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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 359/01)

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

OJ C 352, 30.11.2013

Past publications

OJ C 344, 23.11.2013

OJ C 336, 16.11.2013

OJ C 325, 9.11.2013

OJ C 313, 26.10.2013

OJ C 304, 19.10.2013

OJ C 298, 12.10.2013

These texts are available on:

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

DECISION OF THE COURT OF JUSTICE

of 19 November 2013

on official holidays and judicial vacations

(2013/C 359/02)

THE COURT

having regard to Article 24(2), (4) and (6) of the Rules of Procedure,

whereas it is necessary to establish the list of official holidays and to set the dates of the judicial vacations,

HAS ADOPTED THIS DECISION:

Article 1

The list of official holidays within the meaning of Article 24(4) and (6) of the Rules of Procedure is established as follows:

— New Year's Day,

— Easter Monday,

— 1 May,

— Ascension,

— Whit Monday,

— 23 June,

— 15 August,

— 1 November,

— 25 December,

— 26 December.

Article 2

For the period from 1 November 2013 to 31 October 2014, the dates of the judicial vacations within the meaning of Article 24(2) and (6) of the Rules of Procedure are as follows:

— Christmas 2013: from Monday 16 December 2013 to Sunday 5 January 2014 inclusive,

— Easter 2014: from Monday 14 April 2014 to Sunday 27 April 2014 inclusive,

— Summer 2014: from Friday 18 July 2014 to Sunday 31 August 2014 inclusive.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Luxembourg, 19 November 2013.

Registrar	*President*
A. CALOT ESCOBAR	V. SKOURIS

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 30 August 2013 — Walter Jubin v easyJet Airline Co. Ltd

(Case C-475/13)

(2013/C 359/03)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Walter Jubin

Defendant: easyJet Airline Co. Ltd

Questions referred

1. May compensation granted under national law, which is intended to reimburse additional travel costs incurred as a result of the cancellation of a booked flight, be deducted from the compensation under Article 7 of the regulation [1] if the air carrier has fulfilled its obligations under Article 8(1) of the regulation?

2. If deduction is possible: does it also apply to the cost of alternative transportation to the final destination of the flight?

3. In so far as deduction is possible: may the air carrier make the deduction in all cases or is it dependent on the extent to which it is permitted by national law or the court considers it equitable?

4. In so far as national law is applicable or the court is required to take a discretionary decision: is the compensation under Article 7 of the regulation intended to redress only the inconvenience and the loss of time suffered by passengers as a result of the cancellation, or is it also intended to address material damage?

[1] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 30 August 2013 — Heidemarie Retzlaff v easyJet Airline Co. Ltd

(Case C-476/13)

(2013/C 359/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: Heidemarie Retzlaff

Defendant and respondent in the appeal on a point of law: easyJet Airline Co. Ltd

Questions referred

1. May a right to compensation granted under national law which is intended to reimburse additional travel costs incurred as a result of the cancellation of a booked flight be deducted from the compensation granted under Article 7 of the regulation [1] if the air carrier has fulfilled its obligations under Articles 8(1) and 9(1) of the regulation?

2. If deduction is possible: does this also apply to the costs of alternative transportation to the final destination of the flight?

3. In so far as deduction is possible: may the air carrier make the deduction in all cases or is it dependent on the extent to which it is permitted by national law or on the extent to which the court considers it equitable?

4. In so far as national law is determinant or the court is required to take a discretionary decision: is the payment of compensation under Article 7 of the regulation intended to redress only the inconvenience and loss of time suffered by passengers as a result of the cancellation, or is it intended also to redress material damage?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Action brought on 20 September 2013 — United Kingdom of Great Britain and Northern Ireland v European Parliament, Council of the European Union

(Case C-507/13)

(2013/C 359/05)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson, S. Behzadi-Spencer, agents and K. Beal QC)

Defendants: European Parliament, Council of the European Union

The applicant claims that the Court should:

— annul Article 94(1)(g), Article 94(2) and/or Articles 162(1) and (3) of the CRD IV Directive ([1]);

— annul Articles 450(1)(d), (i) and/or (j) and/or 521(2) of the CR Regulation ([2]);

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

Pleas in law and main arguments

The United Kingdom ('UK') seeks the annulment of a limited number of provisions of certain legislative acts of the European Parliament and the Council of the European Union, pursuant to Article 263 of the Treaty on the Functioning of the European Union ('TFEU'). The application for annulment concerns the 'CRD-IV Package', which entered into force on 17 July 2013. The package consists in a new Capital Requirements Directive, Directive 2013/36/EU; and a new Capital Requirements Regulation. The UK seeks to challenge certain provisions only in those measures, namely:

(i) Articles 94(1)(g), 94(2) and 162(1) and (3) of Directive 2013/36/EU ('the CRD IV Directive'), which was published in the Official Journal on 27 June 2013. Pursuant to Article 164, the Directive entered into force on 17 July 2013.

(ii) Articles 450(1)(d), 450(1)(i), 450(1)(j) and 521(2) of the Capital Requirements Regulation, Regulation (EU) No 575/2013 ('the CR Regulation'). The CR Regulation was published in the Official Journal on 27 June 2013, but entered into force on 28 June 2013, pursuant to Article 521(1). It has to be applied from 1 January 2014 by virtue of Article 521(2).

By the contested Acts, the Parliament and Council have put in place a number of measures addressing the variable remuneration that may permissibly be paid to certain employees of institutions (i.e. credit institutions and investment firms as defined in Article 4 of the CR Regulation). In particular Article 94(1)(g) of the CRD IV Directive has set a limit on the variable remuneration that can be paid to certain 'material risk takers.' This has been known colloquially as a 'cap on bankers' bonuses.' Furthermore, by virtue of Article 94(2) of the CRD IV Directive, the EU legislature has assigned to the European Banking Authority ('the EBA'), an agency established under Article 114 TFEU, the task of determining the criteria by which 'material risk takers' are identified in any particular institution and for developing guidelines relating to a discount rate that may be applied to long-term variable remuneration. Once identified, Article 450 of the CR Regulation requires institutions to publish certain details of those individuals' salaries for public dissemination.

The UK maintains that the contested provisions should be annulled on the following grounds:

(i) The contested provisions have an inadequate Treaty legal base;

(ii) The contested provisions are disproportionate and/or fail to comply with the principle of subsidiarity;

(iii) The contested provisions have been brought into effect in a manner which infringes the principle of legal certainty;

(iv) The assignment of certain tasks to the EBA and conferral of certain powers on the Commission is *ultra vires*;

(v) The identified disclosure requirements in the CR Regulation offend principles of data protection and privacy under EU law.

(vi) To the extent that Article 94(1)(g) is required to be applied to employees of institutions outside the EEA, it infringes Article 3(5) TEU and the principle of territoriality found in customary international law.

(1) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC,OJ L 176, p. 338.

(2) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, p. 1.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 25 September 2013 — Ingeniørforeningen i Danmark, acting on behalf of Poul Landin v TEKNIQ, acting on behalf of ENCO A/S — VVS

(Case C-515/13)

(2013/C 359/06)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Ingeniørforeningen i Danmark, acting on behalf of Poul Landin

Defendant: TEKNIQ, acting on behalf of ENCO A/S — VVS

Question referred

Is the prohibition of direct discrimination on grounds of age contained in Articles 2 and 6 of Directive 2000/78/EC (1) to be interpreted as precluding a Member State from maintaining a legal situation whereby an employer, upon dismissal of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, must, upon termination of the salaried employee's employment, pay an amount equivalent to one, two or three months' salary respectively, while this allowance is not to be paid where the salaried employee, upon termination of employment, is entitled to receive a State retirement pension?

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Lithuania) lodged on 7 October 2013 — Fast Bunkering Klaipėda UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-526/13)

(2013/C 359/07)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės

Parties to the main proceedings

Applicant: Fast Bunkering Klaipėda UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Question referred

Must Article 148(a) of Directive 2006/112 (1) be interpreted as meaning that the provisions of that paragraph concerning exemption from VAT are applicable not only to supplies to the operator of a vessel used for navigation on the high seas, who uses those goods for provisioning the vessel, but also to supplies other than to the operator of the vessel, that is to say, to undisclosed intermediaries, where at the time of the supply the ultimate use of the goods is known in advance and duly established, and evidence confirming this is submitted to the tax authority in accordance with the legislative requirements?

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

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 October 2013 — Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group and Others

(Case C-534/13)

(2013/C 359/08)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Istituto Superiore per la Protezione e la Ricerca Ambientale (ISPRA)

Respondents: Fipa Group srl, Ivan srl, TWS Automation srl

Question referred

Do the European Union principles relating to the environment, laid down in Article 191(2) of the Treaty on the Functioning of the European Union and in Directive 2004/35/EC [1] of 21 April 2004 (Articles 1 and 8(3) and recitals 13 and 24 in the preamble) — specifically, the 'polluter pays'principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority — preclude national legislation, such as the rules set out in Articles 244, 245 and 253 of Legislative Decree No 152 of 3 April 2006, which, in circumstances in which it is established that a site is contaminated and in which it is impossible to identify the polluter or to have that person adopt the restoration measures, do not permit the administrative authority to require the owner (who is not responsible for the pollution) to implement the emergency safety and decontamination measures, merely attributing to that person financial liability limited to the value of the site once the decontamination measures have been carried out?

[1] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

Action brought on 15 October 2013 — European Parliament v Council of the European Union

(Case C-540/13)

(2013/C 359/09)

Language of the case: French

Parties

Applicant: European Parliament (represented by: F. Drexler, A. Caiola, M. Pencheva, acting as Agents)

Defendant: Council of the European Union

Form of order sought

The European Parliament claims that the Court should:

— annul Council Decision 2013/392/EU of 22 July 2013 fixing the date of effect of Decision 2008/633/JHA concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences; [1]

— maintain the effects of Council Decision 2013/392/EU, until such time that it is replaced by a new act adopted in accordance with law;

— order the defendant to pay the costs.

Pleas in law and main arguments

The European Parliament puts forward two pleas in law in support of its action.

First, the European Parliament disputes the Council's use of an incorrect decision-making procedure for the adoption of Decision 2013/392/EU. The European Parliament should in fact have been involved in the adoption of the contested decision under an ordinary legislative procedure. Having not been involved with the adoption of the act, the European Parliament considers that the decision-making procedure followed by the Council is vitiated by an essential procedural requirement.

Second, the European Parliament alleges that the Council used either a legal basis which had been repealed by the entry into force of the Lisbon Treaty, or a secondary legal basis which is unlawful under the case-law of the Court of Justice.

Finally, should the Court of Justice decide to annul the contested decision, the Parliament considers that it would be appropriate for the Court to maintain the effects of the contested decision, in accordance with Article 264, second paragraph, TFEU, until such time that it is replaced by a new act adopted in accordance with law.

[1] OJ 2013 L 198, p. 45.

GENERAL COURT

Judgment of the General Court of 25 October 2013 — Merlin and Others v OHIM — Dusyma (Game)

(Case T-231/10) [1]

(Community design — Invalidity proceedings — Registered Community design representing a game — Earlier design — Grounds for invalidity — Novelty — Individual character — Distinction between goods and design — Articles 3, 4, 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2013/C 359/10)

Language of the case: German

Parties

Applicants: Merlin Handelsgesellschaft mbH (Forchtenberg, Germany); Rolf Krämer (Forchtenberg); BLS Basteln Lernen Spielen GmbH (Forchtenberg); and Andreas Hohl (Künzelsau, Germany) (represented by: R. Kramer, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Dusyma Kindergartenbedarf GmbH (Schorndorf, Germany) (represented by: A. Zinnecker, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 17 March 2010 (Case R 879/2009-3) relating to invalidity proceedings between Merlin Handelsgesellschaft mbH and Others and Dusyma Kindergartenbedarf GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Merlin Handelsgesellschaft mbH, Mr Rolf Krämer, BLS Basteln Lernen Spielen GmbH and Mr Andreas Hohl to pay the costs.*

[1] OJ C 209, 31.7.2010.

Judgment of the General Court of 25 October 2013 — Biotronik SE v OHIM — Cardios Sistemas (CARDIO MANAGER)

(Case T-416/11) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark CARDIO MANAGER — Earlier national word mark CardioMessenger — Relative ground for refusal — No likelihood of confusion — No proof of genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009)

(2013/C 359/11)

Language of the case: English

Parties

Applicant: Biotronik SE & Co. KG (Berlin, Germany) (represented by: A. Reich, S. Pietzcker and R. Jacobs, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Cardios Sistemas Comercial e Industrial Ltda (Sao Paulo, Brazil)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 May 2011 (Case R 1156/2010-2) relating to opposition proceedings between Biotronik SE & Co. KG and Cardios Sistemas Comercial e Industrial Ltda.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Biotronik SE & Co. KG to pay the costs.*

[1] OJ C 298, 8.10.2011.

Judgment of the General Court of 25 October 2013 — Commission v Moschonaki

(Case T-476/11 P) [1]

(Appeal — Civil service — Officials — Notice of vacancy — Rejection of application — Action for annulment — Legal interest in bringing proceedings — Admissibility — Rule that the application corresponds to the complaint — Article 91(2) of the Staff Regulations of Officials — Action for damages)

(2013/C 359/12)

Language of the case: French

Parties

Appellant: European Commission (represented by: J. Currall and B. Eggers, Agents)

Other party to the proceedings: Chrysanthe Moschonaki (Brussels, Belgium) (represented by: N. Lhoëst, lawyer)

Intervener in support of the appellant: Court of Auditors of the European Union (represented by: T. Kennedy and I. Ní Riagáin Düro, Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 28 June 2011 in Case F-55/10 *AS* v *Commission* (not yet published in the ECR), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 28 June 2011 in Case F-55/10 AS v Commission (not yet published in the ECR), in so far as it declares the plea in law alleging infringement of Article 7 of the Staff Regulations of Officials of the European Union to be admissible, in so far as it annuls the decision of 30 September 2009 whereby the European Commission rejected Ms Chrysanthe Moschonaki's application on the basis of that plea in law, and in so far as it ordered the Commission to pay Ms Moschonaki the sum of EUR 3 000;*

2. *Dismisses the remainder of the appeal;*

3. *Refers the case back to the Civil Service Tribunal;*

4. *Reserves the costs.*

[1] OJ C 319, 29.10.2011.

Judgment of the General Court of 23 October 2013 — Viejo Valle v OHIM Établissements Coquet (Cup and saucer with grooves and soup dish with grooves)

(Joined cases T-566/11 and T-567/11) [1]

(Community design — Invalidity proceedings — Registered Community design representing a cup and saucer with grooves and a soup dish with grooves — Ground for invalidity — Unauthorised use of a work protected under the copyright law of a Member State — Article 25(1)(f) of Regulation (EC) No 6/2002)

(2013/C 359/13)

Language of the case: Spanish

Parties

Applicant: Viejo Valle, SA (L'Olleria, Spain) (represented by: I. Temiño Ceniceros, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Établissements Coquet (Saint-Léonard-de-Noblat, France) (represented by: C. Bouchenard, lawyer)

Re:

Actions brought against the decisions of the Third Board of Appeal of OHIM of 29 July 2011 (Cases R 1054/2010-3 and R 1055/2010-3), relating to opposition proceedings between Établissements Coquet and Viejo Valle, SA

Operative part of the judgment

The Court:

1. *Joins Cases T-566/11 and T-567/11 for the purposes of the judgment;*

2. *Dismisses the actions;*

3. *Orders Viejo Valle, SA to bear its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and of Établissements Coquets.*

[1] OJ C 32, 4.2.2012.

Judgment of the General Court of 23 October 2013 — Dimian v OHIM — Bayer Design Fritz Bayer (Baby Bambolina)

(Case T-581/11) [1]

(Community trade mark — Invalidity proceedings — Figurative Community trade mark Baby Bambolina — Earlier unregistered national trade mark Bambolina — Relative ground for refusal — No use in trade of a sign of more than mere local significance — Article 8(4) and Article 53(1)(c) of Regulation (EC) No 207/2009)

(2013/C 359/14)

Language of the case: English

Parties

Applicant: Dimian AG (Nuremberg, Germany) (represented by: P. Pozzi and G. Ghisletti, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Bayer Design Fritz Bayer GmbH & Co. KG (Michelau, Germany) (represented by: J. Pröll, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 August 2011 (Case R 1822/2010-2), relating to invalidity proceedings between Dimian AG and Bayer Design Fritz Bayer GmbH & Co. KG

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

[1] OJ C 25, 28.1.2013.

Judgment of the General Court of 23 October 2013 — Bode Chemie GmbH v OHIM — Laros (sterilina)

(Case T-114/12) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark sterilina — Earlier Community word and figurative marks STERILLIUM and BODE Sterillium — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 359/15)

Language of the case: French

Parties

Applicant: Bode Chemie GmbH (Hamburg, Germany) (represented by: M. Aicher, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Laros Srl (Cremone, Italy) (represented by: F. Caricato, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 16 January 2012 (Case R 2423/2010-4) relating to opposition proceedings between Bode Chemie GmbH and Laros Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bode Chemie GmbH to pay the costs, including the expenses necessarily incurred by Laros Srl for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

[1] OJ C 165, 9.6.2012.

Judgment of the General Court of 23 October 2013 — Schulze v OHIM — GKL (Klassiklotterie)

(Case T-155/12) [1]

(Community design — Invalidity proceedings — Application for Community word mark Klassiklotterie — Earlier national word mark NKL-Klassiklotterie — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 359/16)

Language of the case: German

Parties

Applicant: Hans Gerd Schulze (Hamburg, Germany) (represented by: K. Lodigkeit, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intevener before the General Court: GKL Gemeinsame Klassenlotterie der Länder, formerly NKL Nordwestdeutsche Klassenlotterie (Hamburg) (represented by: S. Russlies, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 January 2012 (Case R 600/2011-4) relating to invalidity proceedings between NKL Nordwestdeutsche Klassenlotterie and Mr Hans Gerd Schulze.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Hans Gerd Schulze to pay the costs.*

[1] OJ C 165, 9.6.2012.

Judgment of the General Court of 23 October 2013 — SFC Jardibric v OHIM — Aqua Center Europa (AQUA FLOW)

(Case T-417/12) [1]

(Community trade mark — Invalidity proceedings — Community figurative mark AQUA FLOW — Earlier national figurative mark VAQUA FLOW — Relative ground for refusal — Likelihood of confusion — Declaration of invalidity — Article 8(1)(b) of Regulation (EC) No 207/2009 — No limitation in consequence of acquiescence — Article 54(2) of Regulation No 207/2009)

(2013/C 359/17)

Language of the case: English

Parties

Applicant: SFC Jardibric (Saint-Jean-de-la-Ruelle, France) (represented by: J.-L. Fourgoux, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Aqua Center Europa, SA (Madrid, Spain) (represented by: M.J. Martín Izquierdo, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 July 2012 (Case R 2230/2010-4), relating to invalidity proceedings between Aqua Center Europa, SA and SFC Jardibric.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders SFC Jardibric to pay the costs.*

[1] OJ C 373, 1.12.2012.

Judgment of the General Court of 25 October 2013 — Beninca v Commission

(Case T-561/12) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Document drawn up by the Commission in the context of the merger between Deutsche Börse and NYSE Euronext — Refusal to grant access — Exception relating to the protection of the decision-making process)

(2013/C 359/18)

Language of the case: English

Parties

Applicant: Jürgen Beninca (Frankfurt-am-Main, Germany) (represented by: C. Zschocke, lawyer)

Defendant: European Commission (represented by: J. Baquero Cruz and F. Clotuche-Duvieusart, Agents)

Re:

Application for annulment of the Commission's decision of 9 October 2012 refusing access to a memorandum from the head of the unit responsible for competition matters at the Directorate-General for Enterprise and Industry

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Mr. Jürgen Beninca to pay the costs.*

[1] OJ C 46, 16.2.2013.

Order of the General Court of 9 October 2013 — Zinātnes, inovāciju un testēšanas centrs v Commission

(Case T-259/11) [1]

(Action for annulment — Phare programme — Project concerning the development of a centre for innovation and testing of construction products — Commission decision to undertake recovery of part of the sums paid — Lack of direct concern — Inadmissibility)

(2013/C 359/19)

Language of the case: Latvian

Parties

Applicant: Zinātnes, inovāciju un testēšanas centrs (Jelgava, Latvia) (represented by: E. Darapoļskis, lawyer)

Defendant: European Commission (represented by: P. van Nuffel and A. Sauka, Agents)

Re:

Action brought by the association Zinātnes, inovāciju un testēšanas centrs in accordance with Article 263 TFEU, seeking annulment of the Commission's decision notified to the Ministry of Finance of the Republic of Latvia by letter dated 16 November 2010.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The application for access to Commission documents is also dismissed.*

3. *Zinātnes, inovāciju un testēšanas centrs shall pay the costs.*

4. *There is no need to adjudicate on the applications to intervene from the Republic of Latvia and the Republic of Lithuania.*

[1] OJ C 252, 27.8.2011.

Order of the General Court of 21 October 2013 — Lyder Enterprises v CPVO — Liner Plants (1993) (SOUTHERN SPLENDOUR)

(Case T-367/11) [1]

(Plant varieties — Application for a Community plant variety right for the plant variety SOUTHERN SPLENDOUR — Objections — Rejection of the application by the Board of Appeal of the CPVO — Competence of the CPVO — Taking of evidence — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2013/C 359/20)

Language of the case: English

Parties

Applicant: Lyder Enterprises Ltd (Auckland, New Zealand) (represented by: G.J. Pickering, Solicitor)

Defendant: Community Plant Variety Office (CPVO) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Other party to the proceedings before the Board of Appeal of the CPVO, intervener before the General Court: Liner Plants (1993) Ltd (Waitakere, New Zealand) (represented by: P.S. Jonker, lawyer)

Re:

Action brought against the decision of the Board of Appeal of the CPVO of 4 May 2011 (Case A 7/2010), concerning the grant of a Community plant variety right for the plant variety SOUTHERN SPLENDOUR

Operative part of the order

1. *The action is dismissed.*

2. *Lyder Enterprises Ltd shall pay the costs.*

(1) OJ C 282, 24.9.2011.

Order of the General Court of 8 October 2013 — Michail v Commission

(Case T-597/11 P) (1)

(Appeal — Civil Service — Officials — Request for assistance — Article 24 of the Staff Regulations — Psychological harassment — Appeal clearly unfounded)

(2013/C 359/21)

Language of the case: Greek

Parties

Appellant: Christos Michail (Brussels, Belgium) (represented by: C. Meïdanis, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and J. Baquero, acting as Agents, assisted by E. Bourtzalas and E. Antypas, lawyers)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 13 September 2011 in case F-100/09 *Michail* v *Commission*, not yet published in the ECR, and seeking that that judgment be set aside.

Operative part of the order

1. *The appeal is dismissed;*

2. *Christos Michail will bear his own costs and will pay those incurred by the European Commission on the appeal.*

(1) OJ C 39, 11.2.2012.

Order of the General Court of 15 October 2013 — Andechser Molkerei Scheitz v Commission

(Case T-13/12) (1)

(Application for annulment and compensation — Public health — List of food additives authorised in foodstuffs — Steviol glycosides — Application inadmissible or manifestly unfounded)

(2013/C 359/22)

Language of the case: German

Parties

Applicant: Andechser Molkerei Scheitz GmbH (Andechs, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission (represented by: S. Grünheid and P. Ondrůšek, acting as Agents)

Re:

Application for annulment of Regulation (EU) No 1131/2011 of the Commission of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides (OJ 2011 L 295, p. 205), in so far as it authorises the use of steviol glycosides extracted from the leaves of the *Stevia rebaudiana* Bertoni plant only as food additives and not as vegetable ingredients of agricultural origin or as aromatic preparations, and a claim for compensation.

Operative part of the order

1. *The application is dismissed.*

2. *Andechser Molkerei Scheitz GmbH is ordered to bear its own costs and to pay those incurred by the Commission.*

(1) OJ C 89, 24.3.2012.

Order of the General Court of 7 October 2013 — Roland v OHIM — Textiles Well (wellness inspired by nature)

(Case T-191/12) [1]

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

(2013/C 359/23)

Language of the case: English

Parties

Applicant: Roland SE (Essen, Germany) (represented by: O. Rauscher and C. Onken, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Textiles Well (Le Vigan, France) (represented by: E. Cornu and É. De Gryse, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 February 2012 (Case R 2552/2010-1) relating to opposition proceedings between Textiles Well SA and Roland SE, formerly Roland-Schuhe GmbH & Co. Handels KG.

Operative part of the order

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

2. *The applicant and intervener shall bear their own costs and each shall pay one half of the costs borne by the defendant.*

[1] OJ C 209, 14.7.2012.

Order of the General Court of 14 October 2013 — Vicente Gandia Pla, SA v OHIM — Tesco Stores (MARQUES DE CHIVÉ)

(Case T-128/13) [1]

(Community trade mark — Opposition — Surrender of national trade mark — Action which becomes devoid of purpose in the course of proceedings — No need to adjudicate)

(2013/C 359/24)

Language of the case: 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) (represented by: L. Rampini, acting as Agent)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 13 December 2012 (Case R 854/2012-1) relating to opposition proceedings between Tesco Stores Ltd and Vicente Gandia Pla, SA.

Operative part of the order

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

2. *Each party is to bear its own costs.*

[1] OJ C 123, 27.4.2013.

Order of the General Court of 15 October 2013 — Spain v Commission

(Case T-148/13) [1]

(Action for annulment — Time-limit for instituting proceedings — Starting point — Publication in the Official Journal — Inadmissibility)

(2013/C 359/25)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented initially by S. Centeno Huerta, then by M. J. García-Valdecasas Dorrego, abogados del Estado)

Defendant: European Commission (represented by: J. Currall, J. Baquero Cruz and B. Eggers, acting as Agents)

Re:

Application for annulment of notice of open competition EPSO/AST/125/12, for the drawing up of a reserve list for assistants (AST 3), in the fields 'Audit', 'Finance/Accounting' and 'Economics/Statistics' (OJ 2012 C 394 A, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Kingdom of Spain is ordered to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 123, 27.4.2013.

Order of the General Court of 15 October 2013 — Spain v Commission

(Case T-149/13) ([1])

(Action for annulment — Period allowed for commencing proceedings — Point from which time starts to run — Publication in the Official Journal — Inadmissibility)

(2013/C 359/26)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented: initially by S. Centeno Huerta, and subsequently by J. García-Valdecasas Dorrego, abogados del Estado)

Defendant: European Commission (represented by: J. Currall, J. Baquero Cruz and B. Eggers, acting as Agents)

Re:

Application for annulment of the Notice of Open Competition No EPSO/AST/126/12, to constitute a reserve list of assistants (AST 3), 'Research' sector, in the fields of 'Biology, Life and Health Sciences', 'Chemistry', 'Physics and Materials Science', 'Nuclear Research', 'Civil and Mechanical Engineering' and 'Electrical Engineering and Electronics' (OJ 2012, C 394 A, p.11)

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Kingdom of Spain is ordered to bear its own costs and pay the costs incurred by the European Commission.*

([1]) OJ C 123, 27.4.2013.

Order of the General Court of 21 October 2013 — Marcuccio v Commission

(Case T-226/13 P) ([1])

(Appeal — Civil service — Action at first instance dismissed as manifestly devoid of any basis in law — Letter concerning compliance with a judgment of the Civil Service Tribunal sent to the appellant's representative in the appeal brought against that judgment — Appeal clearly inadmissible in part and clearly unfounded in part)

(2013/C 359/27)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party to the proceedings: European Commission (represented by: C. Berardis-Kayser and G. Gattinara, acting as Agents)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (Third Chamber) of 6 February 2013 in Case F-67/12 *Marcuccio* v *Commission*, not yet published in the ECR, and seeking that that order be set aside.

Operative part of the order

1. *The appeal is dismissed;*

2. *Mr Luigi Marcuccio will bear his own costs and will pay those incurred by the European Commission on the appeal.*

3. *Mr Marcuccio is ordered to pay the General Court the sum of EUR 2 000 pursuant to Article 90 of the Rules of Procedure.*

([1]) OJ C 171, 15.6.2013.

Order of the President of the General Court of 16 October 2013 — Spain v Commission

(Case T-461/13 R)

(Application for interim measures — State aid — Decision declaring aid to be incompatible with the internal market and ordering its recovery and the cancellation of any outstanding payments — Application for suspension of operation — Failure to show a prima facie case and urgency)

(2013/C 359/28)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González, abogado del Estado)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Re:

Application for suspension of operation of Commission Decision C(2013) 3204 final of 19 June 2013 on State aid SA.28599 (C 23/2010) (ex NN 36/010, ex CP 163/2009) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha).

Operative part of the order

1. *The application for interim measures is dismissed;*

2. *The costs are reserved.*

Order of the President of the General Court of 16 October 2013 — Comunidad Autónoma del País Vasco and Itelazpi v Commission

(Case T-462/13 R)

(Application for interim measures — State aid — Decision declaring aid to be incompatible with the internal market and ordering its recovery and the cancellation of any outstanding payments — Application for suspension of operation — Failure to show urgency)

(2013/C 359/29)

Language of the case: Spanish

Parties

Applicants: Comunidad Autónoma del País Vasco, and Itelazpi, SA (Zamudio, Spain) (represented by: J. Buendía Sierra, A. Lamadrid de Pablo, M. Muñoz de Juan and N. Ruiz García, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky et P. Němečková, acting as Agents)

Re:

Application for suspension of operation of Articles 3 and 4 of Commission Decision C(2013) 3204 final of 19 June 2013 on State aid SA.28599 (C 23/2010) (ex NN 36/010, ex CP 163/2009) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha).

Operative part of the order

1. *The application for interim measures is dismissed;*

2. *The costs are reserved.*

Action brought on 30 September 2013 — H&M Hennes & Mauritz/OHMI — Yves Saint Laurent (handbags)

(Case T-525/13)

(2013/C 359/30)

Language in which the application was lodged: English

Parties

Applicant: H&M Hennes & Mauritz BV & Co. KG (Hamburg, Germany) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

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

Other party to the proceedings before the Board of Appeal: Yves Saint Laurent SAS (Paris, France)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the defendant's Third Board of Appeal of 8 July 2013 in case R 207/2012-3;

— declare the registered Community design No. 613294-0001 invalid;

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

— furthermore, in case the other party intervenes in this case, order Yves Saint Laurent SAS to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: A design for the product 'Handbags' — registered Community design No 613294-0001.

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

Applicant for the declaration of invalidity of the Community design: The applicant

Grounds for the application for a declaration of invalidity: Lack of individual character based on Article 6 of Council Regulation No 6/2002

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Violation of Article 6 of Council Regulation No 6/2002.

Action brought on 30 September 2013 — H&M Hennes & Mauritz v OHIM — Yves Saint Laurent (handbags)

(Case T-526/13)

(2013/C 359/31)

Language in which the application was lodged: English

Parties

Applicant: H&M Hennes & Mauritz BV & Co. KG (Hamburg, Germany) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

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

Other party to the proceedings before the Board of Appeal: Yves Saint Laurent SAS (Paris, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 July 2013 given in Case R 208/2012-3;

— Declare the registered Community design No 61 3294-0002 invalid; and

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

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: A design for the product 'handbags' in Class 03-01 — registered Community design No 61 3294-0002

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

Applicant for the declaration of invalidity of the Community design: The applicant

Grounds for the application for a declaration of invalidity: The grounds were those laid down in Articles 4 to 9 and 25(1)(c), (d), (e), (f) and (g) of Council Regulation No 6/2002

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 6 of Council Regulation No 6/2002.

Action brought on 26 September 2013 — Kicks Kosmetikkedjan/OHIM — Kik Textilien und Non-Food (KICKS)

(Case T-531/13)

(2013/C 359/32)

Language in which the application was lodged: English

Parties

Applicant: Kicks Kosmetikkedjan AB (Stockholm, Sweden) (represented by: K. Strömholm, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kik Textilien und Non-Food GmbH (Bönen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision;

— order OHIM to pay the costs, or alternatively, if applicable, an intervening party to do so;

— authorise the registration of the contested application No. 924 6166 in its entirety.

Pleas in law and main arguments

Applicant for a Community trade mark: Kicks Kosmetikkedjan AB

Community trade mark concerned: the figurative mark 'KICKS' for goods and services in classes 3, 8, 14, 21 and 35 — application No 9246166

Proprietor of the mark or sign cited in the opposition proceedings: Kik Textilien und Non-Food GmbH

Mark or sign cited in opposition: the German and international word mark 'kik' for services in class 35

Decision of the Opposition Division: upheld the opposition for the contested goods and services

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Violation of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 26 September 2013 — Kicks Kosmetikkedjan/OHMI — Kik Textilien und Non-Food (KICKS)

(Case T-532/13)

(2013/C 359/33)

Language in which the application was lodged: English

Parties

Applicant: Kicks Kosmetikkedjan AB (Stockholm, Sweden) (represented by: K. Strömholm, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kik Textilien und Non-Food GmbH (Bönen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the Decision;

— order the OHIM to pay the costs, or alternatively, if applicable, an intervening party to do so;

— authorise the registration of the contested application No 9245473 in its entirety.

Pleas in law and main arguments

Applicant for a Community trade mark: Kicks Kosmetikkedjan AB

Community trade mark concerned: the verbal mark 'KICKS' for goods and services in classes 3, 8, 14, 21 and 35 — application No 9245473

Proprietor of the mark or sign cited in the opposition proceedings: Kik Textilien und Non-Food GmbH

Mark or sign cited in opposition: the German and international word mark 'kik' for services in class 35

Decision of the Opposition Division: upheld the opposition for the contested goods and services

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Violation of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 3 October 2013 — Lithuania v Commission

(Case T-533/13)

(2013/C 359/34)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, R. Krasuckaitė and A. Karbauskas)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1(4) of European Commission Implementing Decision C(2013) 4487 final of 19 July 2013 authorising the grant in Lithuania of transitional national aid for 2013 ('the contested decision');

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, relating to infringement of Article 39 TFEU, read in conjunction with the first subparagraph of Article 40(2) TFEU, and of the principle of non-discrimination

   In adopting Article 1(4) of the contested decision the Commission committed an infringement of Article 39 TFEU, read in conjunction with the first subparagraph of Article 40(2) TFEU, because it did not keep to the objectives of the common agricultural policy that are specified in the FEU Treaty (in particular Article 39(1)(b) TFEU) and to the criteria of the common agricultural policy, and it also infringed the principle of non-discrimination.

2. Second plea in law, relating to infringement of Regulation No 73/2009

   The Commission, in adopting Article 1(4) of the contested decision without a legal basis, infringed Regulation No 73/2009, [1] having applied Article 10a(4) of that regulation incorrectly.

3. Third plea in law, relating to an error of assessment by the Commission

   In adopting Article 1(4) of the contested decision the Commission committed an error of assessment, because it assessed the levels of the direct payments of the old and the new Member States erroneously in 2012 and it based the calculation of the transitional national aid granted on an erroneous assessment of that kind.

4. Fourth plea in law, relating to infringement of the principle of good administration

   In adopting Article 1(4) of the contested decision the Commission infringed the principle of good administration, because it did not comply with the duty to take as a basis the new information provided by the Republic of Lithuania concerning the levels of direct payments in the Member States and did not assess the actual importance of direct payments for Lithuanian farms.

[1] Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16, corrigendum at OJ 2010 L 43, p. 7).

Action brought on 8 October 2013 — Al Matri v Council

(Case T-545/13)

(2013/C 359/35)

Language of the case: English

Parties

Applicant: Fahed Mohamed Sakher Al Matri (Doha, Qatar) (represented by: M. Lester, Barrister, and G. Martin, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Decision 2013/409/CFSP [1] and Council Implementing Regulation (EU) No 735/2013 [2], insofar as they apply to the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has manifestly erred in its assessment that the criteria for listing in the contested measures were fulfilled as regards the applicant.

2. Second plea in law, alleging infringement of the applicant's rights of defence and to effective judicial protection.

3. Third plea in law, alleging failure to give adequate reasons.

4. Fourth plea in law, alleging an unjustified and disproportionate restriction of the applicant's right to property and to conduct his business.

([1]) Council Implementing Decision 2013/409/CFSP of 30 July 2013 implementing Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2013 L 204, p. 52)

([2]) Council Implementing Regulation (EU) No 735/2013 of 30 July 2013 implementing Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ 2013 L 204, p. 23)

Action brought on 15 October 2013 — Oil Turbo Compressor v Council

(Case T-552/13)

(2013/C 359/36)

Language of the case: German

Parties

Applicant: Oil Turbo Compressor Co. (Private Joint Stock) (Tehran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union

Forms of order sought

The applicant claims that the Court should:

— annul point 48 of Table B of the Annex to Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against the Islamic Republic of Iran, in so far as those measures concern the applicant;

— annul point 103 of Table B of Annex VIII to Council Implementing Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against the Islamic Republic of Iran and repealing Regulation (EU) No 961/2010, in so far as those measures concern the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. Manifest error of appraisal of the facts on which the Council decision is based

In the context of this plea, the applicant argues inter alia that the contested legal acts were obviously decided on the basis of incorrect assumptions and are contrary to the judgments of the General Court in Case T-63/12 *Oil Turbo Compressor* v *Council* [2012] ECR II-0000 and Case T-404/11 *TCMFG* v *Council* [2013] ECR II-0000. The applicant submits that there are no facts which could sufficiently substantiate and justify the defendant's decision and the consequent infringement of the applicant's fundamental rights.

2. Infringement of the rule-of-law principle of proportionality

According to the applicant, there is an infringement of the principle of proportionality because its inclusion in the contested legal acts bears no apparent relation to the objective of those legal acts, which is to prevent proliferation-sensitive nuclear activities, the trade in and/or development of nuclear weapon delivery systems or other weapons systems by the Islamic Republic of Iran. The defendant also fails to show that the applicant's exclusion from trade with the European Union is reasonable, in particular the least intrusive measure, in order to obtain the intended objective. The applicant further complains that the major interference with its fundamental rights was obviously not measured against the objective supposedly pursued by the defendant.

3. Infringement of rule-of-law principles

In this regard it is claimed that the defendant failed to provide sufficient reasons for including the applicant in the contested legal acts. The defendant does not refer to the facts or evidence allegedly in its possession. The applicant also submits that, as it is not aware of any facts or evidence which could justify the contested legal acts, and as the defendant is withholding any information, the applicant is being denied a fair hearing in accordance with rule-of-law principles. The applicant's application for access to the case-file has so far not been granted. The applicant further complains that the defendant adheres to the contested legal acts despite the judgments cited above.

Order of the General Court of 17 October 2013 — Transworld Oil Computer Centrum and Others v Eurojust

(Case T-192/13) ([1])

(2013/C 359/37)

Language of the case: Dutch

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

([1]) OJ C 171, 15.6.2013.

Order of the General Court of 10 October 2013 — KO-Invest v OHIM — Kraft Foods Schweiz (Milkoshake For Active People)

(Case T-399/13) ([1])

(2013/C 359/38)

Language of the case: Polish

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

([1]) OJ C 284, 28.9.2013.

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