA (Valbonne, France) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: Research Executive Agency (REA)

Form of order sought

The applicant claims that the Court should:

— Declare that REA failed to fulfil its contractual obligations under grant contract H2020 by suspending all payments due to the applicant on the basis of an OLAF investigation report that was drawn up unlawfully;

— In the alternative, order the appointment of an expert whose task will be to determine the amounts indisputably payable to the applicant under the contested grant contract.

Consequently, that the defendant be ordered:

— to pay the amounts due under grant contract H2020, that is EUR 42 540 625, together with interest on late payment in accordance Article 21.11.1, calculated from the due date of the amounts payable, at the rate fixed by the European Central bank (ECB) for main refinancing operations, increased by 3.5 points,

— to compensate the applicant for the additional harm that it has suffered, assessed at this stage in the amount of EUR 1 500 000 subject to increase or reduction in the course of the proceedings,

— to pay the costs.

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 that the Research Executive Agency (REA) cannot rely on an investigation report drawn up on the basis of evidence obtained unlawfully to justify its decision to suspend, in their entirety, the payments due to the applicant. The applicant claims, in that regard, that in so far as REA relied on unlawfully obtained evidence, both the suspension of payments and the termination of the grant contracts are unlawful.

2. Second plea in law, alleging infringement of the principle of proportionality, in that the various technical audit reports invariably concluded that the resources were used by the applicant in accordance with the principles of economy, efficiency and sound financial management. It follows from this that REA could not claim to have validly found that the applicant had committed irregularities in connection with other grants such as to justify either the termination or suspension of all payments in the contested grant contracts. Moreover, participation in the grant agreements constitutes the only source of funding for the applicant and the absence of new European projects would inevitably lead to bankruptcy.

Action brought on 2 February 2016 — Sigma Orionis v Commission

(Case T-48/16)

(2016/C 098/75)

Language of the case: French

Parties

Applicant: Sigma Orionis SA (Valbonne, France) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare that the European Commission failed to fulfil its contractual obligations under grant contracts FP7 and H2020 by suspending all payments due to the applicant on the basis of an OLAF investigation report that was drawn up unlawfully;

— Declare that the European Commission failed to fulfil its contractual obligations under grant contracts FP7 and H2020 by terminating the contested grant contracts on the basis of an OLAF investigation report that was drawn up unlawfully;

— In the alternative, order the appointment of an expert whose task will be to determine the amounts indisputably payable to the applicant under the contested grant contracts.

Consequently, that the defendant be ordered:

— to pay the unlawfully suspended amounts due under grant contract FP7, that is, EUR 607 404,49 together with interest on late payment in accordance with Article II.5.5, calculated from the due date of the amounts payable, at the rate fixed by the European Central bank (ECB) for main refinancing operations, increased by 3,5 points,

— to pay the unlawfully suspended amounts due under the H2020 grant contracts, that is, EUR 226 688,68 together with interest on late payment in accordance Article 21.11.1, calculated from the due date of the amounts payable, at the rate fixed by the European Central bank (ECB) for main refinancing operations, increased by 3,5 points,

— to compensate the applicant for the additional harm that it has suffered, assessed at this stage in the amount of EUR 1 500 000 subject to increase or reduction in the course of the proceedings,

— to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission cannot rely on an investigation report drawn up on the basis of evidence obtained unlawfully to justify its decision to suspend, in their entirety, the payments due to the applicant. The applicant claims, in that regard, that in so far as the Commission relied on unlawfully obtained evidence, both the suspension of payments and the termination of the grant contracts are unlawful.

2. Second plea in law, alleging infringement of the principle of proportionality, in that the various technical audit reports invariably concluded that the resources were used by the applicant in accordance with the principles of economy, efficiency and sound financial management. It follows from this that the Commission could not claim to have validly found that the applicant had committed irregularities in connection with other grants such as to justify either the termination or suspension of all payments in the contested grant contracts. Moreover, participation in the grant agreements constitutes the only source of funding for the applicant and the absence of new European projects would inevitably lead to bankruptcy.

3. Third plea in law, alleging that the Commission has manifestly and gravely disregarded the limits of its discretion and which is such as to cause the European Union to incur non-contractual liability. The applicant has suffered damage in connection to its reputation and its order book, which greatly reduces or even eliminates any prospect of participating, in the future, in new European projects. Moreover, participation in the grant agreements constitutes the only source of funding for the applicant and the absence of new European projects would inevitably lead to bankruptcy.

Order of the General Court of 14 January 2016 — Premo v OHIM — Prema Semiconductor (PREMO)

(Case T-400/14) ([1])

(2016/C 098/76)

Language of the case: English

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

([1]) OJ C 261, 11.8.2014.

Order of the General Court of 14 January 2016 — Premo v OHIM — Prema Semiconductor (PREMO)

(Case T-440/14) ([1])

(2016/C 098/77)

Language of the case: English

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

([1]) OJ C 315, 15.9.2014.

Order of the General Court of 15 January 2016 — Ahmed Mohamed Saleh Baeshen v OHIM

(Case T-564/14) ([1])

(2016/C 098/78)

Language of the case: English

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

([1]) OJ C 360, 27.10.2014.

Order of the General Court of 19 January 2016 — Loewe Technologies v OHIM — DNS International (SoundVision)

(Case T-623/14) ([1])

(2016/C 098/79)

Language of the case: French

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

([1]) OJ C 351, 6.10.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 25 January 2016 — Darchy v Commission

(Case F-47/15) ([1])

(Civil Service — Officials — Family allowances — Dependent child allowance — Children of the applicant's spouse — Payment with retroactive effect)

(2016/C 098/80)

Language of the case: French

Parties

Applicant: Marie-Pierre Darchy (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Commission (represented by: T.S. Bohr and A.-C. Simon, acting as Agents)

Re:

Annulment of the decision not to uphold the application for the retroactive grant of the dependent child allowance in respect of the two children of the applicant's spouse, who live at her home every second week, with effect from the date of their marriage and payment of compensation.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Darchy to bear her own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 190, 8.6.2015, p. 35.

Order of the Civil Service Tribunal of 28 January 2016 — Schwander v Commission

(Case F-138/11) ([1])

(2016/C 098/81)

Language of the case: French

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

([1]) OJ C 65, 3/3/2012, p. 24.

Order of the Civil Service Tribunal of 2 February 2016 — de Stefano v Commission

(Case F-66/12) ([1])

(2016/C 098/82)

Language of the case: French

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

([1]) OJ C 258, 25/8/2012, p. 28.

Order of the Civil Service Tribunal of 28 January 2016 — Goch v Council

(Case F-21/13) ([1])

(2016/C 098/83)

Language of the case: French

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

([1]) OJ C 156, 1/6/2013, p. 55.

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