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Information and Notices

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These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2016/C 243/02)

On 9 June 2016, the plenum of the General Court decided, following the entry into office as Judges of Mr Xuereb, Mr Schalin and Ms Reine, on a proposal from the President made in accordance with Article 13(2) of the Rules of Procedure, to amend the decision of 23 October 2013 on the assignment of Judges to Chambers, ([1]) as most recently amended by the decision of 13 April 2016, ([2]) for the period from 9 June 2016 to 31 August 2016, and to assign the Judges to Chambers as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, Vice-President, Ms Pelikánová, Mr Buttigieg, Mr Gervasoni and Mr Calvo-Sotelo Ibáñez-Martín, Judges.

First Chamber, sitting with three Judges:

Mr Kanninen, Vice-President

(a) Ms Pelikánová and Mr Buttigieg, Judges;

(b) Ms Pelikánová and Mr Calvo-Sotelo Ibáñez-Martín, Judges;

(c) Mr Buttigieg and Mr Calvo-Sotelo Ibáñez-Martín, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Ms Martins Ribeiro, President of the Chamber, Mr Bieliūnas, Mr Gervasoni, Mr Madise and Mr Csehi, Judges.

Second Chamber, sitting with three Judges:

Ms Martins Ribeiro, President of the Chamber

(a) Mr Gervasoni and Mr Madise, Judges;

(b) Mr Gervasoni and Mr Csehi, Judges;

(c) Mr Madise and Mr Csehi, Judges.

([1]) OJ C 344, 23.11.2013, p. 2.
([2]) OJ C 175, 17.5.2016, p. 2.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Ms Labucka, Mr Bieliūnas, Mr Forrester and Mr Iliopoulos, Judges.

Third Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber

(a) Mr Bieliūnas and Mr Forrester, Judges;

(b) Mr Bieliūnas and Mr Iliopoulos, Judges;

(c) Mr Forrester and Mr Iliopoulos, Judges.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Prek, President of the Chamber, Ms Labucka, Mr Schwarcz, Mr Kreuschitz and Mr Schalin, Judges.

Fourth Chamber, sitting with three Judges:

Mr Prek, President of the Chamber

(a) Ms Labucka and Mr Kreuschitz, Judges;

(b) Ms Labucka and Mr Schalin, Judges;

(c) Mr Kreuschitz and Mr Schalin, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Mr Schwarcz, Ms Tomljenović and Ms Reine, Judges.

Fifth Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber

(a) Mr Schwarcz and Ms Tomljenović, Judges;

(b) Mr Schwarcz and Ms Reine, Judges;

(c) Ms Tomljenović and Ms Reine, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Frimodt Nielsen, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Collins and Mr Valančius, Judges.

Sixth Chamber, sitting with three Judges:

Mr Frimodt Nielsen, President of the Chamber

(a) Mr Dehousse and Mr Collins, Judges;

(b) Mr Dehousse and Mr Valančius, Judges;

(c) Mr Collins and Mr Valančius, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr van der Woude, President of the Chamber, Ms Wiszniewska-Białecka, Ms Kancheva, Mr Ulloa Rubio and Ms Marcoulli, Judges.

Seventh Chamber, sitting with three Judges:

Mr van der Woude, President of the Chamber

(a) Ms Wiszniewska-Białecka and Mr Ulloa Rubio, Judges;

(b) Ms Wiszniewska-Białecka and Ms Marcoulli, Judges;

(c) Mr Ulloa Rubio and Ms Marcoulli, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Gratsias, President of the Chamber, Mr Czúcz, Ms Kancheva, Mr Wetter and Ms Półtorak, Judges.

Eighth Chamber, sitting with three Judges:

Mr Gratsias, President of the Chamber

(a) Ms Kancheva and Mr Wetter, Judges;

(b) Ms Kancheva and Ms Półtorak, Judges;

(c) Mr Wetter and Ms Półtorak, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Mr Berardis, President of the Chamber, Mr Czúcz, Mr Popescu, Mr Spielmann and Mr Xuereb, Judges.

Ninth Chamber, sitting with three Judges:

Mr Berardis, President of the Chamber

(a) Mr Czúcz and Mr Popescu, Judges;

(b) Mr Spielmann and Mr Xuereb, Judges.

The Chambers (Extended Composition) sitting with five Judges shall be formed:

— in the case of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Chambers, by the addition to the limited formation first seised of the case of the fourth Judge of the Chamber and a fifth Judge from the Chamber immediately following in numerical order (who shall not be the President of the Chamber), designated in accordance with the order laid down in Article 8 of the Rules of Procedure;

— in the case of the Ninth Chamber, by the addition to the limited formation first seised of the case of the other two Judges of the Chamber.

The Chambers sitting with three Judges from the four Judges assigned to them shall sit in three sub-formations.

The Chamber sitting with three Judges from the five Judges assigned to it shall sit in two sub-formations.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 28 April 2016 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Het Oudeland Beheer BV

(Case C-128/14) ([1])

(Reference for a preliminary ruling — Taxation — VAT — Taxable transactions — Application for the purposes of the business of goods acquired 'in the course of the business' — Treatment as supplies effected for consideration — Taxable amount)

(2016/C 243/03)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Het Oudeland Beheer BV

Operative part of the judgment

1. *Article 11A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995 must be interpreted as meaning that the value of a right in rem granting its holder a right of use over immovable property and the cost of completing the office building built on the land in question may be included in the taxable amount of a supply, within the meaning of Article 5(7)(a) of that directive, as amended, where the taxable person has already paid value added tax on that value and that cost, but also deducted the value added tax immediately and in full;*

2. *In a situation such as that at issue in the main proceedings, where land and a building under construction on that land have been acquired with the grant of a right in rem granting its holder a right of use over such immovable property, Article 11A(1)(b) of Sixth Directive 77/388, as amended, must be interpreted as meaning that the value of that right in rem to be taken in account in calculating the taxable amount of a supply, within the meaning of Article 5(7)(a) of that directive, corresponds to the value of the amount to be paid in consideration each year for the remainder of the long lease granting the right in rem, as corrected or capitalised according to the same method used to determine the value of the grant of the long leasehold.*

([1]) OJ C 159, 26.5.2014.

Judgment of the Court (Second Chamber) of 28 April 2016 (requests for a preliminary ruling from the Landesverwaltungsgericht Niederösterreich, Raad van State, Tribunale amministrativo regionale per il Lazio — Austria, Netherlands, Italy) — Borealis Polyolefine GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (C-191/14), OMV Refining & Marketing GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (C-192/14), DOW Benelux BV and Others v Staatssecretaris van Infrastructuur en Milieu (C-295/14), Esso Italiana Srl, Eni SpA, Linde Gas Italia Srl v Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei Ministri (C-389/14) v Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico (C-391/14) v Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico (C-392/14), Dalmine SpA v Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico (C-393/14)

(Joined Cases C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14) ([1])

(References for a preliminary ruling — Scheme for greenhouse gas emission allowance trading in the European Union — Directive 2003/87/EC — Article 10a(5) — Method for allocating allowances — Free allocation of allowances — Method for calculating the uniform cross-sectoral correction factor — Decision 2011/278/EU — Article 15(3) — Decision 2013/448/EU — Article 4 — Annexe II — Validity)

(2016/C 243/04)

Languages of the case: German, Dutch and Italian

Referring courts

Landesverwaltungsgericht Niederösterreich, Raad van State, Tribunale amministrativo regionale per il Lazio

Parties to the main proceedings

(Case C-191/14)

Applicant: Borealis Polyolefine GmbH

Defendant: Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-192/14)

Applicant: OMV Refining & Marketing GmbH

Defendant: Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-295/14)

Applicants: DOW Benelux BV and Others

Defendant: Staatssecretaris van Infrastructuur en Milieu

(Case C-389/14)

Applicants: Esso Italiana Srl, Eni SpA, Linde Gas Italia Srl

Defendants: Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei Ministri

intervening party: Edison SpA

(Case C-391/14)

Applicant: Api Raffineria di Ancona SpA

Defendants: Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico

intervening party: Edison SpA

(Case C-392/14)

Applicant: Lucchini in Amministrazione Straordinaria SpA

Defendants: Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico

intervening party: Cofely Italia SpA

(Case C-393/14)

Applicant: Dalmine SpA

Defendants: Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico

intervening parties: Cofely Italia SpA, Buzzi Unicem SpA

Operative part of the judgment

1. *The examination of the first four questions in Cases C-191/14 and C-192/14, the third question in Case C-295/14 and the first question in Cases C-389/14 and C-391/14 to C-393/14 has disclosed nothing to affect the validity of Article 15(3) of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council in so far as that provision precludes emissions from electricity generators from being taken into account in the determination of the maximum annual amount of allowances;*

2. *Article 4 of, and Annex II to, Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council are invalid;*

3. *The temporal effects of the declaration of invalidity of Article 4 of, and Annex II to, Decision 2013/448 are to be limited so that, first, that declaration does not produce effects until 10 months following the date of delivery of this judgment so as to enable the European Commission to adopt the necessary measures and, second, measures adopted during that period on the basis of the invalidated provisions cannot be called into question.*

([1]) OJ C 303, 8.9.2014
OJ C 372, 20.10.2014.

Judgment of the Court (First Chamber) of 4 May 2016 — European Commission v Republic of Austria

(Case C-346/14) ([1])

(Failure of a Member State to fulfil obligations — Article 4(3) TEU — Article 288 TFEU — Directive 2000/60/EC — EU water policy — Article 4(1) — Prevention of deterioration of the status of bodies of surface water — Article 4(7) — Derogation from the prohibition of deterioration — Overriding public interest — Authorisation to construct a hydropower plant on the Schwarze Sulm River (Austria) — Deterioration of the water status)

(2016/C 243/05)

Language of the case: German

Parties

Applicant: European Commission (represented by: E. Manhaeve, C. Hermes and G. Wilms, acting as Agents)

Defendant: Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

Intervener in support of the defendant: Czech Republic (represented by: M. Smolek, Z. Petzl and J. Vláčil, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 361, 13.10.2014.

Judgment of the Court (Second Chamber) of 4 May 2016 — Republic of Poland v European Parliament, Council of the European Union

(Case C-358/14) ([1])

(Action for annulment — Approximation of laws — Directive 2014/40/EU — Article 2(25), Article 6(2)(b), Article 7(1) to (5), the first sentence of Article 7(7), Article 7(12) to (14) and Article 13(1)(c) — Validity — Manufacture, presentation and sale of tobacco products — Prohibition on the placing on the market of tobacco products with characterising flavours — Tobacco products containing menthol — Legal basis — Article 114 TFEU — Principle of proportionality — Principle of subsidiarity)

(2016/C 243/06)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna and M. Szwarc, Agents)

Intervener in support of the applicant: Romania (represented by: R.-H. Radu, D.M. Bulancea and A. Vacaru, Agents)

Defendants: European Parliament (represented by: L. Visaggio, J. Rodrigues and A. Pospíšilová Padowska, Agents), Council of the European Union (represented by: O. Segnana, J. Herrmann, K. Pleśniak and M. Simm, Agents)

Interveners in support of the defendants: Ireland (represented by: J. Quaney and A. Joyce, Agents, and by E. Barrington SC and J. Cooke SC and E. Carolan, Barrister-at-Law), French Republic (represented by: D. Colas and S. Ghiandoni, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: V. Kaye, C. Brodie and M. Holt, Agents, and by I. Rogers QC and S. Abram and E. Metcalfe, Barristers), European Commission (represented by: M. Van Hoof, C. Cattabriga and M. Owsiany-Hornung, Agents)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Poland to pay the costs;*

3. *Orders Ireland, the French Republic, Romania, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.*

([1]) OJ C 315, 15.9.2014.

Judgment of the Court (Second Chamber) of 4 May 2016 (request for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — United Kingdom) — Pillbox 38 (UK) Ltd v The Secretary of State for Health

(Case C-477/14) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 2014/40/EU — Article 20 — Electronic cigarettes and refill containers — Validity — Principle of equal treatment — Principles of proportionality and legal certainty — Principle of subsidiarity — Charter of Fundamental Rights of the European Union — Articles 16 and 17)

(2016/C 243/07)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Pillbox 38 (UK) Ltd

Defendant: The Secretary of State for Health

Operative part of the judgment

Consideration of the question referred has disclosed no factor of such a kind as to affect the validity of Article 20 of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

([1]) OJ C 7, 12.1.2015.

Judgment of the Court (Fifth Chamber) of 12 May 2016 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Gemeente Borsele v Staatssecretaris van Financiën, Staatssecretaris van Financiën v Gemeente Borsele

(Case C-520/14) ([1])

(Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Articles 2(1)(c) and 9 (1) — Taxable persons — Economic activities — Definition — Transport of schoolchildren)

(2016/C 243/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Gemeente Borsele, Staatssecretaris van Financiën

Defendants: Staatssecretaris van Financiën, Gemeente Borsele

Operative part of the judgment

Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a regional or local authority which provides a service for the transport of schoolchildren under conditions such as those described in the main proceedings does not carry out an economic activity and is not therefore a taxable person.

([1]) OJ C 56, 16.2.2015.

Judgment of the Court (Fourth Chamber) of 27 April 2016 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X v Staatssecretaris van Financiën

(Case C-528/14) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Regulation (EC) No 1186/2009 — Article 3 — Relief from import duties — Personal property — Transfer of residence from a third country to a Member State — Definition of 'normal place of residence' — Impossible to have at the same time a normal place of residence in a Member State and in a third country — Criteria for determining the normal place of residence)

(2016/C 243/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

1. *Article 3 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty is to be interpreted as meaning that, for the purposes of the application of that provision, a natural person may not have at the same time a normal place of residence in both a Member State and in a third country.*

2. *In circumstances such as those in the main proceedings, where the person concerned has both personal and occupational ties in a third country and personal ties in a Member State, it is necessary, for the purpose of determining whether the normal place of residence of that person within the meaning of Article 3 of Regulation No 1186/2009 is in the third country, to attach particular importance to the length of that person's stay in the third country when carrying out an overall assessment of the relevant facts.*

([1]) OJ C 56, 16.2.2015.

Judgment of the Court (First Chamber) of 12 May 2016 (requests for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Toorank Productions BV v Staatssecretaris van Financiën

(Joined Cases C-532/14 and C-533/14) ([1])

(References for a preliminary ruling — Common Customs Tariff — Classification for customs purposes — Combined Nomenclature — Tariff heading 2206 — Tariff heading 2208 — Alcoholic beverages obtained through fermentation followed by purification — Addition of additives to alcoholic beverages obtained through fermentation followed by purification — Beverages which have lost the properties of beverages falling under tariff heading 2206)

(2016/C 243/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Toorank Productions BV

Respondent: Staatssecretaris van Financiën

Operative part of the judgment

1. *On a proper construction of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the versions resulting from Commission Regulation (EC) No 1719/2005 of 27 October 2005 and from Commission Regulation (EC) No 1214/2007 of 20 September 2007, a beverage, such as Ferm Fruit, which is obtained through fermentation of an apple concentrate and is designed to be consumed either undiluted or as a base in other beverages, being neutral in terms of colour, smell and taste as a result of purification (including ultrafiltration) and having an alcoholic strength by volume, without the addition of distilled alcohol, of 16 % falls under heading 2208 of that nomenclature.*

2. *On a proper construction of the Combined Nomenclature set out in Annex I to Regulation No 2658/87, in the versions resulting from Regulation No 1719/2005 and from Regulation No 1214/2007, beverages with an alcoholic strength by volume of 14 % which are manufactured by adding sugar, aromatic substances, colouring and flavouring agents, thickening agents and preservatives and, for one of those beverages, cream, to Ferm Fruit, and which do not contain distilled alcohol, fall under heading 2208 of that nomenclature.*

3. *On a proper construction of the Combined Nomenclature set out in Annex I to Regulation No 2658/87, in the versions resulting from Regulation No 1719/2005 and from Regulation No 1214/2007, a beverage with an alcoholic strength by volume of 13,4 % which is manufactured by adding sugar, aromatic substances, colouring and flavouring agents, thickening agents, preservatives and distilled alcohol to Ferm Fruit, where that distilled alcohol does not exceed, either in volume or percentage, 49 % of the alcohol present in that beverage, with the remaining 51 % resulting from a process of fermentation, falls under heading 2208 of that nomenclature.*

(1) OJ C 65, 23.2.2015.

Judgment of the Court (Second Chamber) of 4 May 2016 (request for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, on the application of: Philip Morris Brands SARL, Philip Morris Ltd, British American Tobacco UK Ltd v The Secretary of State for Health

(Case C-547/14) (1)

(Reference for a preliminary ruling — Approximation of laws — Directive 2014/40/EU — Articles 7, 18 and 24(2) and (3) — Articles 8(3), 9(3), 10(1)(a), (c) and (g), 13 and 14 — Manufacture, presentation and sale of tobacco products — Validity — Legal basis — Article 114 TFEU — Principle of proportionality — Principle of subsidiarity — Fundamental rights of the European Union — Freedom of expression — Charter of Fundamental Rights of the European Union — Article 11)

(2016/C 243/11)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: The Queen, on the application of: Philip Morris Brands SARL, Philip Morris Ltd, British American Tobacco UK Ltd

Defendant: The Secretary of State for Health

Interested parties and interveners: Imperial Tobacco Ltd, JT International SA, Gallaher Ltd, Tann UK Ltd, Tannpapier GmbH, V. Mane Fils, Deutsche Benkert GmbH & Co. KG, Benkert UK Ltd, Joh. Wilh. von Eicken GmbH

Operative part of the judgment

1. *Article 24(2) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC must be interpreted as permitting Member States to maintain or introduce further requirements in relation to aspects of the packaging of tobacco products which are not harmonised by that directive.*

2. *Article 13(1) of Directive 2014/40 must be interpreted as prohibiting the display, on the labelling of unit packets and on the outside packaging, as well as on the tobacco product itself, of any information covered by that provision, even if the information concerned is factually accurate.*

3. *Consideration of the questions referred for a preliminary ruling by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) has disclosed no factor of such a kind as to affect the validity of Articles 7, 18 and 24(2) and (3) of Directive 2014/40 or that of the provisions of Chapter II of Title II of that directive.*

([1]) OJ C 56, 16.2.2015.

Judgment of the Court (Eighth Chamber) of 28 April 2016 (request for a preliminary ruling from the Administratīvā apgabaltiesa — Latvia) — SIA 'Oniors Bio' v Valsts ieņēmumu dienests

(Case C-233/15) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheadings 1517 90 91 and 1518 00 31 — Mixture of fluid vegetable oil, unprocessed, non-volatile, composed of rapeseed oil (88 %) and sunflower oil (12 %))

(2016/C 243/12)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: SIA 'Oniors Bio'

Defendant: Valsts ieņēmumu dienests

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version resulting from Commission Regulation (EU) No 1006/2011 of 27 September 2011, must be interpreted as meaning that, in order to determine whether a mixture of vegetable oils such as that at issue in the main proceedings must be classified as an edible mixture of vegetable oils under CN subheading 1517 90 91 or as an inedible mixture of vegetable oils under CN subheading 1518 00 31, all the factors relevant to the case must be taken into account, in so far as they relate to the objective characteristics and properties inherent in that product. Among the relevant factors which may justify the classification of such a mixture as 'inedible', account should be taken of the information provided by the producer of that mixture in the context of the customs declaration, according to which, because of the characteristics of the process for its production, the presence of noxious substances in that mixture cannot be excluded. In that regard, the fact that an analysis of samples taken from such a mixture of vegetable oils has not shown that it contains any noxious substance does not suffice, by itself, to call into question the classification of the mixture in question as 'inedible'. Such a consequence presupposes the existence of other relevant evidence capable of calling into question the accuracy of the information relating to the process for the production of the mixture in question, provided by its producer and included in that declaration, in accordance with Articles 62, 68 and 71 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005.

([1]) OJ C 245, 27.7.2015.

Judgment of the Court (Second Chamber) of 12 May 2016 — Bank of Industry and Mine v Council of the European Union

(Case C-358/15 P) ([1])

(Appeal — Restrictive measures taken against Iran — List of persons and entities subject to the freezing of funds and economic resources — Implementing Regulation (EU) No 945/2012 — Legal base — Criterion relating to the provision of material, logistical or financial support to the Government of Iran — Part of the profits of a State company paid to the Iranian State)

(2016/C 243/13)

Language of the case: French

Parties

Appellant: Bank of Industry and Mine (represented by: E. Rosenfeld and S. Perrotet, lawyers)

Other party to the proceedings: Council of the European Union (represented by: M. Bishop and A. Vitro, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bank of Industry and Mine and the Council of the European Union to each pay their own costs.*

([1]) OJ C 294, 7.9.2015.

Order of the Court (Tenth Chamber) of 28 April 2016 (request for a preliminary ruling from the Juzgado de Primera Instancia No 44 de Barcelona — Spain) — Alta Realitat S.L. v Erlock Film ApS, Ulrich Thomsen

(Case C-384/14) ([1])

(Reference for a preliminary ruling — Cooperation in civil and commercial matters — Service of judicial and extrajudicial documents — Regulation (CE) No 1393/2007 — Article 8 — Failure to provide a translation of the document — Refusal to accept a document — Linguistic knowledge of the addressee of the document — Review by the judge hearing the matter in the Member State of origin)

(2016/C 243/14)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 44 de Barcelona

Parties to the main proceedings

Applicant: Alta Realitat S.L.

Defendants: Erlock Film ApS, Ulrich Thomsen

Operative part of the order

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, must be interpreted to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:

— *the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;*

— *where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;*

— *it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;*

— *it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and*

— *where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved.*

([1]) OJ C 338, 3.11.2014.

Appeal brought on 18 November 2015 by Magyar Bencés Kongregáció Pannonhalmi Főapátság against the order of the General Court (Sixth Chamber) delivered on 10 September 2015 in Case T-453/14 *Magyar Bencés Kongregáció Pannonhalmi Főapátság* v *European Parliament*

(Case C-607/15 P)

(2016/C 243/15)

Language of the case: Hungarian

Parties

Appellant: Magyar Bencés Kongregáció Pannonhalmi Főapátság (represented by: D. Sobor, ügyvéd)

Other party to the proceedings: European Parliament

By order of 4 May 2016, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered the applicant to pay the costs.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 March 2016 — Verband Sozialer Wettbewerb e.V. v DHL Paket GmbH

(Case C-146/16)

(2016/C 243/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: Verband Sozialer Wettbewerb e.V.

Defendant and respondent: DHL Paket GmbH

Questions referred

1. Must the information concerning the geographical address and identity of the trader, within the meaning of Article 7(4)(b) of Directive 2005/29/EC, ([1]) appear in advertising material for specific products which appears in a print medium, even if consumers obtain the advertised products exclusively via a website of the trader who publishes the advertisement, and which is indicated in the advertisement, and consumers can easily obtain the information required by Article 7(4) of the Directive on or via that website?

2. Does the answer to Question 1 depend on whether the undertaking advertising in the print medium is advertising sales of its own products and refers directly to its own website for the information required by Article 7(4) of Directive 2005/29/EC, or whether the advertising relates to products which are sold by other undertakings on an internet platform operated by the advertiser, and consumers are able to access the information set out in Article 7(4) of the Directive only through one or more steps (clicks) via links to the internet sites of those other undertakings which are made available only on the website specified in the advertisement?

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

Request for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 1 April 2016 — Ruxandra-Paula Andriciuc and Others v Banca Românească SA

(Case C-186/16)

(2016/C 243/17)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicants: Ruxandra-Paula Andriciuc and Others

Defendant: Banca Românească SA

Questions referred

1. Must Article 3(1) of Directive 93/13 ([1]) be interpreted as meaning that the significant imbalance in the parties' rights and obligations arising from the contract must be evaluated strictly by reference to the time when the contract was concluded or does that imbalance also extend to the case where, during the performance of the contract, whether it is performed at regular intervals or continuously, performance by the consumer has become excessively burdensome in comparison with the time when the contract was concluded because of significant variations in the exchange rate?

2. Must the plainness and intelligibility of a contractual term, within the meaning of Article 4(2) of Directive 93/13, be understood to mean that that term must provide not only for the grounds of its incorporation in the contract and the term's method of operation, or must it also provide for all the possible consequences of the term as a result of which the price paid by the consumer may vary, for example, foreign exchange risk, and in the light of Directive 93/13/EEC may it be considered that the bank's obligation to inform the customer at the time of granting the credit relates solely to the conditions of credit, namely, the interest, commissions, and guarantees required of the borrower, since such an obligation may not include the possible overvaluation or undervaluation of a foreign currency?

3. Must Article 4(2) of Directive 93/13 EEC be interpreted as meaning that the expressions 'the main subject matter of the contract' and 'adequacy of the price and remuneration, on the one hand, as against the services or goods supplie[d] in exchange, on the other' include a term incorporated in a credit agreement entered into in a foreign currency concluded between a seller or supplier and a consumer, which has not been negotiated individually, pursuant to which 'the credit must be repaid in the same currency'?

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

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 18 April 2016 — Elecdey Carcelén, S.A. v Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla la Mancha

(Case C-215/16)

(2016/C 243/18)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha, Sala Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Applicant: Elecdey Carcelén, S.A.

Defendant: Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla la Mancha

Questions referred

1. As the 'support systems' defined in Article 2(k) of Directive 2009/28/EC, including fiscal stimuli consisting of tax reductions, exemptions and refunds, are envisaged as a means of attaining the renewable energy consumption objectives provided for in the aforementioned Directive 2009/28/EC, are those stimuli or measures to be regarded as mandatory and binding on the Member States, having direct effect in so far as they may be invoked and relied on by the individuals concerned in all kinds of public, judicial and administrative proceedings?

2. Since the list of 'support systems' mentioned in the previous question includes fiscal stimulus measures consisting of, 'but … not restricted to', tax reductions, exemptions and refunds, are those stimuli to be regarded as specifically including non-taxation, that is to say, the prohibition of any kind of specific and one-off levy, in addition to the general taxes levied on the economic activity and production of electricity, imposed on energy from renewable sources? The following question is also asked in this paragraph: [Similarly], is the general prohibition stated above also considered to include the prohibition of concurrence, double taxation or overlapping of multiple general or one-off taxes charged at different stages of the activity of generating renewable energy, affecting the same chargeable event taxed by the levy on wind power under consideration?

3. If the answer to the previous question is in the negative and it is acknowledged that energy from renewable sources is taxable, for the purposes of the provisions of Article 1(2) of Directive 2008/118/EC, is the term 'specific purposes' to be interpreted as meaning that its objective must be exclusive and, furthermore, that the tax on renewable energy must, as regards its structure, be genuinely non-fiscal, and not merely budgetary or revenue-collecting in nature?

4. In accordance with the provisions of Article 4 of Directive 2003/96/EC, which, when referring to the levels of taxation which Member States are to apply to the energy products and electricity takes as its reference the minimum levels prescribed by the Directive, which are understood to be the total of all direct and indirect taxes applied to those products at the time of release for consumption, should that total be understood as excluding from the level of taxation required by the Directive those national taxes which, as regards their structure and specific purposes, are not genuinely non-fiscal, as interpreted according to the reply to the previous question?

5. Is the term 'charge' used in Article 13(1)(e) of Directive 2009/28/EC an autonomous concept of European law which is to be interpreted more broadly, as comprehensive and also synonymous with the concept of tax in general?

6. If the answer to the previous question is in the affirmative, the question we raise is the following: May the charges, referred to in the aforementioned Article 13(1)(e), payable by consumers, include only those levies or taxes which are designed to compensate, where appropriate, for the damage caused by the impact [of energy products and electricity] on the environment and seek to make good, using the revenue generated, the damage linked to that adverse impact or effect, but not those taxes or benefits which, applying to non-polluting energy, fulfil a primarily budgetary or tax-collecting purpose?

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 18 April 2016 — Energías Eólicas de Cuenca S.A. v Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

(Case C-216/16)

(2016/C 243/19)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha, Sala Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Applicant: Energías Eólicas de Cuenca S.A.

Defendant: Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

Questions referred

1. As the 'support systems' defined in Article 2(k) of Directive 2009/28/EC, including fiscal stimuli consisting of tax reductions, exemptions and refunds, are envisaged as a means of attaining the renewable energy consumption objectives provided for in the aforementioned Directive 2009/28/EC, are those stimuli or measures to be regarded as mandatory and binding on the Member States, having direct effect in so far as they may be invoked and relied on by the individuals concerned in all kinds of public, judicial and administrative proceedings?

2. Since the list of 'support systems' mentioned in the previous question includes fiscal stimulus measures consisting of, 'but … not restricted to', tax reductions, exemptions and refunds, are those stimuli to be regarded as specifically including non-taxation, that is to say, the prohibition of any kind of specific and one-off levy, in addition to the general taxes levied on the economic activity and production of electricity, imposed on energy from renewable sources? The following question is also asked in this paragraph: [Similarly], is the general prohibition stated above also considered to include the prohibition of concurrence, double taxation or overlapping of multiple general or one-off taxes charged at different stages of the activity of generating renewable energy, affecting the same chargeable event taxed by the levy on wind power under consideration?

3. If the answer to the previous question is in the negative and it is acknowledged that energy from renewable sources is taxable, for the purposes of the provisions of Article 1(2) of Directive 2008/118/EC, is the term 'specific purposes' to be interpreted as meaning that its objective must be exclusive and, furthermore, that the tax on renewable energy must, as regards its structure, be genuinely non-fiscal, and not merely budgetary or revenue-collecting in nature?

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5. Is the term 'charge' used in Article 13(1)(e) of Directive 2009/28/EC an autonomous concept of European law which is to be interpreted more broadly, as comprehensive and also synonymous with the concept of tax in general?

6. If the answer to the previous question is in the affirmative, the question we raise is the following: May the charges, referred to in the aforementioned Article 13(1)(e), payable by consumers, include only those levies or taxes which are designed to compensate, where appropriate, for the damage caused by the impact [of energy products and electricity] on the environment and seek to make good, using the revenue generated, the damage linked to that adverse impact or effect, but not those taxes or benefits which, applying to non-polluting energy, fulfil a primarily budgetary or tax-collecting purpose?

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 20 April 2016 — Iberenova Promociones S.A.U. v Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

(Case C-220/16)

(2016/C 243/20)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha, Sala Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Applicant: Iberenova Promociones S.A.U.

Defendant: Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

Questions referred

1. As the 'support systems' defined in Article 2(k) of Directive 2009/28/EC, including fiscal stimuli consisting of tax reductions, exemptions and refunds, are envisaged as a means of attaining the renewable energy consumption objectives provided for in the aforementioned Directive 2009/28/EC, are those stimuli or measures to be regarded as mandatory and binding on the Member States, having direct effect in so far as they may be invoked and relied on by the individuals concerned in all kinds of public, judicial and administrative proceedings?

2. Since the list of 'support systems' mentioned in the previous question includes fiscal stimulus measures consisting of, 'but … not restricted to', tax reductions, exemptions and refunds, are those stimuli to be regarded as specifically including non-taxation, that is to say, the prohibition of any kind of specific and one-off levy, in addition to the general taxes levied on the economic activity and production of electricity, imposed on energy from renewable sources? The following question is also asked in this paragraph: [Similarly], is the general prohibition stated above also considered to include the prohibition of concurrence, double taxation or overlapping of multiple general or one-off taxes charged at different stages of the activity of generating renewable energy, affecting the same chargeable event taxed by the levy on wind power under consideration?

3. If the answer to the previous question is in the negative and it is acknowledged that energy from renewable sources is taxable, for the purposes of the provisions of Article 1(2) of Directive 2008/118/EC, is the term 'specific purposes' to be interpreted as meaning that its objective must be exclusive and, furthermore, that the tax on renewable energy must, as regards its structure, be genuinely non-fiscal, and not merely budgetary or revenue-collecting in nature?

4. In accordance with the provisions of Article 4 of Directive 2003/96/EC, which, when referring to the levels of taxation which Member States are to apply to the energy products and electricity takes as its reference the minimum levels prescribed by the Directive, which are understood to be the total of all direct and indirect taxes applied to those products at the time of release for consumption, should that total be understood as excluding from the level of taxation required by the Directive those national taxes which, as regards their structure and specific purposes, are not genuinely non-fiscal, as interpreted according to the reply to the previous question?

5. Is the term 'charge' used in Article 13(1)(e) of Directive 2009/28/EC an autonomous concept of European law which is to be interpreted more broadly, as comprehensive and also synonymous with the concept of tax in general?

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Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 20 April 2016 — Iberdrola Renovables Castilla-La Mancha S.A. v Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

(Case C-221/16)

(2016/C 243/21)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha, Sala Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Applicant: Iberdrola Renovables Castilla-La Mancha S.A.

Defendant: Comisión Superior de Hacienda de la Comunidad Autónoma de Castilla de la Mancha

Questions referred

1. As the 'support systems' defined in Article 2(k) of Directive 2009/28/EC, including fiscal stimuli consisting of tax reductions, exemptions and refunds, are envisaged as a means of attaining the renewable energy consumption objectives provided for in the aforementioned Directive 2009/28/EC, are those stimuli or measures to be regarded as mandatory and binding on the Member States, having direct effect in so far as they may be invoked and relied on by the individuals concerned in all kinds of public, judicial and administrative proceedings?

2. Since the list of 'support systems' mentioned in the previous question includes fiscal stimulus measures consisting of, 'but … not restricted to', tax reductions, exemptions and refunds, are those stimuli to be regarded as specifically including non-taxation, that is to say, the prohibition of any kind of specific and one-off levy, in addition to the general taxes levied on the economic activity and production of electricity, imposed on energy from renewable sources? The following question is also asked in this paragraph: [Similarly], is the general prohibition stated above also considered to include the prohibition of concurrence, double taxation or overlapping of multiple general or one-off taxes charged at different stages of the activity of generating renewable energy, affecting the same chargeable event taxed by the levy on wind power under consideration?

3. If the answer to the previous question is in the negative and it is acknowledged that energy from renewable sources is taxable, for the purposes of the provisions of Article 1(2) of Directive 2008/118/EC, is the term 'specific purposes' to be interpreted as meaning that its objective must be exclusive and, furthermore, that the tax on renewable energy must, as regards its structure, be genuinely non-fiscal, and not merely budgetary or revenue-collecting in nature?

4. In accordance with the provisions of Article 4 of Directive 2003/96/EC, which, when referring to the levels of taxation which Member States are to apply to the energy products and electricity takes as its reference the minimum levels prescribed by the Directive, which are understood to be the total of all direct and indirect taxes applied to those products at the time of release for consumption, should that total be understood as excluding from the level of taxation required by the Directive those national taxes which, as regards their structure and specific purposes, are not genuinely non-fiscal, as interpreted according to the reply to the previous question?

5. Is the term 'charge' used in Article 13(1)(e) of Directive 2009/28/EC an autonomous concept of European law which is to be interpreted more broadly, as comprehensive and also synonymous with the concept of tax in general?

6. If the answer to the previous question is in the affirmative, the question we raise is the following: May the charges, referred to in the aforementioned Article 13(1)(e), payable by consumers, include only those levies or taxes which are designed to compensate, where appropriate, for the damage caused by the impact [of energy products and electricity] on the environment and seek to make good, using the revenue generated, the damage linked to that adverse impact or effect, but not those taxes or benefits which, applying to non-polluting energy, fulfil a primarily budgetary or tax-collecting purpose?

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 20 April 2016 — MIP-TS OOD v Nachalnik na Mitnitsa Varna

(Case C-222/16)

(2016/C 243/22)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Appellant on a point of law: MIP-TS OOD

Respondent in the appeal on a point of law: Nachalnik na Mitnitsa Varna

Question referred

Does the scope of Article 1(1) of Council Implementing Regulation (EU) No 791/2011 of 3 August 2011 include the importation of fibreglass open mesh fabrics, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m^2, excluding fibreglass discs, currently classified under CN codes ex 7019 51 00 and ex 7019 59 00 (TARIC codes 7019 51 00 10 and 7019 59 00 10), in respect of which those goods were declared under the procedure 'release for free circulation and end use' on 10 April 2012 as originating in Thailand and shipped from that country, whereas in fact they originated in the People's Republic of China, as established within the framework of OLAF's investigation procedure and report carried out under Regulation (EC) No 1073/1999 of the European Parliament and of the Council?

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 20 April 2016 — Asotsiatsiya na balgarskite predpriyatiya za mezhdunarodni prevozi i patishtata (AEBTRI) v Nachalnik na Mitinitsa Burgas (Director of the Burgas customs office) as successor to the Svilengrad customs office

(Case C-224/16)

(2016/C 243/23)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant on a point of law: Asotsiatsiya na balgarskite predpriyatiya za mezhdunarodni prevozi i patishtata (AEBTRI)

Respondent in the appeal on a point of law: Nachalnik na Mitinitsa Burgas (Director of the Burgas customs office) as successor to the Svilengrad customs office

Questions referred

1. Does the Court of Justice have jurisdiction, with a view to forestalling divergent judgments, to interpret, in a manner binding on the courts of the Member States, the TIR Convention, approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 ([1]) concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ 1978 L 252, p. 1, in force in the Community as from 20 June 1983), in so far as concerns the scope of Articles 8 and 11 of that convention, with regard to the assessment of liability of a guaranteeing association, also referred to in Article 457(2) of the regulation implementing the Community Customs Code (CCIP)? ([2])

2. Does the interpretation of Article 457(2) of the CCIP, in conjunction with Article 8(7) (now Article 11(2)) of the TIR Convention and the explanatory notes thereto, allow for a finding that, in a situation such as that in the present case, where the debts referred to in Article 8(1) and (2) of the [TIR Convention] become due, the customs authorities have required payment thereof so far as possible from the holder of the TIR carnet, who is directly liable for those sums, before bringing a claim against the guaranteeing association?

3. Must the recipient, who acquired or held an item known to have been conveyed under cover of a TIR carnet, where it was not established that that item was submitted and declared before the customs office of destination, be considered to be, on account of those circumstances alone, a person who should have been aware that that item had been removed from customs supervision, and to be recognised as jointly and severally liable within the meaning of the third indent of Article 203(3), in conjunction with Article 213, of the Community Customs Code?

4. If the answer to the third question is in the affirmative, does the customs administration's failure to require payment of the customs debt from the recipient preclude the liability under Article 457(2) of the CCIP of the guaranteeing association, pursuant to Article 1(16) of the [TIR Convention]?

(1) Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ 1978 L 252, p. 1).
(2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Reference for a preliminary ruling from Supreme Court (Ireland) made on 2 May 2016 – Edward Cussens, John Jennings, Vincent Kingston v T. G. Brosman

(Case C-251/16)

(2016/C 243/24)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: Edward Cussens, John Jennings, Vincent Kingston

Defendant: T. G. Brosman

Questions referred

1) Is the principle of abuse of rights, as recognised in the judgment of the Court in Halifax as being applicable in the sphere of VAT, directly effective against an individual in the absence of a national measure, whether legislative or judicial, giving effect to that principle, in circumstances where, as here, the redefining of the pre-sale transactions and the purchaser sales transactions (collectively referred to as the appellants' transactions), as advocated by the Commissioners, would give rise to a liability on the part of the appellants to VAT, where such liability, on the proper application of the provisions of national legislation in force at the relevant time to the appellants' transactions, did not arise?

2) If the answer to question 1) is that the principle of abuse of rights is directly effective against an individual, even in the absence of a national measure, whether legislative or judicial, giving effect to that principle, was the principle sufficiently clear and precise to be applied to the appellants' transactions, which were completed before the judgment of the Court in Halifax was delivered, and, in particular, having regard to the principles of legal certainty and the protection of the appellants' legitimate expectations?

3) If the principle of abuse of rights applies to the appellants' transactions so that they are to be redefined –

   a) what is the legal mechanism by means of which the VAT due on the appellants' transactions is assessed and is collected, since no VAT is due, assessable or collectable in accordance with national law, and

   b) how are the national courts to impose such liability?

4) In determining whether the essential aim of the appellants' transactions was to obtain a tax advantage, should the national court consider the pre-sale transactions (which it has been found were effected solely for tax reasons) in isolation, or must the aim of the appellants' transactions as a whole be considered?

5) Is s. 4(9) of the VAT Act to be treated as national legislation implementing the Sixth Directive ([1]), notwithstanding that it is incompatible with the legislative provision envisaged in Article 4(3) of the Sixth Directive, on the proper application of which the appellants, in relation to the supply before first occupation of the properties, would be treated as taxable persons, notwithstanding that there had been a previous disposal which was chargeable to tax?

6) If s. 4(9) is incompatible with the Sixth Directive, are the appellants, by relying on that sub-section, engaged in an abuse of rights contrary to the principles recognised in the judgment of the Court in Halifax?

7) In the alternative, if s. 4(9) is not incompatible with the Sixth Directive, have the appellants achieved a tax advantage which is contrary to the purpose of the Directive and/or s. 4?

8) Even if s. 4(9) is not to be treated as implementing the Sixth Directive, does the principle of abuse of rights as established by the judgment of the Court in Halifax nevertheless apply to the transactions in issue by reference to the criteria laid down by the Court in Halifax?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment
OJ L 145, p. 1

Appeal brought on 12 May 2016 by Schenker Ltd against the judgment of the General Court (Ninth Chamber) delivered on 29 February 2016 in Case T-265/12: Schenker Ltd v European Commission

(Case C-263/16 P)

(2016/C 243/25)

Language of the case: English

Parties

Appellant: Schenker Ltd (represented by: F. Montag, Rechtsanwalt, F. Hoseinian, avocat, M. Eisenbarth, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 29 February 2016 in case T-265/12 Schenker Ltd v European Commission;

— annul Article 1(1)(a) of the Commission decision of 28 March 2012 in Case COMP/39462 – Freight Forwarding (the Decision) or alternatively refer the case back to the General Court;

— annul or, in the alternative, reduce the fines set out in Article 2(1)(a) of the Decision or alternatively refer the case back to the General Court; and

— order the Commission to pay the cost of the proceedings.

Pleas in law and main arguments

The Appellant relies on the following grounds of appeal:

1. The General Court errs in law in concluding that the Commission was entitled to rely on Deutsche Post's immunity application, that the principle of prohibition of double representation had not been breached and that the Commission did not have to investigate the potential breach of the said principle.

2. The General Court errs in law in interpreting Article 1 of Regulation 141/62 ([1]) as not applicable to the 'UK New Export System' conduct.

3. The General Court errs in law by concluding that the 'UK New Export System' conduct, despite being limited to surcharges for a filing service related to shipments from the UK to countries outside the EEA, was capable of appreciably affecting trade between Member States.

4. The General Court errs in law in concluding that the Commission did not breach Article 41 of the Charter of Fundamental Rights of the European Union, the principle of sound administration and the duty to state reasons under Article 296 of the Treaty on the Functioning of the European Union (TFEU) when it decided not to hold The Brink's Company jointly and severally liable with the Appellant (as a successor of BAX Global Ltd. (UK)) for the 'UK New Export System' conduct.

5. The General Court errs in law by distorting the content of the Decision, exceeding the powers given to it under Article 264 TFEU and failing to carry out a balancing exercise in applying the principle of proportionality when concluding that the Commission did not breach Article 23 of Regulation 1/2003 ([2]) and the principles of proportionality and that the punishment must fit the offence when calculating the fines.

6. The General Court errs in law by upholding the Commission's reduction rates under the 2006 Leniency Notice ([3]) and distorts the content of the Decision.

([1]) EEC: Regulation No 141 of the Council exempting transport from the application of Council Regulation No 17
OJ 124, p. 2751

([2]) 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 L 1, p. 1

([3]) Commission Notice on Immunity from fines and reduction of fines in cartel cases
OJ C 298, p. 17

Appeal brought on 12 May 2016 by Deutsche Bahn AG, Schenker AG, Schenker China Ltd, Schenker International (H.K.) Ltd against the judgment of the General Court (Ninth Chamber) delivered on 29 February 2016 in Case T-267/12: Deutsche Bahn AG and Others v European Commission

(Case C-264/16 P)

(2016/C 243/26)

Language of the case: English

Parties

Appellants: Deutsche Bahn AG, Schenker AG, Schenker China Ltd, Schenker International (H.K.) Ltd (represented by: F. Montag, Rechtsanwalt, F. Hoseinian, avocat, M. Eisenbarth, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 29 February 2016 in case T-267/12 Deutsche Bahn AG and Others v European Commission;

— annul Articles 1(2)(g), 1(3)(a), 1(3)(b) and 1(4)(h) of the Commission decision of 28 March 2012 in Case COMP/39462 – Freight Forwarding (the Decision) or alternatively refer the case back to the General Court;

— annul or, in the alternative, reduce the fines set out in Articles 2(2)(g), 2(3)(a), 2(3)(b) and 2(4)(h) of the Decision or alternatively refer the case back to the General Court; and

— order the Commission to pay the cost of the proceedings.

Pleas in law and main arguments

The Appellants rely on the five following grounds of appeal:

1. The General Court errs in law in concluding that the Commission was entitled to rely on Deutsche Post's immunity application, that the principle of prohibition of double representation had not been breached and that the Commission did not have to investigate the potential breach of the said principle.

2. The General Court errs in law in interpreting Article 1 of Regulation 141/62 ([1]) as not applicable to the 'Advance Manifest System' conduct.

3. The General Court errs in law in concluding that the Commission did not breach Article 41 of the Charter of Fundamental Rights of the European Union, the principle of sound administration and the duty to state reasons under Article 296 of the Treaty on the Functioning of the European Union (TFEU) when it decided not to hold The Brink's Company jointly and severally liable with Schenker China Ltd. (as a successor of BAX Global (China) Co. Ltd.) for the 'Chinese Currency Adjustment Factor' conduct.

4. The General Court errs in law by distorting the content of the Decision, exceeding the powers given to it under Article 264 TFEU and failing to carry out a balancing exercise in applying the principle of proportionality when concluding that the Commission did not breach Article 23 of Regulation 1/2003 ([2]) and the principles of proportionality and that the punishment must fit the offence when calculating the fines.

5. The General Court errs in law by upholding the Commission's reduction rates under the 2006 Leniency Notice ([3]). The General Court distorts the content of the Decision and breaches the Appellants' rights to a fair hearing.

([1]) EEC: Regulation No 141 of the Council exempting transport from the application of Council Regulation No 17
OJ 124, p. 2751

([2]) 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 L 1, p. 1

([3]) Commission Notice on Immunity from fines and reduction of fines in cartel cases
OJ C 298, p. 17

Appeal brought on 13 May 2016 by Panalpina World Transport (Holding) Ltd, Panalpina Management AG, Panalpina China Ltd against the judgment of the General Court (Ninth Chamber) delivered on 29 February 2016 in Case T-270/12: Panalpina World Transport (Holding) Ltd and Others v European Commission

(Case C-271/16 P)

(2016/C 243/27)

Language of the case: English

Parties

Appellants: Panalpina World Transport (Holding) Ltd, Panalpina Management AG, Panalpina China Ltd (represented by: S. Mobley, A. Stratakis, A. Gamble, Solicitors)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the contested judgment, insofar as it dismisses the Appellants' first plea in respect of the infringements;

— vary Articles 2(2) and 2(3) of the Decision of 28 March 2012 in case COMP/39462 – Freight Forwarding (the 'Decision') insofar as those provisions concern the Appellants and, exercising its unlimited jurisdiction, reduce the fines imposed on the Appellants; and

— in any event, order the Commission to pay its own costs and the Appellants' costs in connection with these proceedings and those before the General Court.

Pleas in law and main arguments

When satisfying itself that the Commission did not depart from its decision-making practice, make an error of law, or infringe the principles of proportionality and equal treatment, the General Court erred in law by manifestly exceeding the limits of a reasonable assessment of the evidence before it and misapplying relevant case law. The Appellants' specific pleas in law are as follows:

1. That the General Court erred in law by manifestly exceeding the limits of a reasonable assessment of the evidence as to whether the infringements in question, and the AMS and CAF infringements in particular, related to the entirety of the freight forwarding 'package of services'.

2. That the General Court erred in law by not applying the case law principle that, for an infringement related to a component of a product or service, the Commission should only take into account sales attributable to that component.

GENERAL COURT

Judgment of the General Court of 24 May 2016 — Good Luck Shipping v Council

(Joined Cases T-423/13 and T-64/14) ([1])

(Common foreign and security policy — Restrictive measures against certain persons and entities with the aim of preventing nuclear proliferation in Iran — Freezing of funds — Error of law — Legal basis — Error of assessment — No evidence)

(2016/C 243/28)

Language of the case: English

Parties

Applicant: Good Luck Shipping LLC (Dubai, United Arab Emirates) (represented by: F. Randolph, QC, M. Lester, Barrister, and M. Taher, Solicitor)

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

Re:

Application, first, for annulment of Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 156, p. 10) and Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 156, p. 3), Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 306, p. 18), and Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 306, p. 3), in so far as those measures relate to the applicant, and, second, for a declaration that Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 272, p. 46) and Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 272, p. 1) are inapplicable.

Operative part of the judgment

The Court:

1. *Annuls the following measures, in so far as they concern Good Luck Shipping LLC:*

— *Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;*

— *Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 on restrictive measures against Iran;*

— *Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;*

— *Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation (EU) No 267/2012 on restrictive measures against Iran;*

2. *Orders that the effects of Decision 2013/661 be maintained as regards Good Luck Shipping until the annulment of Regulation No 1154/2013 takes effect;*

3. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Good Luck Shipping.*

([1]) OJ C 325, 9.11.2013.

Judgment of the General Court of 25 May 2016 — Commission v McCarron Poultry

(Case T-226/14) ([1])

(Arbitration clause — Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998-2002) — Contract relating to 'Energy, environment and sustainable development' — Termination of the contract — Reimbursement of part of the amount advanced — Default interest — Procedure by default)

(2016/C 243/29)

Language of the case: English

Parties

Applicant: European Commission (represented initially by L. Cappelletti and F. Moro, subsequently by F. Moro, acting as Agents, and by R. van der Hout, lawyer)

Defendant: McCarron Poultry Ltd (Killacorn Emyvale, Ireland)

Re:

Action under Article 272 TFEU seeking an order that the defendant reimburse part of the amount advanced by the Commission under contract NNE5/1999/20229, together with default interest.

Operative part of the judgment

The Court:

1. *Orders McCarron Poultry Ltd to repay to the Commission the sum of EUR 900 662,25, plus accrued default interest calculated at the rate of 2,50 % per annum from 1 December 2010 until the date of full payment of the debt;*

2. *Orders McCarron Poultry to pay the costs.*

([1]) OJ C 212, 7.7.2014.

Judgment of the General Court of 25 May 2016 — Ice Mountain Ibiza v EUIPO — Etyam (ocean beach club ibiza)

(Case T-753/14) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark ocean beach club ibiza — Earlier national figurative and word marks ocean drive Ibiza-hotel and OCEAN THE GROUP — Annulment of the earlier mark on which the contested decision was based — No need to adjudicate)

(2016/C 243/30)

Language of the case: Spanish

Parties

Applicant: Ice Mountain Ibiza, SL (San Antonio, Spain) (represented by: J. L. Gracia Albero, F. Miazzetto and E. Cebollero González, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Etyam, SL (Ibiza, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 31 July 2014 (Case R 2293/2013-1) relating to opposition proceedings between Etyam and Ice Mountain Ibiza

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 26, 26.1.2015.

Judgment of the General Court of 25 May 2016 — Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean beach club ibiza)

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

(EU trade mark — Opposition proceedings — Application for EU figurative mark ocean beach club ibiza — Earlier national figurative marks OC ocean club and OC ocean club Ibiza — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation No 207/2009)

(2016/C 243/31)

Language of the case: Spanish

Parties

Applicant: Ice Mountain Ibiza, SL (San Antonio, Spain) (represented by: J. L. Gracia Albero, F. Miazzetto and E. Cebollero González, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Marbella Atlantic Ocean Club, SL (Puerto Banús, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2014 (Case R 2292/2013-1) relating to opposition proceedings between Marbella Atlantic Ocean Club and Ice Mountain Ibiza

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ice Mountain Ibiza, SL to pay the costs.*

([1]) OJ C 73, 2.3.2015.

Judgment of the General Court of 25 May 2016 — Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean ibiza)

(Case T-6/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark ocean ibiza — Earlier national figurative marks OC ocean club and OC ocean club Ibiza — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation No 207/2009)

(2016/C 243/32)

Language of the case: Spanish

Parties

Applicant: Ice Mountain Ibiza, SL (San Antonio, Spain) (represented by: J. L. Gracia Albero, F. Miazzetto and E. Cebollero González, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Marbella Atlantic Ocean Club, SL (Puerto Banús, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2014 (Case R 2207/2013-1) relating to opposition proceedings between Marbella Atlantic Ocean Club and Ice Mountain Ibiza

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ice Mountain Ibiza, SL to pay the costs.*

([1]) OJ C 73, 2.3.2015.

Judgment of the General Court of 24 May 2016 — El Corte Inglés v EUIPO — Grup Supeco Maxor (Supeco)

(Case T-126/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark Supeco — Earlier EU figurative mark SUPER COR — Relative ground for refusal — Likelihood of confusion — Extent of the examination carried out by the Board of Appeal — Goods and services on which the opposition is based — Article 8(1)(b) of Regulation (EC) No 207/2009 — Rule 15(2)(f) of Regulation (EC) No 2868/95 — Communication No 2/12)

(2016/C 243/33)

Language of the case: French

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO) (represented by: E. Scheffer and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Grup Supeco Maxor, SL (Madrid, Spain) (represented by: S. Martínez-Almeida y Alejos-Pita, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 December 2014 (Case R 1112/2014-5) relating to opposition proceedings between El Corte Inglés, SA and Grup Supeco Maxor, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA to pay the costs.*

(1) OJ C 155, 11.5.2015.

Judgment of the General Court of 25 May 2016 — U-R LAB v EUIPO

(Case T-422/15 and 423/15) (1)

(European Union trade mark — Application for European Union figurative and word marks THE DINING EXPERIENCE — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2016/C 243/34)

Language of the case: French

Parties

Applicant: U-R LAB (Paris, France) (represented by: G. Barbaut, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J.Crespo Carrillo, acting as Agent)

Re:

Two actions brought against the decision of the Fourth Board of Appeal of EUIPO of 20 May 2015 (Cases R 2541/2014 4 and R 2542/2014 4) concerning applications for registration of, first, the figurative sign and, secondly, the word sign THE DINING EXPERIENCE as European Union trade marks.

Operative part of the judgment

The Court:

1. *Joins Cases T-422/15 and T-423/15 for the purposes of the present judgment;*

2. *Dismisses the actions;*

3. *Orders U-R LAB to pay the costs.*

(1) OJ C 328, 5.10.2015.

Action brought on 28 April 2016 — KK v EASME

(Case T-376/15)

(2016/C 243/35)

Language of the case: French

Parties

Applicant: KK (Paris, France) (represented by: J.-P. Spitzer, lawyer)

Defendant: Executive Agency for Small and Medium-sized Enterprises (EASME)

Form of order sought

The applicant claims that the Court should:

— annul the decision of 15 June 2015, by which EASME rejected the applicant's proposal;

— order EASME to pay the sum of EUR 50 000 in compensation for the loss of opportunity, and EUR 90 800 in compensation for material damage suffered by the applicant;

— order EASME to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law in support of its claim for annulment.

1. First plea in law, alleging the technical inaccessibility of the Internet portal where the applicant's proposal in response to the call for proposals and related activities under Horizon 2020 — the Framework Programme for Research and Innovation (2014-20) should have been submitted.

2. Second plea in law, alleging that the applicant, contrary to what is contended by EASME, did not fraudulently sign the commitment when submitting its proposal file.

3. Third plea in law, alleging that the rejection of the proposal submitted by the applicant is contrary to the competition rules.

The applicant also relies on two pleas in law in support of its claim for compensation.

1. First plea in law, alleging that the applicant suffered material damage relating to the loss of opportunity.

2. Second plea in law, alleging that the applicant suffered material damage resulting from the time dedicated to responding to the call for proposals.

Action brought on 4 January 2016 — Gregis v EUIPO — DM9 Automobili (ATS)

(Case T-5/16)

(2016/C 243/36)

Language in which the application was lodged: Italian

Parties

Applicant: Gian Luca Gregis (Adeje, Spain) (represented by: M. Bartolucci, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DM9 Automobili Srl (Borgomanero, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word element 'ATS' — Community trade mark No 9 799 719

Procedure before EUIPO: Proceedings relating to the registration of a transfer

Contested decision: Decision of the First Board of Appeal of EUIPO of 30 October 2015 in Case R 588/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— cancel Transfer T8391925 of 14 April 2014.

Pleas in law

— Infringement of Article 17 of Regulation No 207/2009;

— Infringement of Rule 31 of Regulation No 2868/95;

— Infringement of Rule 84(3)(b) of Regulation No 2868/95.

Action brought on 19 April 2016 — Poland v Commission

(Case T-167/16)

(2016/C 243/37)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2016/180 of 9 February 2016 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States, as regards the entries for Estonia, Lithuania and Poland (OJ 2016 L 35, p. 12) in so far as the *gmina* (commune) of Czyże, the remaining part of the *gmina* of Zabłudów and the *gmina* of Hajnówka together with the city of Hajnówka are included in Part II of the Annex to Decision 2014/709/EU;

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant puts forward three pleas in law in support of its action.

1. First plea in law: infringement of the principle of proportionality by reason of the failure to have regard for the requirement that the contested measures must be necessary for achieving the intended objectives, the failure to have regard for the requirement that the contested measures must be appropriate for achieving the intended objectives, and the failure to have regard for the requirement that those measures must be strictly proportionate.

2. Second plea in law: failure to comply with essential formal requirements laid down in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13) and in the rules of procedure of the Standing Committee on Plants, Animals, Food and Feed.

3. Third plea in law: failure to comply with the obligation to set out reasons for the contested decision.

Action brought on 19 April 2016 — Guardian Glass España, Central Vidriera v Commission

(Case T-170/16)

(2016/C 243/38)

Language of the case: Spanish

Parties

Applicant: Guardian Glass España, Central Vidriera, S.L. (Llodio, Spain) (represented by: M. Araujo Boyd, D. Armesto Macías and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— admit the application and the grounds for annulment set out therein;

— uphold the grounds for annulment set out in the application and, accordingly, annul the contested decision;

— order the initiation of a formal procedure as set out in Article 108(2) TFEU so that the applicant may exercise its procedural rights and the Commission may formally resolve, in accordance with the law, its doubts regarding the compatibility of the aid in question;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is directed against the decision of the European Commission refusing to declare compatible certain aids received by Guardian which was notifed to the Spanish authorities by a letter from the Commission dated 15 July 2015, entitled 'Tax matters in the Basque Country (Álava) — Informal communication regarding additional submissions in connection to compatibility with the 1998 guidelines on national regional aid', and notified to the applicant by the Spanish authorities on 19 February 2016.

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

1. First plea in law.

   By its main plea the applicant submits that in adopting a decision declaring an individual aid award to be incompatible with the internal market, the Commission infringed Article 250 TFEU and the principle of collegiality in so far as that decision was not adopted by the College of Commissioners, as well as infringing Article 108(2) TFEU and Articles 4 and 13 of Regulation No 659/1999, ([1]) in so far as it failed to initiate the formal procedure prior to the adoption of that decision.

2. Second plea in law.

   By its second plea, relied on in the alternative, the applicant alleges infringement of Article 107(3) TFEU in so far as the Commission decision erred in assessing the compatibility of the aid with the internal market.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 25 April 2016 — Make up for ever v EUIPO — L'Oréal (MAKE UP FOR EVER PROFESSIONAL)

(Case T-185/16)

(2016/C 243/39)

Language in which the application was lodged: French

Parties

Applicant: Make up for ever SA (Paris, France) (represented by: C. Caron, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: L'Oréal (Paris, France)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative trade mark containing the word elements 'MAKE UP FOR EVER PROFESSIONAL' — EU trade mark No 3 371 341

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of the EUIPO of 5 February 2016 in Case R 3222/20014-5

Form of order sought

The applicant claims that the Court should:

— conclude that the semi-figurative EU trade mark 'MAKE UP FOR EVER PROFESSIONAL' No 3 371 341 is valid for all of the goods and services covered by the filing;

— annul the contested decision;

— refer the case back to the EUIPO for further action, if necessary;

— order the company L'Oréal to pay the costs arising from the proceedings before the Cancellation Division of the EUIPO, the Board of Appeal of the EUIPO and the present proceedings before the General Court.

Pleas in law

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

— Infringement of Article 7(3) of Regulation No 207/2009.

Action brought on 22 April 2016 – Anton Riemerschmid Weinbrennerei und Likörfabrik v EUIPO – Viña y Bodega Botalcura (LITU)

(Case T-187/16)

(2016/C 243/40)

Language in which the application was lodged: English

Parties

Applicant: Anton Riemerschmid Weinbrennerei und Likörfabrik GmbH & Co. KG (Erding, Germany) (represented by: P. Koch Moreno, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Viña y Bodega Botalcura SA (Las Condes, Chile)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'LITU' – Application for registration No 12 684 833

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 9 February 2016 in Case R 719/2015-2

Form of order sought

The applicant claims that the Court should:

— deliver a judgment accepting the action, fully annulling the contested decision;

— order to dismiss the European Union Trademark Application for the word mark LITU in relation to all the goods;

— order that the Defendant and/or the other party to the proceedings should bear the fees and costs.

Plea in law

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

Action brought on 22 April 2016 – Andrea Incontri v EUIPO – HigicoL (ANDREA INCONTRI)

(Case T-197/16)

(2016/C 243/41)

Language in which the application was lodged: English

Parties

Applicant: Andrea Incontri Srl (Milan, Italy) (represented by: A. Perani and J. Graffer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: HigicoL, SA (Baguim do monte, Portugal)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'ANDREA INCONTRI' – Application for registration No 10 985 323

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 February 2016 in Case R 146/2015-4

Form of order sought

The applicant claims that the Court should:

— totally alter the contested decision;

— as a consequence, accept EUTM Application No 10 985 323 ANDREA INCONTRI in its entirety;

— order the other parties to bear the costs of the present proceedings, as well as those of the EUIPO opposition and appeal proceedings.

Plea in law

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

Action brought on 29 April 2016 — Ranocchia v ERCEA

(Case T-208/16)

(2016/C 243/42)

Language of the case: Italian

Parties

Applicant: Graziano Ranocchia (Rome, Italy) (represented by: C. Intino, lawyer)

Defendant: European Research Council Executive Agency (ERCEA) (Brussels, Belgium)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the ERCEA Redress Committee of 26 February 2016 (Ref: Ares(2016)1020667 — 29/02/2016), issued following the formal redress request submitted on 22 December 2016 vis-à-vis the Evaluation Letter of Dr José Labastida of 17 December 2015 (Ref: Ares(2015)5922529);

— annul the Evaluation Letter of Dr José Labastida of 17 December 2015 (Ref: Ares(2015)5922529) and all documents connected with those mentioned above, including the list of projects approved by the ERC-Cog-2015 SH5-Cultures and Cultural Production panel, which was made public by the ERCEA by press release of 12 February 2016;

— annul any prior, subsequent or connected measures.

Pleas in law and main arguments

In support of his action, the applicant alleges a misuse of powers, on the grounds that the evaluation is manifestly unreasonable, that there has been a distortion of the facts on which the decision not to approve the proposal is based, and that the ERCEA's rules on evaluating proposals have been infringed.

The applicant submits that the selection procedures concerned have been vitiated with regard to both the objective and subjective scope of evaluation.

As regards the first point, the applicant argues that there is a total lack of consistency between the (extremely positive) evaluations of the individual committee members and the final overall evaluation (rejection of the proposal), and that there has been an incorrect application of the evaluation criteria.

As regards the second point, the applicant focuses on what he considers to be a false representation of the acts and facts which led to the decision not to approve the proposal. He draws particular attention to the incorrect interpretation of the criterion of 'excellence' for the purposes of the evaluation.

Action brought on 5 May 2016 — Lukash v Council

(Case T-210/16)

(2016/C 243/43)

Language of the case: French

Parties

Applicant: Olena Lukash (Kiev, Ukraine) (represented by: M. Cessieux, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare Ms Olena Lukash's action to be admissible;

— annul, in so far as it concerns the applicant, 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;

— annul, in so far as it concerns the applicant, 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;

— annul the subsequent decisions and regulations extending the restrictive measures laid down by Council Decision 2014/119/CFSP of 5 March 2014 and updating the grounds, namely:

  — Council Decision 2015/364/CFSP of 5 March 2015;

  — Council Regulation (EU) 2015/357 of 5 March 2015;

  — Council Decision 2015/876/CFSP of 5 June 2015;

  — Council Regulation (EU) 2015/869 of 5 June 2015;

  — Council Decision 2016/318/CFSP of 4 March 2016;

  — Council Regulation (EU) No 208/2014 of 4 March 2016;

— order the Council of the European Union to pay the costs in accordance with Articles 87 and 91 of the Rules of Procedure of the General Court.

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 an infringement of the rights of defence and of the right to an effective remedy.

2. Second plea in law, alleging a breach of the obligation to state reasons.

3. Third plea in law, alleging a failure to observe the criteria set out in Article 1 of Decision 2014/119/CFSP, reiterated in recital 4 of Regulation (EU) No 208/2014, in recital 3 of Decision 2015/364/CFSP, reiterated in recital 2 of Regulation (EU) 2015/357, in recital 4 of Decision 2015/876/CFSP, reiterated in recital 3 of Regulation (EU) 2015/357, and in recital 4 of Decision 2016/318/CFSP, reiterated in recital 2 of Regulation (EU) 2015/357.

4. Fourth plea in law, alleging an error of fact by the Council.

5. Fifth plea in law, alleging a clear breach of the applicant's right to property.

Action brought on 9 May 2016 — El Corte Inglés v EUIPO — Elho Business & Sport (FRee STyLe)

(Case T-212/16)

(2016/C 243/44)

Language in which the application was lodged: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J. Rivas Zurdo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Elho Business & Sport Vertriebs GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'FRee STyLe'— EU trade mark No 10 317 642

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 February 2016 in Case R 377/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the party or parties opposing this action to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) in conjunction with Article 52(1)(a) of Regulation No 207/2009.

— Coexistence of the opposing marks and other signs containing the term 'FREE STYLE'.

— Failure in the decision of the Board of Appeal to fulfil the obligation to dismiss evidence adduced by the applicant outside the prescribed period as laid down in Article 76(1) and (2) of Regulation No 207/2009.

Action brought on 9 May 2016 — El Corte Inglés v EUIPO — Elho Business & Sport (FREE STYLE)

(Case T-213/16)

(2016/C 243/45)

Language in which the application was lodged: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J. Rivas Zurdo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Elho Business & Sport Vertriebs GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FREE STYLE'— EU trade mark No 4 761 731

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 February 2016 in Case R 387/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the party or parties opposing this action to pay the costs.

Pleas in law

The pleas in law and principal arguments are those put forward in Case T-212/16, *El Corte Inglés* v *EUIPO — Elho Business & Sport (FRee STyLe)*.

Action brought on 11 May 2016 — Vignerons de la Méditerranée v EUIPO — Bodegas Grupo Yllera (LE VAL FRANCE)

(Case T-216/16)

(2016/C 243/46)

Language in which the application was lodged: French

Parties

Applicant: Vignerons de la Méditerranée (Narbonne, France) (represented by: M. Karsenty-Ricard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bodegas Grupo Yllera SL (Rueda, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark featuring the word elements 'LE VAL FRANCE' — Application for registration No 12 162 921

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 2 March 2016 in Case R 427/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject opposition No B 2 307 737 brought by the company Bodegas Grupo Yllera SL against EU trade mark application No 12 162 921 submitted by the company Vignerons de la Méditerranée;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 10 May 2016 — Haverkamp v EUIPO — Sissel (Foot mat)

(Case T-227/16)

(2016/C 243/47)

Language in which the application was lodged: German

Parties

Applicant: Reinhard Haverkamp (Kindberg, Austria) (represented by: A. Waldenberger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sissel GmbH (Bad Dürkheim, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: International registration designating the European Union in respect of the design 'Foot mat' — International registration designating the European Union No DM/072187-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 26 February 2016 in Case R 2618/2014-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of these proceedings, the proceedings before the Board of Appeal and the invalidity proceedings before EUIPO.

Plea in law

— Infringement of Article 6(1)(b) of Regulation No 6/2002.

Action brought on 10 May 2016 — Haverkamp v EUIPO — Sissel (Pebble beach surface pattern)

(Case T-228/16)

(2016/C 243/48)

Language in which the application was lodged: German

Parties

Applicant: Reinhard Haverkamp (Kindberg, Austria) (represented by: A. Waldenberger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sissel GmbH (Bad Dürkheim, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: International registration designating the European Union in respect of the design 'Pebble beach surface pattern' — International registration designating the European Union No DM/072198-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 26 February 2016 in Case R 2619/2014-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of these proceedings, the proceedings before the Board of Appeal and the invalidity proceedings before EUIPO.

Pleas in law

— Infringement of Article 5(1)(b) of Regulation No 6/2002;

— Infringement of Article 6(1)(b) of Regulation No 6/2002.

Appeal brought on 12 May 2016 by the European Commission against the judgment of the Civil Service Tribunal of 2 March 2016 in Case F-3/15, Frieberger and Vallin v Commission

(Case T-232/16 P)

(2016/C 243/49)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Berscheid and G. Gattinara, acting as Agents)

Other parties to the proceedings: Jürgen Frieberger (Woluwe-Saint-Lambert, Belgium) and Benjamin Vallin (Saint-Gilles, Belgium)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 2 March 2016 in Case F-3/15, Frieberger and Vallin v Commission, in so far as the Civil Service Tribunal held the fourth plea in law to be well founded;

— as regards the proceedings at first instance, in so far as the Civil Service Tribunal took the view that the state of proceedings permitted it to give final judgment, dismiss the action as unfounded and order the appellants to pay the costs;

— as regards the appeal proceedings, order the parties to bear their own costs relating to those proceedings.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on five grounds of appeal.

1. First ground of appeal, alleging a distortion of the arguments raised at first instance and an infringement of the prohibition on ruling *ultra petita*.

2. Second ground of appeal, alleging an error of law in the interpretation of Article 26(5) of Annex XIII to the Staff Regulations.

3. Third ground of appeal, alleging an error of law in the interpretation of the notion of transfer of pension rights under Article 11(2) of Annex VIII to the Staff Regulations.

4. Fourth ground of appeal, alleging an infringement of the obligation to state reasons.

5. Fifth ground of appeal, alleging an infringement of the principle of equal treatment.

Appeal brought on 12 May 2016 by José Luis Ruiz Molina against the judgment of the Civil Service Tribunal of 2 March 2016 in Case F-60/15, Ruiz Molina v OHIM

(Case T-233/16 P)

(2016/C 243/50)

Language of the case: French

Parties

Appellant: José Luis Ruiz Molina (San Juan de Alicante, Spain) (represented by: N. Lhoëst and S. Michiels, lawyers)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought by the appellant

The appellant claims that the Court should

— set aside the judgment of the European Union Civil Service Tribunal of 2 March 2016 in Case F-60/15;

— order the respondent to the appeal to pay the costs of both sets of proceedings in their entirety.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on four grounds of appeal.

1. First ground of appeal, alleging infringement of the first paragraph of Article 8 of the Conditions of Employment of Other Servants of the European Union.

2. Second ground of appeal, alleging infringement of the principle of *res judicata* attaching to the judgment of 15 September 2011 in *Bennett and Others* v *OHIM*, F-102/09, EU:F:2011:138.

3. Third ground of appeal, alleging infringement of Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) which implemented the framework agreement on fixed-term work concluded on 18 March 1999 between the general cross-industry organisations, and infringement of well established principles and standards of international social and labour law on stable employment.

4. Fourth ground of appeal, alleging failure to state reasons for the judgment under appeal.

Action brought on 9 May 2016 — Meissen Keramik v EUIPO — Staatliche Porzellan-Manufaktur Meissen (Meissen)

(Case T-234/16)

(2016/C 243/51)

Language in which the application was lodged: German

Parties

Applicant: Meissen Keramik GmbH (Meißen, Germany) (represented by: M. Vohwinkel and M. Bagh, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Staatliche Porzellan-Manufaktur Meissen GmbH (Meißen, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'Meissen' — EU trade mark No 3 743 663

Procedure before EUIPO: Revocation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 March 2016 in Cases R 2620/2014-4 and R 2622/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it finds against the applicant, that is to say in so far as the appeal lodged by the applicant for a declaration of revocation and applicant in the present proceedings was dismissed and in so far as, in addition, owing to the appeal filed by the proprietor of the trade mark, the contested decision of the Cancellation Division was annulled and the application for cancellation was also rejected in that respect;

— in so far as the Court regards itself as authorised to make an alteration: declare EU trade mark No 3 743 663 to be revoked in its entirety — in the alternative or incidentally: refer the case back to EUIPO;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 15(1)(a) of Regulation No 207/2009;

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

Action brought on 10 May 2016 — Biogena Naturprodukte v EUIPO (ZUM wohl)

(Case T-236/16)

(2016/C 243/52)

Language of the case: German

Parties

Applicant: Biogena Naturprodukte GmbH & Co KG (Salzburg, Austria) (represented by: I. Schiffer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark including the word elements 'ZUM wohl' — Application No 13 666 871

Contested decision: Decision of the First Board of Appeal of EUIPO of 23 February 2016 in Case R 1982/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare that the sign applied for under the number 013 666 871 be allowed to proceed to registration as an EU trade mark in respect of all the goods and services in Classes 29, 30, 32 and 43 for which registration is sought in the application of 23 January 2015;

— order EUIPO to pay all the costs which the applicant for the EU trade mark has incurred as a result of the application procedure;

— order EUIPO to pay the costs of these proceedings.

Pleas in law

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

Action brought on 12 May 2016 — Polskie Zdroje v EUIPO (perlage)

(Case T-239/16)

(2016/C 243/53)

Language of the case: Polish

Parties

Applicant: Polskie Zdroje sp. z o.o. sp. k. (Warsaw, Poland) (represented by: T. Gawrylczyk, legal adviser)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'perlage' — application for registration no 13 472 899

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 March 2016 in Case R 1129/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

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

Action brought on 18 May 2016 – Freddo v EUIPO – Freddo Freddo (Freggo)

(Case T-243/16)

(2016/C 243/54)

Language in which the application was lodged: English

Parties

Applicant: Freddo SA (Buenos Aires, Argentina) (represented by: S. Malynicz, QC, K. Gilbert, G. Lodge, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Freddo Freddo, SL (Madrid, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'Freggo' – Application for registration No 7 606 064

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 17 February 2016 in Case R 919/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO (and if it intervenes, the other party to the proceedings before the Office) to pay its own costs and pay those of the applicant.

Plea in law

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

Action brought on 13 May 2016 – Yanukovych v Council

(Case T-244/16)

(2016/C 243/55)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovych (Kyiv, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) insofar as it applies to the applicant;

— annul Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1), on the basis that it fails to revoke the Regulation No 208/2014, insofar as it applies to the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council of the European Union ('the Council') lacked a proper legal basis for the contested measures. First, the conditions for the Council relying on Article 29 TEU were not fulfilled by the contested measures. Amongst other things: (i) the Council's expressly invoked objectives (consolidating the rule of law and respect for human rights in Ukraine) are merely vague assertions that cannot be legitimately sustained as a valid basis for these measures; (ii) the basis on which the Council seeks to rely lacks any sufficient connection to the proper standard of judicial review required in the present circumstances; and (iii) the imposition of restrictive measures on the applicant in fact supports and legitimises the conduct of the new regime in Ukraine that is itself undermining due process and the rule of law and that is violating, and is prepared systematically to violate, human rights. Second, the conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU. Third, there was no sufficient link for Article 215 TFEU to be relied on against the applicant.

2. Second plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the contested measures was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the EU), and not the purposes/rationales stated on the face of the contested measures

3. Third plea in law, alleging that the Council failed to state reasons. The 'statement of reasons' adopted in the contested measures for including the applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.

4. Fourth plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.

5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. In re-designating the applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error.

6. Sixth plea in law, alleging that the applicant's rights of defence have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed to adequately consult with the applicant prior to the re-designation, and the applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances.

7. Seventh plea in law, alleging that the Applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the applicant's assets since the Ukraine authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the applicant.

Action brought on 13 May 2016 – Yanukovych v Council

(Case T-245/16)

(2016/C 243/56)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Donetsk, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) insofar as it applies to the applicant;

— annul Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1), on the basis that it fails to revoke the Regulation No 208/2014, insofar as it applies to the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council of the European Union ('the Council') lacked a proper legal basis for the contested measures. Arguments in support of this and subsequent pleas, include the following. The conditions for the Council relying on Article 29 TEU were not satisfied by the contested measures. Those contested measures were inconsistent with the objectives expressly invoked by the Council Decision (CFSP) 2016/318 (rule of law and respect for human rights in Ukraine). Indeed, the contested measures undermine the rule of law and human rights by supporting a regime which does not have a history of human rights compliance or compliance with the rule of law. No reliance can properly be placed by the Council on decisions of Ukraine's Prosecutor General's Office or Courts, including because they are neither independent nor impartial, and are subject to political interference by the current regime in Ukraine. The presumption of innocence, to which the applicant is entitled, has been repeatedly violated by the Ukraine authorities.

2. Second plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the contested measures was and is to curry favour with the current regime in Ukraine, and to maximise its political influence with that regime, which are not proper uses of the powers concerned.

3. Third plea in law, alleging that the Council failed to state proper or sufficient reasons, merely relying on formulaic and imprecise statements.

4. Fourth plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time. The material relied on by the Council was not a sufficiently solid factual basis for the applicant's listing.

5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. The Council did not have concrete, factually reliable and consistent evidence to justify the contested measures, and had not subjected the limited material that it did have to a sufficiently rigorous review.

6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the applicant prior to the contested measures, and the applicant has not been afforded a proper or fair opportunity either to correct errors or to produce relevant information.

7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 5 April 2016 – ZZ v EIB

(Case F-19/16)

(2016/C 243/57)

Language of the case: English

Parties

Applicant: ZZ (represented by: A. Senes et L. Payot, lawyers)

Defendant: European Investment Bank (EIB)

Subject-matter and description of the proceedings

Reimburse the applicant, with interest, for the alleged loss of her pensionable rights or, in the alternative, reinstate, with interest, the pensionable rights allegedly lost by her in the national system, when those rights were transferred to the defendant's pension scheme.

Form of order sought

— Condemn the European Investment Bank to restore the prejudice that the applicant has suffered for the loss of her pensionable rights in the amount of EUR 55 641,17, plus interest accrued at the applicable rate calculated retroactively, as if the original transfer was done for the full amount of her pensionable rights existing with Istituto Nazionale della Previdenza Sociale, when the original request of transfer was done;

— In the alternative, condemn EIB to perform the immediate return in pensionable months to ZZ of EUR 55 641,17, plus interest accrued at the applicable rate calculated retroactively as if the original transfer was done for the full amount of her pension rights existing with Istituto Nazionale della Previdenza Sociale. In this case, it is suggested, calculations should be made under article 71.1.1. of the EIB's Staff Pension Scheme Regulations;

— condemn EIB to support all such further relief as the Tribunal considers just;

— condemn EIB to support the costs of the present proceedings, which are estimated as EUR 3 000.

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