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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 123/01)

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

OJ C 114, 20.4.2013

Past publications

OJ C 108, 13.4.2013

OJ C 101, 6.4.2013

OJ C 86, 23.3.2013

OJ C 79, 16.3.2013

OJ C 71, 9.3.2013

OJ C 63, 2.3.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 7 March 2013 — Swiss Confederation v European Commission, Federal Republic of Germany, Landkreis Waldshut

(Case C-547/10 P) [1]

(Appeal — External relations — Agreement between the European Community and the Swiss Confederation on air transport — Regulation (EEC) No 2408/92 — Access of Community air carriers to intra-Community air routes — Articles 8 and 9 — Scope — Exercise of traffic rights — Decision 2004/12/EC — German measures relating to the approaches to Zurich Airport — Duty to state reasons — Non-discrimination — Proportionality — Burden of proof)

(2013/C 123/02)

Language of the case: German

Parties

Appellant: Swiss Confederation (represented by: S. Hirsbrunner, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by: T. van Rijn, K. Simonsson and K. P. Wojcik, Agents); Federal Republic of Germany (represented by T. Henze, Agent, assisted by T. Masing, Rechtsanwalt); Landkreis Waldshut, (represented by M. Núñez Müller, Rechtsanwalt)

Re:

Appeal against the judgment delivered by the General Court (Fifth Chamber) on 9 September 2010 in Case T-319/05 *Switzerland* v *Commission* by which that court dismissed the action brought by the Swiss Confederation for the annulment of Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1993 L 15, p. 33) — Measures adopted by Germany relating to the approaches to Zurich airport — Wrongful assessment of the applicability of Article 9(1) of Regulation (EEC) No 2408/92 to the contested measures — Misinterpretation of the scope of the Commission's obligation to state reasons — Failure to take account of the rights of the airport operator and the people living around the airport — Infringement of the principles of non-discrimination and proportionality

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders the Swiss Confederation to bear, in addition to its own costs, all of the costs incurred by the European Commission both at first instance and on appeal.*

3. *Orders the Federal Republic of Germany and Landkreis Waldshut to bear their own costs.*

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[1] OJ C 30, 29.1.2011.

Judgment of the Court (Fifth Chamber) of 7 March 2013 (request for a preliminary ruling from the arbeidshof te Antwerpen — Belgium) — Aldegonda van den Booren v Rijksdienst voor Pensioenen

(Case C-127/11) [1]

(Social security for migrant workers — Article 46a of Regulation (EEC) No 1408/71 — National rules against overlapping — Old-age pension — Increase in the amount paid by a Member State — Survivor's pension — Reduction in the amount paid by another Member State)

(2013/C 123/03)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Applicant: Aldegonda van den Booren

Defendant: Rijksdienst voor Pensioenen

Re:

Request for a preliminary ruling — Arbeidshof te Antwerpen — Interpretation of Articles 10 EC, 39 EC and 42 EC (now Articles 4(3) TUE, 45 TFEU and 48 TFEU respectively) and Article 46a(3)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English special edition, 1971 (II), p. 416) — Benefits — National anti-overlapping rules — Reduction of the survivor's pension paid by the first Member State because of an increase in the old-age pension paid by another Member State

Operative part of the judgment

Article 46a of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, must be interpreted as meaning that it does not preclude the application of legislative rules of a Member State containing a provision under which a survivor's pension received in that Member State is reduced as a result of the increase in an old-age pension received under the legislation of another Member State, provided, in particular, that the conditions set out in Article 46a(3)(d) are observed.

Article 45 TFEU must be interpreted as meaning that it likewise does not preclude the application of such national legislative rules in so far as they do not lead, in respect of the person concerned, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element, and, if such a disadvantage is established, in so far as it is justified by objective considerations and is proportionate in relation to the objective legitimately pursued by national law, this being a matter for the referring court to ascertain.

([1]) OJ C 152, 21.5.2011.

Judgment of the Court (First Chamber) of 7 March 2013 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — GfBk Gesellschaft für Börsenkommunikation mbH v Finanzamt Bayreuth

(Case C-275/11) ([1])

(Taxation — Value added tax — Directive 77/388/EEC — Exemption of the management of special investment funds — Scope)

(2013/C 123/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: GfBk Gesellschaft für Börsenkommunikation mbH

Defendant: Finanzamt Bayreuth

Re:

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 13B(d)(6) 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 (OJ 1977 L 145, p. 1) — Exemption of the management of special investment funds — Scope

Operative part of the judgment

Article 13B(d)(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that advisory services concerning investment in transferable securities, provided by a third party to an investment management company which is the manager of a special investment fund, fall within the concept of 'management of special investment funds' for the purposes of the exemption laid down in that provision, even if the third party has not acted on the basis of a mandate within the meaning of Article 5g of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Second Chamber) of 7 March 2013 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri -vastuualue

(Case C-358/11) [1]

(Environment — Waste — Hazardous waste — Directive 2008/98/EC — Old telecommunications poles treated with CCA (copper-chromium-arsenic) solutions — Registration, evaluation and authorisation of chemicals — Regulation (EC) No 1907/2006 (REACH Regulation) — List of uses for treated wood in Annex XVII to the REACH Regulation — Old telecommunications poles used as underlay for duckboards)

(2013/C 123/05)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri -vastuualue

Defendants: Lapin luonnonsuojelupiiri ry and Lapin elinkeino-, liikenne- ja ympäristökeskuksen ympäristö ja luonnonvarat -vastuualue

Re:

Request for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3) and Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC — Registration, evaluation and authorisation of chemical substances — Substance subject to a restriction under Annex XVI of that regulation — Use of old telephone poles treated with CCA (copper-chrome-arsenic) solutions for underlay for hiking trails

Operative part of the judgment

1. *European Union law does not, as a matter of principle, exclude the possibility that waste regarded as hazardous may cease to be waste within the meaning of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives if a recovery operation enables it to be made usable without endangering human health and without harming the environment and, also, if it is not found that the holder of the object at issue discards it or intends or is required to discard it within the meaning of Article 3(1) of that directive, this being a matter for the referring court to ascertain.*

2. *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, in the version resulting from Commission Regulation (EC) No 552/2009 of 22 June 2009, in particular Annex XVII thereto, in so far as it authorises the use, subject to certain conditions, of wood treated with a 'CCA' (copper-chromium-arsenic) solution, must be interpreted as meaning that, in circumstances such as those in the main proceedings, it is relevant for the purpose of determining whether such wood may cease to be waste because, if those conditions were fulfilled, its holder would not be required to discard it within the meaning of Article 3(1) of Directive 2008/98.*

3. *Articles 67 and 128 of Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, must be interpreted as meaning that European Union law harmonises the requirements relating to the manufacture, placing on the market or use of a substance such as that relating to arsenic compounds which is the subject of a restriction under Annex XVII to that regulation.*

4. *Annex XVII, point 19(4)(b), to Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, which lists the applications for which, by way of derogation, wood treated with a 'CCA' (copper-chromium-arsenic) solution may be used, must be interpreted as meaning that the list in that provision is exhaustive in character and that, therefore, that derogation cannot be applied to cases other than those referred to therein. It is for the referring court to determine whether, in circumstances such as those at issue in the main proceedings, the use of the telecommunications poles concerned as an underlay for duckboards does in fact come within the scope of the applications listed in that provision.*

5. *The provisions of Annex XVII, point 19(4)(d), second indent, to Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, according to which wood treated with a 'CCA' (copper-chromium-arsenic) solution must not be used in any application where there is a risk of repeated skin contact, must be interpreted as meaning that the prohibition at issue must apply in any situation which, in all likelihood, will involve repeated skin contact with the treated wood, such likelihood having to be inferred from the specific conditions of normal use of the application to which that wood has been put, this being a matter for the referring court to ascertain.*

[1] OJ C 269, 10.9.2011.

Judgment of the Court (First Chamber) of 7 March 2013 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Wheels Common Investment Fund Trustees Ltd and Others v Commissioners for Her Majesty's Revenue and Customs

(Case C-424/11) ([1])

(Value added tax — Directive 77/388/EEC — Exemption of the management of special investment funds — Scope — Occupational retirement pension schemes)

(2013/C 123/06)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Appellants: Wheels Common Investment Fund Trustees Ltd, National Association of Pension Funds Ltd, Ford Pension Fund Trustees Ltd, Ford Salaried Pension Fund Trustees Ltd, Ford Pension Scheme for Senior Staff Trustee Ltd

Respondent: Commissioners for Her Majesty's Revenue and Customs

Re:

Request for preliminary ruling — First-tier Tribunal (Tax Chamber) — Interpretation of Article 13B(d)(6) 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 (OJ 1977 L 145, p. 1) — Interpretation of Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p.1) — Exemptions — Scope of the exemption for the management of special investment funds — Inclusion of occupational retirement pension schemes

Operative part of the judgment

Article 13B(d)(6) 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 and Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that an investment fund pooling the assets of a retirement pension scheme is not a 'special investment fund' within the meaning of those provisions, management of which may be exempted from value added tax in the light of the objective of those directives and the principle of fiscal neutrality, where the members of the scheme do not bear the risk arising from the management of the fund and the contributions which the employer pays into the scheme are a means by which he complies with his legal obligations towards his employees.

([1]) OJ C 311, 22.10.2011.

Judgment of the Court (Fourth Chamber) of 7 March 2013 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — DKV Belgium v Association belge des consommateurs Test-Achats ASBL

(Case C-577/11) ([1])

(Freedom to provide services — Freedom of establishment — Directives 73/239/EEC and 92/49/EEC — Direct insurance other than life assurance — Freedom to set rates — Health insurance contracts not linked to professional activity — Restrictions — Overriding reasons in the public interest)

(2013/C 123/07)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: DKV Belgium SA

Defendant: Association belge des consommateurs Test-Achats ASBL

Re:

Request for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Article 49 and 56 TFEU, of the second paragraph of Article 29 and Article 39(3) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) (OJ 1992 L 228, p. 1) and of Article 8(3) of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3) — National legislation providing, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted, on the annual date of the premium, only on the basis of specific criteria — System of prior approval of rates — Restriction on the principles of the freedom of establishment and the freedom to provide services — Overriding reasons in the general interest

Operative part of the judgment

Articles 29 and 39(2) and (3) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) and Article 8(3) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 92/49, must be interpreted as not precluding legislation of a Member State which provides, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted annually only:

— *on the basis of the consumer price index, or*

— *on the basis of a so-called 'medical index', if and in so far as the changes in that index exceed that in the consumer price index, or*

— *after obtaining authorisation from an administrative authority responsible for the supervision of insurance undertakings, at the request of the insurance undertaking concerned, where that authority finds that the application of the premium rate of that undertaking, notwithstanding the adaptations calculated on the basis of those two types of indices, gives rise to, or is likely to give rise to losses.*

Articles 49 TFEU and 56 TFEU must be interpreted as not precluding such legislation, provided that there are no less restrictive measures which might be used to achieve, under the same conditions, the objective of protecting consumers against sharp, unexpected increases in insurance premium rates, which it is for the national court to ascertain.

([1]) OJ C 32, 4.2.2012.

Judgment of the Court (Fourth Chamber) of 7 March 2013 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — ITV Broadcasting Limited and Others v TVCatchup Limited

(Case C-607/11) ([1])

(Directive 2001/29/EC — Article 3(1) — Broadcasting by a third party over the internet of signals of commercial television broadcasters — 'Live streaming' — Communication to the public)

(2013/C 123/08)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: ITV Broadcasting Ltd, ITV 2 Ltd, ITV Digital Channels Ltd, Channel 4 Television Corporation, 4 Ventures Ltd, Channel 5 Broadcasting Ltd, ITV Studios Ltd

Defendant: TVCatchup Ltd

Re:

Request for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Concept of 'communication to the public' — Authorisation, by right holders, of the television broadcasting of their works on the free terrestrial network covering either the whole territory of a Member State or a limited geographical area within that Member State — Continuous transmission service, operated by a third party broadcaster, available to individual subscribers who have paid the television licence fee, meaning that those subscribers can receive the programmes live via video streams on the internet

Operative part of the judgment

1. *The concept of 'communication to the public', within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that it covers a retransmission of the works included in a terrestrial television broadcast*

   — *where the retransmission is made by an organisation other than the original broadcaster,*

   — *by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server,*

   — *even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver.*

2. *The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is funded by advertising and is therefore of a profit-making nature.*

3. *The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is made by an organisation which is acting in direct competition with the original broadcaster.*

([1]) OJ C 65, 3.3.2012.

Judgment of the Court (Eighth Chamber) of 7 March 2013 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Efir OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

(Case C-19/12) ([1])

(Value added tax — Directive 2006/112/EC — Articles 62, 63, 65, 73 and 80 — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons — Barter contract — VAT on construction services — Chargeable event — When chargeable — Whether both taxable transactions and exempt transactions are covered by the concept of a chargeable event — Payment on account of the entire consideration — Payment on account — Basis of assessment for a transaction in the event of consideration in the form of goods or services — Direct effect)

(2013/C 123/09)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Efir OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

Re:

Request for a preliminary ruling –Varhoven administrativen sad — Interpretation of Article 62(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Occurrence of the chargeable event — National legislation providing for the application of the concept of a chargeable event to both taxable transactions and exempt transactions — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons

Operative part of the judgment

1. *Articles 63 and 65 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the main proceedings, where building rights are established in favour of a company to erect a building, by way of consideration for construction services of certain real property which that company has undertaken to deliver on a turn-key basis to the persons who established those building rights, those provisions do not preclude the VAT on those construction services from becoming chargeable as from the moment when those building rights are established, that is to say, before those services are performed, provided that, at the time those rights are established, all the relevant information concerning that future supply of services is already known and, therefore, in particular, the services in question are precisely identified, and the value of those rights may be expressed in monetary terms, which it is for the national court to verify.*

   In circumstances such as those of the main proceedings, where the transactions are not completed between parties having ties within the meaning of Article 80 of Directive 2006/112, which it is for the national court to verify, Articles 73 and 80 of that directive must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which, when the consideration for a transaction is made up entirely of goods or services, the taxable amount of the transaction is the open market value of the goods or services supplied.

2. *Articles 63, 65 and 73 of Directive 2006/112 have direct effect.*

([1]) OJ C 89, 24.3.2012.

Judgment of the Court (Eighth Chamber) of 7 March 2013 (request for a preliminary ruling from the Székesfehérvári Törvényszék — Hungary) — Gábor Fekete v Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága,

(Case C-182/12) ([1])

(Community Customs Code — Article 137 — Regulation implementing the Customs Code — Article 561(2) — Conditions for total relief from import duties — Importation into a Member State of a vehicle whose owner is established in a third country — Private use)

(2013/C 123/10)

Language of the case: Hungarian

Referring court

Székesfehérvári Törvényszék (Hungary)

Parties to the main proceedings

Applicant: Gábor Fekete

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

Re:

Request for a preliminary ruling — Székesfehérvári Törvényszék — Interpretation of Article 561(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Total relief from import duty — Private use of a means of transport — Concept of employment relationship — Importation into a Member State of a vehicle belonging to a foundation established in a third country by the chairman of the board of that foundation — Authorisation of the foundation in question for the chairman of the board to use and drive the vehicle concerned

Operative part of the judgment

Article 561(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 993/2001 of 4 May 2001 must be interpreted as meaning that the total relief from import duties provided for by that provision for a means of transport used privately by a person established in the customs territory of the European Union may be granted only if such use is provided for in a contract of employment between that person and the owner of the vehicle established outside that territory.

([1]) OJ C 217, 21.07.2012.

Request for a preliminary ruling from the Gerechtshof Amsterdam (Netherlands) lodged on 25 January 2013 — Inspecteur van de Belastingdienst Noord/kantoor Groningen v SCA Group Holding BV

(Case C-39/13)

(2013/C 123/11)

Language of the case: Dutch

Referring court

Gerechtshof Amsterdam

Parties to the main proceedings

Appellant: Inspecteur van de Belastingdienst Noord/kantoor Groningen

Respondent: SCA Group Holding BV

Questions referred

1. Does denying the respondent the opportunity of having the Netherlands fiscal unity regime applied to the activities and the assets of the (sub-)sub-subsidiaries established in the Netherlands — that is to say, Alphabet Holding, HP Holding and Alpha Holding — constitute a restriction of the freedom of establishment within the meaning of Article 43 EC in conjunction with Article 48 EC?

   In that context, in the light of the objectives pursued by the Netherlands fiscal unity regime …, is the situation of the (sub-)sub-subsidiaries Alphabet Holding, HP Holding and Alpha Holding objectively comparable … to (i) the situation of companies established in the Netherlands which are (sub-)subsidiaries of an intermediate holding company established in the Netherlands which has not elected to be integrated in a fiscal unity with its parent company established in the Netherlands, and which therefore, as sub-subsidiaries, similarly to Alphabet Holding, HP Holding and Alpha Holding, have no access to the fiscal unity regime with — exclusively — its grandparent company, or to (ii) the situation of sub-subsidiaries established in the Netherlands which, together with their parent company/intermediate holding company established in the Netherlands, have elected to form a fiscal unity with their (grand-)parent company established in the Netherlands and whose activities and assets therefore, unlike those of Alphabet Holding, HP Holding and Alpha Holding, are consolidated for tax purposes?

2. In answering the first sentence of Question 1, does it still make a difference … whether the domestic companies concerned are held by one single intermediate holding company (at a higher level of the group structure) in the other Member State or whether, as in the case of Alphabet Holding, HP Holding and Alpha Holding, they are held by two (or more) intermediate holding companies — albeit situated in that other Member State — (at two or more higher levels of the group structure)?

3. If and to the extent that the first sentence of Question 1 must be answered in the affirmative, can such a restriction then be justified by overriding reasons in the general interest, more particularly by the need to maintain tax consistency, including the prevention of unilateral and bilateral double use of losses …?

   Does it still make a difference in that context that it has been established in the specific case that there is no double use of losses …?

4. If and to the extent that Question 3 must be answered in the affirmative, should the restriction be considered to be proportionate …?

Request for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 25 January 2013 — X AG and Others v Inspecteur van de Belastingdienst Amsterdam

(Case C-40/13)

(2013/C 123/12)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Appellants: X AG, X1 Holding GmbH, X2 Holding GmbH, X3 Holding BV, D1 BV, D2 BV, D3 BV

Respondent: Inspecteur van de Belastingdienst Amsterdam

Questions referred

1. Does denying the appellants the opportunity to have the Netherlands fiscal unity regime applied to the activities and assets of the sister companies X3 Holding, D1 and D2, established in the Netherlands, constitute a restriction of the freedom of establishment within the meaning of Article 43 EC in conjunction with Article 48 EC?

   In that context, in the light of the objectives pursued by the Netherlands fiscal unity regime …, is the situation of X3 Holding, D1 and D2 objectively comparable … to (i) the situation of sister companies, established in the Netherlands, which have not elected to be integrated in a fiscal unity with their common parent company (-ies), established in the Netherlands, and which therefore, jointly as sister companies, similarly to the appellants, have no access to the fiscal unity regime, or to (ii) the situation of sister companies, established in the Netherlands, which, together with their common parent company (-ies), established in the Netherlands, have elected to form a fiscal unity with their parent company (-ies) and whose activities and assets therefore, in contrast to those of the appellants, are consolidated for tax purposes?

2. In answering the first sentence of Question 1, does it still make a difference … whether the companies concerned have (i), as in the case of D1 and D2, a common (direct) parent company in the other Member State or (ii), as in the case of, on the one hand, X3 Holding, and, on the other hand, D1 and D2, various (direct) parent companies in the other Member State, with the result that it is only at a higher level — albeit situated in that other Member State — of the group structure that there is a common (indirect) parent company of those various companies?

3. If and to the extent that the first sentence of Question 1 must be answered in the affirmative, can such a restriction then be justified by overriding reasons in the general interest, more particularly by the need to preserve tax consistency, including the prevention of unilateral and bilateral double use of losses …?

4. If and to the extent that Question 3 must be answered in the affirmative, should such a restriction be considered to be proportionate …?

Request for a preliminary ruling from the Gerechtshof Amsterdam (Netherlands) lodged on 25 January 2013 — Inspecteur van de Belastingdienst Holland-Noord/kantoor Zaandam v MSA International Holdings BV, MSA Nederland BV

(Case C-41/13)

(2013/C 123/13)

Language of the case: Dutch

Referring court

Gerechtshof Amsterdam

Parties to the main proceedings

Appellant: Inspecteur van de Belastingdienst Holland-Noord/kantoor Zaandam

Respondents: MSA International Holdings BV, MSA Nederland BV

Questions referred

1. Does denying the respondents the possibility of having the Netherlands fiscal unity regime applied to the activities and the assets of the sub-subsidiary/respondent [MSA Nederland], established in the Netherlands, constitute a restriction of the freedom of establishment within the meaning of Article 43 EC in conjunction with Article 48 EC?

   In that context, in the light of the objectives pursued by the Netherlands fiscal unity regime …, is the situation of the sub-subsidiary/respondent [MSA Nederland] objectively comparable … to (i) the situation of a company established in the Netherlands which is a subsidiary of an intermediate holding company established in the Netherlands which has not elected to be integrated in a fiscal unity with its parent

company established in the Netherlands and which therefore, as a sub-subsidiary, similarly to [the] respondent [MSA Nederland], has no access to the fiscal unity regime with — exclusively — its grandparent company, or to (ii) the situation of a sub-subsidiary established in the Netherlands which, with its parent company/intermediate holding company established in the Netherlands, has elected to form a fiscal unity with [its] (grand)parent company established in the Netherlands and whose activities and assets therefore, in contrast to those of [the] respondent [MSA Nederland], are consolidated for tax purposes?

2. In answering the first sentence of Question 1, does it still make a difference … whether the foreign intermediate holding company concerned, if it does not operate in the Netherlands through a subsidiary but through a permanent establishment, had been able to elect — as regards the assets and the activities of that Netherlands permanent establishment — to form a fiscal unity with its parent company established in the Netherlands?

3. If and to the extent that the first sentence of Question 1 must be answered in the affirmative, can such a restriction then be justified by overriding reasons in the general interest, more particularly by the need to preserve tax consistency, including the prevention of the unilateral and bilateral double use of losses …?

4. If and to the extent that Question 3 must be answered in the affirmative, should such a restriction then be considered to be proportionate …?

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 28 January 2013 — Hauptzollamt Köln v Kronos Titan GmbH

(Case C-43/13)

(2013/C 123/14)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Köln

Defendant: Kronos Titan GmbH

Question referred

Does Article 2(3) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, [1] in relation to the taxation of energy products other than those for which a level of taxation is specified in the Directive, require the application of a rate of tax which national law specifies for the use of an energy product as heating fuel, provided that that other energy product is also used as heating fuel? Or, in cases where the other energy product — in circumstances where it is used as heating fuel — is equivalent to a particular energy product, can the rate of tax specified by national law for this energy product be applied, even in the case where the rate of tax is the same irrespective of whether it is being used as motor fuel or as heating fuel?

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[1] OJ L 283, p. 51.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 28 January 2013 — Hauptzollamt Krefeld v Rhein-Ruhr Beschichtungs-Service GmbH

(Case C-44/13)

(2013/C 123/15)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Defendant and appellant: Hauptzollamt Krefeld

Applicant and respondent: Rhein-Ruhr Beschichtungs-Service GmbH

Question referred

Does Article 2(3) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, [1] in relation to the taxation of energy products other than those for which a level of taxation is specified in the Directive, require the application of a rate of tax which national law specifies for the use of an energy product as heating fuel, provided that that other energy product is also used as heating fuel? Or, in cases where the other energy product — in circumstances where it is used as heating fuel — is equivalent to a particular energy product, can the rate of tax specified by national law for this energy product be applied, even in the case where the rate of tax is the same irrespective of whether it is being used as motor fuel or as heating fuel?

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

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 31 January 2013 — Posteshop SpA — Divisione Franchising Kipoint v Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri

(Case C-52/13)

(2013/C 123/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Posteshop SpA — Divisione Franchising Kipoint

Defendants: Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri

Question referred

With regard to the protection to be afforded to traders, is Directive 2006/114/EC [1] to be interpreted as referring to advertising that is misleading and at the same time based on unlawful comparison, or to two separate offences, each of which may be relevant in its own right, namely misleading advertising and unlawful comparative advertising?

[1] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ 2006 L 376, p. 21.

Action brought on 12 February 2013 — European Commission v Portuguese Republic

(Case C-76/13)

(2013/C 123/17)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade, G. Braun and L. Nicolae, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

The Commission claims that the Court of Justice should:

— declare that the Portuguese Republic has failed to comply with the judgment of the Court in Case C-154/09 *European Commission* v *Portuguese Republic* [2010] ECR I-127;

— order the Portuguese Republic to pay the Commission a periodic penalty payment of EUR 43 264,64 per day of its failure to comply with the judgment in Case C-154/09, from the date of delivery of the judgment in the present case until the defendant has complied in full with the judgment in Case C-154/09;

— order the Portuguese Republic to pay the Commission a fine of a fixed rate of EUR 5 277,3 per day of its failure to comply, from the date of delivery of the judgment in Case C-154/09 until:

  — the date of compliance with that judgment, in the event that the Court of Justice determines that the Portuguese Republic has complied with it before the judgment in the present case is delivered;

  — the date of delivery of the judgment in this case, in the event that it finds that the judgment in Case C-154/09 has not been complied with prior to the delivery of the judgment in the present case;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese Republic is yet to designate the undertakings which are to provide the universal service in accordance with Articles 3(2) and 8(2) of the Universal Service Directive. [1] Moreover, the Portuguese Lei das Comunicações Eletrónicas (Law on electronic communications) still provides for the maintenance of all of the obligations set out in the basic concession rules for the provision of public telecommunications services approved by Decree-Law No 31/2003, pursuant to which the provision of the universal service in entrusted to PT Comunicações by means of a concession contract which is valid until 2025. For the purposes of the fine, the Commission proposes that the Court determine a coefficient of 7 on a scale of 1 to 20.

The infringement at issue jeopardises the attainment of the fundamental objectives of competition law in relation to the liberalisation of the telecommunications market, in addition to

contravening fundamental principles of European Union law, such as the principle of non-discrimination. Moreover, the infringement at issue calls into question the efficiency of the universal service, which is one of the main objectives of telecommunications law. In this instance, a concession was granted to Portugal Telecom without any form of public or restricted tender procedure being organised and, consequently, without guaranteeing that the universal service is provided in the best conditions in terms of cost effectiveness, and without guaranteeing competition by minimising market distortions.

(1) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Request for a preliminary ruling from the Tribunal d'instance de Quimper (France) lodged on 14 February 2013 — CA Consumer Finance v Francine Crouan, née Weber, Tual Crouan

(Case C-77/13)

(2013/C 123/18)

Language of the case: French

Referring court

Tribunal d'instance de Quimper

Parties to the main proceedings

Applicant: CA Consumer Finance

Defendants: Francine Crouan, née Weber, Tual Crouan

Question referred

Does Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (1) preclude an interpretation of the national law which validates terms that unilaterally vary the rate of interest in credit agreements, leaving the reasons for the variation in the rate and the methods for calculating that rate to the discretion of the lender, where there are no valid reasons specified in the agreement, if those terms are consistent with wording established by legislation and the lender has, in implementing the agreement, satisfied the statutory requirements relating to the information which must be provided to the borrower?

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

Action brought on 20 February 2013 — European Commission v Council of the European Union

(Case C-86/13)

(2013/C 123/19)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Currall, D. Martin and J.-P. Keppenne, Agents)

Defendant: Council of the European Union

Form of order sought

— Annul the Council's decision of 20 December 2012 by which it refused to adopt the Commission's proposal for a Council Regulation adjusting, with the effect from 1 July 2012, the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto;

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

Pleas in law and main arguments

The Commission relies on three pleas in law in support of its action.

The first plea alleges infringement of Article 65 of the Staff Regulations and Articles 1, 3 and 10 of Annex XI to the Regulations, in that, in the absence of any proposal by the Commission to apply the exception clause in Article 10 of Annex XI, the Council was required to adopt, before 31 December 2012, the proposal for the annual adjustment of the remuneration and pensions of the officials and other servants of the European Union submitted by the Commission, in accordance with Article 3 of Annex XI. The Council does not have the authority to adopt a decision applying, in essence, Article 10, without an appropriate Commission proposal or without the participation of the Parliament, its co-legislator under Article 10.

The second plea alleges infringement of Article 64 of the Staff Regulations and Articles 1 and 3 of Annex XI thereto, in that the Council failed to adopt, even though required to do so, the new correction coefficients to be applied to remuneration and pensions, which were proposed by the Commission in order to ensure equal treatment as between officials and pensioners irrespective of their place of employment or residence, as the case may be.

The third plea alleges complete failure to state reasons, since the Council simply stated that the qualified majority necessary for the adoption the Commission's proposal in accordance with Article 3 of Annex XI was not reached, without explaining why it had disregarded the proposal. This plea is directed at both the adjustment of remuneration and pensions and the adoption of new correction coefficients.

Request for a preliminary ruling from the Augstākās tiesas Senāts (Latvia) lodged on 4 March 2013 — AS 'Olainfarm' v Latvijas Republikas Veselības ministrija, Zāļu valsts aģentūra

(Case C-104/13)

(2013/C 123/20)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: AS 'Olainfarm'

Defendants: Latvijas Republikas Veselības ministrija, Zāļu valsts aģentūra

Intervener: AS 'Grindeks'

Questions referred

1. On a proper construction of Article 10 or of any other provision of Directive 2001/83/EC [1] of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, has the manufacturer of a reference medicinal product an individual right to bring an action challenging the decision of a competent authority by which a generic medicinal product of another manufacturer of medicinal products was registered, using as the reference medicinal product the product registered by the manufacturer of the reference medicinal product? In other words, does that Directive confer on the manufacturer of the reference medicinal product the right to a judicial remedy, the object of which is to determine whether the manufacturer of the generic medicinal product made lawful, well-founded reference to the product registered by the manufacturer of the reference medicinal product, relying on Article 10 of the Directive?

2. If the reply to the first question should be affirmative, on a proper construction of Articles 10 and 10a of the Directive, may a medicinal product registered in accordance with Article 10a of the Directive as a medicinal product in well-established medicinal use be used as a reference medicinal product for the purpose of Article 10(2)(a)?

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[1] OJ 2001 L 311, p. 67.

Action brought on 6 March 2013 — European Commission v Republic of Finland

(Case C-109/13)

(2013/C 123/21)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet and I. Koskinen acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Article 2(1), (2), (5), (7), (8), (9), (11), (13), (14), (17), (18), (19), (21), (22), (24), (28) — (35); Article 3(5)(a) and (9)(c); Article 9(1), (2), (3), (7), (9), (10) and (12); Articles 10 and 11; Article 12(d) and (h); Articles 13 and 14; the second and third sentences of Article 16(1), (2) and (3); Articles 17 to 23; Article 25(1); the third and fourth sentences of Article 26(2)(c), the second and fourth sentences of Article 26(2)(d) and (3); Article 29; Article 35(4) and (5); Article 36(a) — (e), (g) and (j); Article 37(1)(b) to (u), (3), (4)(b) and (d), (5) and (9); Article 38(1); Article 39(1), (4) and (8); Article 40(1),(2), (3), (6) and (7); and points 6 and 8 in Annex I(1)(a), (d), (f) and (j) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC into national law, both with respect to mainland Finland and the province of Åland, or, in any event, by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under Article 49(1) of that directive;

— impose on the Republic of Finland, pursuant to Article 260(3) TFEU, a daily penalty payment of EUR 32 140,00 which is to be applied from the day on which the judgment is delivered in the present case;

— order Republic of Finland to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 3 March 2011.

Action brought on 7 March 2013 — European Commission v Republic of Finland

(Case C-111/13)

(2013/C 123/22)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet and I. Koskinen, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Article 2(1), (2), (4) — (18), (20), (22) — (36); the first, second and third sentences of Article 3(3), Article 3(6)(b); Article 12; Article 13(1), (2) and (5); Article 15(1) and (2); the second sentence of Article 16(1) and Article 16(2) and (3); Article 25(1); Article 33; the second and fourth subparagraphs of Article 36(4) and Article36(6), (8) and the third subparagraph of Article 36(9); Article 39(4)(a) and (b), points (a) and (b) of the first subparagraph of Article 39(5) and the second subparagraph thereof; Article 40(a) — (e), (g) and (h); Article 41(1)(b), (c) — (f), (h) — (q) and (s) — (u), (4)(b) and (d), (6)(a), (7), (9), (10), (11) and (12); Article 42(1); Article 43(1), (4) and (8); Article 44(1), (2), (3), (6) and (7) and Annex I(1)(a), sixth and eighth indents, (b), (d), (f) and (h) and Annex I(2) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ([1]) into national law in mainland Finland and the Province of Åland or, in any event by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under Article 54(1) of that directive;

— impose on the Republic of Finland, pursuant to Article 260(3) of the TFEU, a daily penalty payment of EUR 28 589,60, which is to be applied from the day on which the judgment is delivered in the present case;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 3 March 2011.

([1]) OJ 2009 L 211, p. 94.

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

(Opinion 1/12)

(2013/C 123/23)

Language of the case: all the official languages

Applicant

Commission of the European Communities (represented by: C. Hermes and H. Krämer, Agents)

The President of the Court has ordered that Opinion 1/12 be removed from the register.

GENERAL COURT

Judgment of the General Court of 14 March 2013 — Fresh Del Monte Produce v Commission

(Case T-587/08) ([1])

(Competition — Agreements, decisions and concerted practices — Market in bananas — Decision finding an infringement of Article 81 EC — Information exchange system — Concept of a concerted practice having an anti-competitive object — Causal link between the collusion and the conduct of the undertakings on the market — Single infringement — Imputation of the infringement — Rights of the defence — Fines — Gravity of the infringement — Cooperation — Mitigating circumstances)

(2013/C 123/24)

Language of the case: English

Parties

Applicant: Fresh Del Monte Produce, Inc. (George Town, Cayman Islands, United Kingdom) (represented by: initially B. Meyring, lawyer, and E. Verghese, Solicitor, and subsequently by B. Meyring)

Defendant: European Commission (represented by: initially M. Kellerbauer, A. Biolan and X. Lewis, and subsequently by M. Kellerbauer, A. Biolan and P. Van Nuffel, Agents,)

Intervener in support of the applicant: Internationale Fruchtimport Gesellschaft Weichert GmbH & Co. KG (Hamburg, Germany) (represented by: A. Rinne, lawyer, C. Humpe and S. Kon, Solicitors, and C. Vajda QC)

Re:

Application for annulment of Commission Decision C(2008) 5955 of 15 October 2008 relating to a proceeding under Article 81 [EC] (Case COMP/39.188 — Bananas) and, in the alternative, for a reduction of the fine

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed under Article 2(c) of Commission Decision C(2008) 5955 of 15 October 2008 relating to a proceeding under Article 81 [EC] (Case COMP/39.188 — Bananas) at EUR 8.82 million;*

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

3. *Orders Fresh Del Monte Produce, Inc. to bear its own costs and to pay three quarters of the costs incurred by the European Commission, and the Commission to bear one quarter of its own costs;*

4. *Orders Internationale Fruchtimport Gesellschaft Weichert GmbH & Co. KG to bear its own costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the General Court of 14 March 2013 — Dole Food and Dole Germany v Commission

(Case T-588/08) ([1])

(Competition — Agreements, decisions and concerted practices — Market in bananas — Decision finding an infringement of Article 81 EC — Concept of a concerted practice having an anti-competitive object — Information exchange system — Obligation to state the reasons on which the decision is based — Rights of the defence — Guidelines on the method of setting fines — Gravity of the infringement)

(2013/C 123/25)

Language of the case: English

Parties

Applicants: Dole Food Company, Inc. (Westlake Village, California, United States); and Dole Germany OHG (Hamburg, Germany) (represented by: J.-F. Bellis, lawyer)

Defendant: European Commission (represented: initially by X. Lewis and M. Kellerbauer, and subsequently by M. Kellerbauer and P. Van Nuffel, Agents)

Re:

Application for annulment of Commission Decision C(2008) 5955 final of 15 October 2008 relating to a proceeding under Article 81 EC (Case COMP/39.188 — Bananas)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Dole Food Company, Inc. and Dole Germany OHG to pay the costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the General Court of 13 March 2013 — Biodes v OHIM — Manasul Internacional (FARMASUL)

(Case T-553/10) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark FARMASUL — Earlier Spanish figurative mark MANASUL — Relative ground for refusal — Likelihood of confusion — Distinctive character of the earlier mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 123/26)

Language of the case: Spanish

Parties

Applicant: Biodes, SL (Madrid, Spain) (represented by: E. Manresa Medina, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Manasul Internacional, SL (Ponferrada, Spain) (represented by: M.I. Escudero Pérez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 September 2010 (Case R 1034/2009-1), relating to opposition proceedings between Manasul Internacional, SL and Biodes, SL

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Biodes, SL to pay the costs.*

[1] OJ C 30, 29.1.2011.

Judgment of the General Court of 13 March 2013 — Inglewood and Others v Parliament

(Joined Cases T-229/11 and T-276/11) [1]

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Additional pension scheme — Decisions rejecting applications seeking to benefit from the provisions in force before the amendment to the additional pension scheme in 2009 — Plea of illegality — Acquired rights — Legitimate expectations — Proportionality — Equal treatment)

(2013/C 123/27)

Language of the case: French

Parties

Applicants: Lord Inglewood (Penrith, United Kingdom), and the other 10 applicants whose names are set out in the Annex to the judgment (Case T-229/11); and Marie-Arlette Carlotti (Marseilles, France) (Case T-276/11) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Parliament (represented by: N. Lorenz, M. Windisch and K. Pocheć, acting as Agents)

Re:

Applications for annulment of the European Parliament's decisions refusing to grant the applicants their voluntary additional pension early, at the age of 60 or in part in the form of a lump sum

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Lord Inglewood and the other 10 applicants whose names are set out in the Annex, as well as Ms Marie-Arlette Carlotti, to pay the costs.*

[1] OJ C 211, 16.7.2011.

Action brought on 14 February 2013 — K-Swiss/OHIM — Künzli SwissSchuh (Trainer with five stripes)

(Case T-85/13)

(2013/C 123/28)

Language in which the application was lodged: English

Parties

Applicant: K-Swiss, Inc. (California, United States) (represented by: R. Niebel and K. Tasma, lawyers)

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

Other party to the proceedings before the Board of Appeal: Künzli SwissSchuh AG (Windisch, Switzerland)

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs), dated 30 October 2012 in Case R 174/2011-2; and

— Order the defendant and, as appropriate, the intervener to bear the coasts of the action.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark representing a trainer with five stripes — Community trade mark registration No 4 771 978

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Article 52(1)(a) in conjunction with Article 7(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested Community trade mark invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009.

Action brought on 12 February 2013 — Herdade de S. Tiago II/OHIM — Polo/Lauren (V)

(Case T-90/13)

(2013/C 123/29)

Language in which the application was lodged: English

Parties

Applicant: Herdade de S. Tiago II-Sociedade Agrícola, SA (Lisboa, Portugal) (represented by: I. de Carvalho Simões and J. Pimenta, lawyers)

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

Other party to the proceedings before the Board of Appeal: The Polo/Lauren Company, LP (New York, United States)

Form of order sought

The applicant claims that the Court should:

— Grant the appeal and annul the decision of the Second Board of Appeal of OHIM dated 28 November 2012 in Case R 1436/2010-2;

— Order the respondent to pay the costs of the appeal proceedings before the General Court, including those of the appellant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark representing a polo player on horseback and the word element 'V' for goods and services in classes 3, 18, 25, 28, 41 and 43 — Community trade mark application 5 791 835

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration, UK trade mark registration and Benelux trade mark registration of the figurative mark representing a polo player for goods in classes 9, 18, 20, 21, 24, 25 et 28

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) and (5) of Council Regulation No 207/2009.

Action brought on 22 February 2013 — Rot Front/OHIM — Rakhat (Macka)

(Case T-96/13)

(2013/C 123/30)

Language in which the application was lodged: English

Parties

Applicant: Rot Front OAO (Moscow, Russia) (represented by: B. Térauda, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rakhat AO (Almaty, Kazakhstan)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark containing the word element 'Macka' for goods in classes 29 and 30 — Community trade mark application No 9 556 135

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Non-registered figurative mark containing a device of bag with the word element 'Macka' for 'confectionery' goods in Greece and Germany

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(4) of Council Regulation No 207/2009.

Action brought on 14 February 2013 — Heli-Flight v EASA

(Case T-102/13)

(2013/C 123/31)

Language of the case: German

Parties

Applicant: Heli-Flight GmbH & Co. KG (Reichelsheim, Germany) (represented by: T. Kittner, lawyer)

Defendant: European Aviation Safety Agency (EASA)

Form of order sought

— Annul the defendant's decision of 13 January 2012 rejecting the applicant's application for approval of flight conditions for the Robinson R66 helicopter (serial No 0034);

— declare that the defendant failed, without justification, to act in respect of the applicant's applications for approval of flight conditions for the Robinson R66 helicopter (serial No 0034) of 11 July 2011 and 10 January 2012;

— declare that the defendant is obliged to compensate the applicant for all loss incurred as a result of the fact that it rejected the applicant's applications for approval of flight conditions for the Robinson R66 helicopter (serial No 0034) of 11 July 2011 and 10 January 2012 and/or failed, without justification, to act as regards the decisions on the approval of flight conditions for that helicopter;

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

Pleas in law and main arguments

In support of the first head of claim, the applicant essentially submits the following:

1. In the applicant's view, the decision on the approval of flight conditions is not a discretionary decision. It is submitted in that regard, inter alia, that the burden of proof as to the fact that the aircraft in question can fly safely under specified conditions is on the defendant, not the applicant.

2. Further, the applicant submits that, in the event that the defendant's decision on the approval of flight conditions is a discretionary decision, the defendant failed to exercise its discretion, or in any event exercised it erroneously. In the applicant's view, the defendant exercises its discretion erroneously when it relies on safety information obtained during the type-certification process, to which the applicant was not a party. In addition, the applicant complains that the defendant has failed sufficiently to particularise the alleged safety concerns in the present proceedings. In that context, the applicant submits that it was given no opportunity to comment on specific alleged sources of risk. The applicant also claims that the defendant's reasoning is manifestly contradictory.

3. In the alternative, the applicant submits that it has produced proof that the aircraft in question can be flown safely under specified conditions.

4. Finally, in relation to its application for annulment the applicant pleads breaches of the duty of good administration on the part of the defendant. According to the applicant, the defendant failed to fulfil its obligation to investigate, wrongly relied on confidentiality in connection with the type-certification process, infringed the applicant's right to be heard and infringed the obligation to state reasons.

Action brought on 19 February 2013 — Cadbury Holdings/OHIM — Société des produits Nestlé (Shape of a four-finger chocolate bar)

(Case T-112/13)

(2013/C 123/32)

Language in which the application was lodged: English

Parties

Applicant: Cadbury Holdings Ltd (Uxbridge, United Kingdom) (represented by: T. Mitcheson, Barrister, P. Walsh and S. Dunstan, Solicitors)

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

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

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the Second Board of Appeal in Case R 513/2011-2 dated 11 December 2012, except insofar as the Board of Appeal determined that the mark is devoid of inherent distinctive character under Article 7(1)(b); and

— Order OHIM to pay the costs of this application and order the intervener to pay the costs of the proceedings before the Cancellation Division and the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The three-dimensional mark representing a shape of a four-finger chocolate bar for goods in class 30 — Community trade mark registration No 2 632 529

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Article 52(1)(a) in conjunction with Article 7(1)(b), (c), (d) and (e)(ii) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the Community trade mark invalid

Decision of the Board of Appeal: Annulled the contested decision

Pleas in law: Infringement of Article 52(1)(a) in conjunction with Article 7(1)(b), (c), (d) and (e)(ii) of Council Regulation No 207/2009.

Action brought on 21 February 2013 — Laboratoires Polive/OHIM — Arbora & Ausonia (dodie)

(Case T-122/13)

(2013/C 123/33)

Language in which the application was lodged: English

Parties

Applicant: Laboratoires Polive (Levallois Perret, France) (represented by: A. Sion, lawyer)

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

Other party to the proceedings before the Board of Appeal: Arbora & Ausonia, SL (Barcelona, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision rendered by the second Board of Appeal on 28 November 2012;

— Order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark (in colour) 'dodie', for goods in classes 3, 5, 8, 9, 10, 11, 16, 18, 21, 25 and 28 — Community trade mark application No 9 037 821

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Spanish and Portuguese trade marks of the word mark 'DODOT' for goods in classes 3, 5, 10, 12, 16, 18, 20, 21, 24, 25, 28, 44

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the contested decision, upheld the opposition and rejected the trade mark applied for in relation to certain goods in classes 3, 5, 8, 10, 11, 16, 18, 21, 25 and 28

Pleas in law: Infringement of Articles 8(1)(b) Council Regulation No 207/2009.

Action brought on 21 February 2013 — Laboratoires Polive/OHIM — Arbora & Ausonia (dodie)

(Case T-123/13)

(2013/C 123/34)

Language in which the application was lodged: English

Parties

Applicant: Laboratoires Polive (Levallois Perret, France) (represented by: A. Sion, lawyer)

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

Other party to the proceedings before the Board of Appeal: Arbora & Ausonia, SL (Barcelona, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision rendered by the second Board of Appeal on 28 November 2012;

— Order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'dodie', for goods in classes 3, 5, 8, 9, 10, 11, 16, 18, 21, 25 and 28 — Community trade mark application No 9 037 821

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Spanish and Portuguese trade marks of the word mark 'DODOT' for goods in classes 3, 5, 10, 12, 16, 18, 20, 21, 24, 25, 28, 44

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the contested decision, upheld the opposition and rejected the trade mark applied for in relation to certain goods in classes 3, 5, 8, 10, 11, 16, 18, 21, 25 and 28

Pleas in law: Infringement of Articles 8(1)(b) Council Regulation No 207/2009.

Action brought on 1 March 2013 — Vicente Gandia Pla/OHIM — Tesco Stores (MARQUES DE CHIVÉ)

(Case T-128/13)

(2013/C 123/35)

Language in which the application was lodged: English

Parties

Applicant: Vicente Gandia Pla, SA (Chiva, Spain) (represented by: I. Temiño Ceniceros, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tesco Stores Ltd (Cheshunt, United Kingdom)

Form of order sought

The applicant claims/claim that the Court should:

— Declare admissible the here concerned appeal and enclosures;

— Annul the Boards of Appeal Decision;

— Condemn the OHIM and the intervener to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'MARQUES DE CHIVÉ' for goods in classes 29, 32 and 33 — Community trade mark registration No 9 571 415

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: United Kingdom registration No 1 520 720 of the word mark 'MARQUES DE CHIVE' for goods in class 33

Decision of the Opposition Division: Rejected the opposition directed at the application for the goods in class 33 for lack of genuine use

Decision of the Board of Appeal: Annulled the contested decision and rejected the application for the goods in class 33

Pleas in law: Infringement of Articles 42(2) and (3) of Council Regulation No 207/2009.

Action brought on 4 March 2013 — Deweerdt and Others v Court of Auditors

(Case T-132/13)

(2013/C 123/36)

Language of the case: French

Parties

Applicants: Sonja Deweerdt (Rulles, Belgium); Didier Lebrun (Luxembourg, Luxembourg); and Margot Lietz (Mensdorf, Luxembourg) (represented by: A. Coolen, J.-N. Louis, E. Marchal and D. Abreu Caldas, lawyers)

Defendant: Court of Auditors of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare Article 4 of the Rules of Procedure of the Court of Auditors unlawful inasmuch as it has the effect of ensuring the impunity of a Member who is guilty of harassment;

— Annul the decision of the Court of Auditors of 13 December 2012 not to refer the matter to the Court of Justice in order to request it to examine whether Ms S., at that time a Member of the Court of Auditors, no longer fulfilled the requisite conditions or met the obligations arising from her office and, should her term of office have already ended, to deprive her of her right to a pension;

— Order the Court of Auditors to pay the costs.

Pleas in law and main arguments

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

1. The first plea in law alleges that Article 4 of the Rules of Procedure of the Court of Auditors is unlawful inasmuch as it ensures the impunity of a Member who is guilty of harassment.

2. The second plea in law relates to the fact that the contested decision is marred by inconsistency, inasmuch as the Court of Auditors expressly acknowledged Ms S.'s shortcomings whilst refusing to refer the matter of Ms S. to the Court of Justice.

3. The third plea in law alleges that there is no relevant reasoning to enable the applicants to assess the merits of the contested decision.

4. The fourth plea in law alleges infringement of the principle of legitimate expectations and an abuse of rights, inasmuch as the Court of Auditors examined the expediency of referring the matter of Ms S. to the Court of Justice only a year and a day after the external investigator had submitted the report.

Action brought on 4 March 2013 — Pro-Aqua International/OHIM — Rexair (WET DUST CAN'T FLY)

(Case T-133/13)

(2013/C 123/37)

Language in which the application was lodged: English

Parties

Applicant: Pro-Aqua International GmbH (Ansbach, Germany) (represented by: T. Raible, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rexair LLC (Troy, United States)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 17 December 2012 (in case R 211/2012-2);

— Order OHIM to pay the costs, including those incurred in the proceedings before OHIM and the Board of Appeal of OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'WET DUST CAN'T FLY' for products and services of classes 3, 7 and 37 (Community trade mark registration No 6 668 073)

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Article 52(1)(a) in conjunction with Article 7(1)(b) and (c) of Council Regulation No 207/2009

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009.

Action brought on 11 March 2013 — Hanwha SolarOne and Others v Parliament and Others

(Case T-136/13)

(2013/C 123/38)

Language of the case: English

Parties

Applicants: Hanwha SolarOne (Qidong) Co. Ltd (Qidong, China); Hanwha SolarOne Technology Co. Ltd (Lianyungang, China); Hanwha SolarOne Solar Technology (Shanghai) Co. Ltd (Shanghai, China); et Hanwha Solar Electric Power Engineering Co. Ltd (Qidong) (represented by: F. Graafsma, lawyer)

Defendants: European Parliament, European Commission and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Regulation (EU) No 1168/2012 of the European parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344/1), insofar as it was applied to the applicants;

— Annul the Commission's decision of 3 January 2013 by which it refused to consider the applicants' market economy treatment (MET) claims; and

— Order the defendants to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law.

The applicants request the annulment of Regulation (EU) No 1168/2012 insofar as it applies to the applicants and applicants' MET claims submitted to the European Commission, as required under Article 2(7)(c) of the basic Regulation, in the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China (Notice of Initiation published in the Official Journal of the European Union of 6 September 2012, OJ C 269/5). The applicants also request the annulment of the decision of 3 January 2013 in which the Commission refused to consider the applicants' MET claims submitted in the above-mentioned investigation.

The applicants submit that Regulation (EU) No 1168/2012, as applied by the Commission to the applicants in the 3 January 2013 decision, and the 3 January decision stating that the Commission would not consider the applicants' MET claims, frustrate the legitimate expectations of the applicants and are applied retroactively to the detriment of the applicants without valid justifications. As a result, Regulation (EU) No 1168/2012, as applied by the Commission to the applicants in the 3 January 2013 Decision, and the 3 January 2013 Decision, manifestly violate the basic principles of legal certainty and good faith.

Action brought on 13 March 2013 — Jinko Solar and Others v Parliament and Others

(Case T-142/13)

(2013/C 123/39)

Language of the case: English

Parties

Applicants: Jinko Solar Co. Ltd (Shangrao, China); Zhejiang Jinko Solar Co. Ltd (Haining City, China); Jiangxi Jinko Photovoltaic Materials Co. Ltd (Shangrao); Jinko Solar Import and Export Co. Ltd (Shangrao, China); and Zhejiang Jinko Trading Co. Ltd (Haining City) (represented by: K. Adamantopoulos and J. Cornelis, lawyers)

Defendants: European Parliament, European Commission, Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1), insofar as it was applied to the applicants,

— Annul the Commission's Decision of 3 January 2013 by which it refused to consider the applicants' market economy treatment claims; and

— Order the defendants to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law alleging that Regulation (EU) No 1168/2012, as applied by the Commission to the applicants in the 3 January 2013 Decision, and the 3 January 2013 Decision stating that the Commission would not consider the applicants' market economy treatment claims, frustrate the legitimate expectations of the applicants and are applied retroactively to the detriment of the applicants without valid justifications. As a result, Regulation (EU) No 1168/2012, as applied by the Commission to the applicants by the 3 January 2013 Decision, and the 3 January 2013 Decision, manifestly violate the basic principles of legal certainty and good faith.

Action brought on 13 March 2013 — Zhejiang Heda Solar Technology v Commission

(Case T-143/13)

(2013/C 123/40)

Language of the case: French

Parties

Applicant: Zhejiang Heda Solar Technology Co. Ltd (Fuyang, China) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping

proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590);

— Declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1);

— And, consequently, order the Commission and any interveners to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging breach of the principles of legal certainty, legitimate expectations and proportionality, in that the contested decision withdrew, with retroactive effect, the applicant's previously acquired right to have its request for the status of undertaking operating under market economy conditions examined by the Commission without there being an overriding interest to justify that withdrawal.

Action brought on 13 March 2013 — Hanzhou Zhejiang University Sunny Energy Science and Technology v Commission

(Case T-144/13)

(2013/C 123/41)

Language of the case: French

Parties

Applicant: Hanzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd (Hangzhou, China) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590);

— Declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1);

— And, consequently, order the Commission and any interveners to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law identical to that raised in Case T-143/13 *Zhejiang Heda Solar Technology* v *Commission*.

Action brought on 13 March 2013 — Ningbo Qixin Solar Electrical Appliance v Commission

(Case T-145/13)

(2013/C 123/42)

Language of the case: French

Parties

Applicant: Ningbo Qixin Solar Electrical Appliance Co. Ltd (Zhejiang, China) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590);

— Declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1);

— And, consequently, order the Commission and any interveners to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law identical to that raised in Case T-143/13 *Zhejiang Heda Solar Technology* v *Commission*.

Action brought on 13 March 2013 — Zhejiang Sunflower Light Energy Science & Technology v Commission

(Case T-146/13)

(2013/C 123/43)

Language of the case: French

Parties

Applicant: Zhejiang Sunflower Light Energy Science & Technology LLC (Shaoxing, China) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590);

— Declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1);

— And, consequently, order the Commission and any interveners to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law identical to that raised in Case T-143/13 *Zhejiang Heda Solar Technology* v *Commission*.

Action brought on 13 March 2013 — Zhejiang Yuhui Solar Energy Source v Commission

(Case T-147/13)

(2013/C 123/44)

Language of the case: French

Parties

Applicant: Zhejiang Yuhui Solar Energy Source Co. Ltd (Jiashan, China) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590);

— Declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1);

— And, consequently, order the Commission and any interveners to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law identical to that raised in Case T-143/13 *Zhejiang Heda Solar Technology* v *Commission*.

Action brought on 14 March 2013 — Kingdom of Spain v Commission

(Case T-148/13)

(2013/C 123/45)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: S. Centeno Huerta)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul notice of open competition EPSO/AST/125/12 — Assistants (AST 3), and

— order the Commission to pay the costs.

Pleas in law and main arguments

Pursuant to Article 263 TFEU, the Kingdom of Spain seeks the annulment of the notice of open competition referred to above for infringement of Article 22 of the Charter of Fundamental Rights of the European Union, Article 342 TFEU, Articles 1 and 6 of Regulation No 1 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), Articles 1d and 27 of the Staff Regulations and the case-law in Case C-566/10 P *Italy* v *Commission*.

In support of the action, the Kingdom of Spain claims that the notice of competition in respect of which annulment is sought:

— discriminates against candidates whose first language is not English, French or German;

— does not justify objectively and in a concrete manner the limitation of the number of languages in the light of the positions to which the notice relates; the mere general statement relating to 'the interests of the service' is not sufficient in that regard;

— it is not in line with the objective of selecting candidates with the highest standard of ability, efficiency and integrity;

— infringes the principle of proportionality, in that it does not ensure a balance between the efficiency of the service and the principle of guaranteeing multilingualism in the European Union.

Action brought on 14 March 2013 — Spain v Commission

(Case T-149/13)

(2013/C 123/46)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: S. Centeno Huerta)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul notice of open competition EPSO/AST/126/12 — Assistants (AST 3), research sector, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those raised in Case T-148/13 *Kingdom of Spain* v *Commission*.

Action brought on 14 March 2013 — Et Solar Industry and Others v Commission

(Case T-153/13)

(2013/C 123/47)

Language of the case: English

Parties

Applicants: Et Solar Industry Ltd (Taizhou City, China); Et Energy Co. Ltd (Taizhou City); and Dotec Electric Co. Ltd (Taizhou City) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Declare the appeal admissible;

— Annul the Commission's Decision set out in its letter of 3rd January 2013 deciding that the applicants market economy treatment ('MET') claim will no longer be considered;

— Order the defendant and any interveners to pay the applicants legal costs and expenses for this procedure.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing and failing to respect the applicants' rights to the protection of legitimate expectations and the principle of proportionality thereby unlawfully terminating without due cause the applicants claim for market economy treatment in the context of an anti-dumping investigation.

2. Second plea in law, alleging that the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing the principles of legal certainty and the non-retroactive application of European Union law by unlawfully terminating the applicants' MET claim thereby unlawfully terminating without due cause the applicants claim for market economy treatment in the context of an anti-dumping investigation.

Action brought on 14 March 2013 — Jiangsu Jiasheng Photovoltaic Technology v Commission

(Case T-154/13)

(2013/C 123/48)

Language of the case: English

Parties

Applicant: Jiangsu Jiasheng Photovoltaic Technology Co., Ltd (Yixing, China) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare the appeal admissible;

— Annul the Commission's Decision set out in its letter of 3rd January 2013 deciding that the applicants market economy treatment ('MET') claim will no longer be considered;

— Order the defendant and any interveners to pay the applicants legal costs and expenses for this procedure.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing and failing to respect the applicant's rights to the protection of legitimate expectations and the principle of proportionality thereby unlawfully terminating without due cause the applicant claim for market economy treatment in the context of an anti-dumping investigation.

2. Second plea in law, alleging that the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing the principles of legal certainty and the non-retroactive application of European Union law by unlawfully terminating the applicants' MET claim thereby unlawfully terminating without due cause the applicants claim for market economy treatment in the context of an anti-dumping investigation.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 13 March 2013 — Mendes v Commission

(Case F-125/11) [1]

(Civil service — Open competition — Non-admission to the assessment tests — Administration's duty to interpret complaints in a spirit of openness — Amendment to the vacancy notice after holding the admission tests — Principle of legitimate expectations — Legal certainty)

(2013/C 123/49)

Language of the case: French

Parties

Applicant: Isabel Mendes (Brussels, Belgium) (represented by: S. Rogrigues and A. Blot, lawyers)

Defendant: European Commission (represented by: J. Currall, acting as Agent)

Re:

Application to annul the decision not to admit the applicant to the assessment tests in competition EPSO/AST/111/10

Operative part of the judgment

The Tribunal:

1. *annuls the decision of the selection board of open competition EPSO/AST/111/10 of 7 April 2011 not to admit the applicant to the assessment tests;*

2. *orders the European Commission to pay EUR 2 000 to the applicant;*

3. *dismisses the application as to the remainder;*

4. *orders each party to bear its own costs.*

[1] OJ C 65, 3.3.2012, p. 21.

Order of the Civil Service Tribunal (2nd Chamber) of 14 March 2013 — Christoph and Others v Commission

(Case F-63/08) [1]

(Civil Service — Non-permanent staff — Articles 2, 3a and 3b of the Conditions of employment of other servants (COS) — Temporary staff — Contractual staff — Auxiliary contractual staff — Duration of contract — Article 8 and 88 of the COS — Decision of the Commission of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services — Directive 1999/70/EC — Applicability to the institutions)

(2013/C 123/50)

Language of the case: French

Parties

Applicants: Eugen Christoph and Others (Leggiuno, Italy) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission (represented by: J. Curral and D. Martin, Agents)

Intervener in support of the defendant: Council of the European Union (represented: initially by M. Bauer and K. Zieleśkiewicz, Agents, and subsequently by M. Bauer and J. Hermann, Agents)

Re:

Annulment of the decisions fixing the conditions of employment of the applicants in so far as the duration of their contract or the extension thereof is limited to a fixed period

Operative part of the order

1. *The action is dismissed as manifestly lacking any legal foundation.*

2. *The applicants shall bear their own costs and are ordered to pay the costs incurred by the European Commission.*

3. *The Council of the European Union is ordered to bear its own costs.*

[1] OJ C 247, 27.9.2008, p. 25.

Action brought on 15 January 2013 — ZZ v Commission

(Case F-5/13)

(2013/C 123/51)

Language of the case: English

Parties

Applicant: ZZ (represented by: J. Grayston, G. Pandey, M. Gambardella, lawyers)

Defendant: Commission

Subject-matter and description of the proceedings

The annulment of the decision not to include the applicant on the reserve list of the EPSO/AD/205/10 competition.

Form of order sought

— Annul the decision of 09.03.2012 of the Selection Board and of the European Personnel Selection Office (hereinafter 'EPSO'), notified in the EPSO's account in which it was confirmed not to include the applicant's name in the reserve list of the competition (EPSO competition EPSO/AD/205/10 (customs field), which was the reply to the 'Request for review of reasoning tests' presented by the applicant;

— annul the decision of 23.12.2011 of the Selection Board and of EPSO, notified in the EPSO's account in which the applicant was notified that his name was not placed on the 'reserve list' (the database of successful candidates) as he did not obtain the necessary pass marks in the verbal reasoning tests;

— annul EPSO and the Selection Board implied decision, never served upon the applicant, not to grant him disclosure the documents he requested with letter of 31.12.2011 (Request for review);

— annul EPSO's implied rejection of the Applicant's Complaint under Article 90 (2) of the Staff Regulation of Officials of the European Union;

— annul EPSO Notice of competition EPSO/AD/205/10 (customs field), published in OJ C 292 A/1 of 28.10.2010;

— annul in its entirety the 'reserve list of the competition EPSO/AD/205/10 (customs field)' published in the OJ C 22 A/1 of 27.01.2012;

— order that the Commission to bear the Applicant's costs.

Action brought on 4 February 2013 — ZZ v EEAS

(Case F-11/13)

(2013/C 123/52)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, S. Orlandi, A. Coolen and E. Marchal, lawyers)

Defendant: European External Action Service (EEAS)

Subject-matter and description of the proceedings

Annulment of the decision to transfer the applicant to a post at EEAS headquarters and to terminate his posting to an EU delegation.

Form of order sought

— Annul the decision of 8 March 2012 to transfer the applicant, with effect from 1 September 2012, to a post at headquarters and to bring his posting to a premature end;

— Order the EEAS to pay an amount equivalent to the difference between his earnings from 1 September 2012, when he was repatriated to headquarters, and his former earnings, until 1 September 2013, the date on which he could have been transferred back to headquarters in the context of the system of rotation of the heads of delegation posts;

— In so far as necessary, annul the decision to reject his complaint of 24 October 2012;

— Order the EEAS to pay the costs.

Action brought on 15 February 2013 — ZZ v Commission

(Case F-17/13)

(2013/C 123/53)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Salerno, B. Cortese, lawyers)

Defendant: Commission

Subject-matter and description of the proceedings

Application for the annulment of the Commission's decision rejecting the request for employment of the applicant which was made by the OIL.

Form of order sought

— Annul the contested decision;

— order the defendant to compensate for the material damage caused to the applicant by the contested decision; to evaluate the amount corresponding to the difference, from October 2011 until such time as the applicant is recruited to function group III, between the payments corresponding to function group III and those payments which she continued to receive as a member of the contractual staff of function group II, plus corresponding interest from the due date of each months' pay until the date of their actual payment;

— order the defendant to pay all the costs.

Action brought on 19 February 2013 — ZZ v Commission

(Case F-19/13)

(2013/C 123/54)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission

Subject-matter and description of the proceedings

Application for the annulment of the decision to calculate accredited pension rights acquired before entry into service on the basis of the new General Implementing Provisions.

Form of order sought

— Annul the decision of 2 July 2012 concerning the calculation of accredited pension rights acquired by the applicant before his entry into service with the Commission;

— in so far as necessary, annul the decision of 7 December 2012 rejecting his complaint requesting application of the General Implementing Provisions and the actuarial rates in force at the time of his request to transfer his pension rights;

— order the Commission to pay the costs.

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