

# Official Journal of the European Union

C 129



English edition

## Information and Notices

Volume 57  
28 April 2014

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## IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND  
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COURT OF JUSTICE OF THE EUROPEAN UNION

(2014/C 129/01)

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

OJ C 112, 14.4.2014

**Past publications**

OJ C 102, 7.4.2014

OJ C 93, 29.3.2014

OJ C 85, 22.3.2014

OJ C 78, 15.3.2014

OJ C 71, 8.3.2014

OJ C 61, 1.3.2014

These texts are available on:

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

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## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Seventh Chamber) of 6 March 2014 — Pi-Design AG, Bodum France SAS, Bodum Logistics A/S v Yoshida Metal Industry Co. Ltd, Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Joined Cases C-337/12 P to C-340/12 P) <sup>(1)</sup>**

**(Appeal — Community trade mark — Registration of signs consisting of a surface with black dots — Declaration of invalidity — Regulation (EC) No 40/94 — Article 7(1)(e)(ii) — Distortion of the evidence)**

(2014/C 129/02)

*Language of the case: English*

**Parties**

*Appellants:* Pi-Design AG, Bodum France SAS, Bodum Logistics A/S (represented by: H. Pernez, avocat)

*Other parties to the proceedings:* Yoshida Metal Industry Co. Ltd (represented by: S. Vereva, K. Muraro and M. Balestrierio, avvocati), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

**Re:**

Appeals brought against the judgments of the General Court (Fourth Chamber) of 8 May 2012 in Cases T-331/10 and T-461/10 *Yoshida Metal Industry v OHIM — Pi-Design and Others*, by which that court annulled Decisions R 1235/2008-1 and R 1237/2008-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 May 2010 which annulled the decisions of the Cancellation Division rejecting the applications for declarations of invalidity brought by Pi-Design, Bodum France and Bodum Logistics A/S in respect of figurative marks representing a triangular surface with black dots (T-331/10) and a surface with black dots (T-416/10), for goods in Classes 8 and 21 — Interpretation of Article 7(1)(e)(ii) of Regulation (EC) No 207/2009 on the Community trade mark — Sign which consists exclusively of the shape of goods which is necessary to obtain a technical result.

**Operative part of the judgment**

*The Court:*

1. Sets aside the judgments of the General Court of the European Union of 8 May 2012 in Case T-331/10 *Yoshida Metal Industry v OHIM — PiDesign and Others (Representation of a triangular surface with black dots)* and Case T-416/10 *Yoshida Metal Industry v OHIM — Pi-Design and Others (Representation of a surface with black dots)*;
2. Refers the cases back to the General Court of the European Union;
3. Reserves the costs.

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<sup>(1)</sup> OJ C 295, 29.9.2012.



**Judgment of the Court (Third Chamber) of 6 March 2014 (request for a preliminary ruling from the Oberster Patent- und Markensenat (Austria)) — Backaldrin Österreich The Kornspitz Company GmbH v Pfahnl Backmittel GmbH**

(Case C-409/12) <sup>(1)</sup>

*(Trade marks — Directive 2008/95/EC — Article 12(2)(a) — Revocation — Trade mark which, in consequence of acts or inactivity of the proprietor, has become the common name in the trade for a product or service in respect of which it is registered — Perception of the word sign ‘KORNSPITZ’ by sellers, on the one hand, and by end users, on the other — Loss of distinctive character from the point of view of end users only)*

(2014/C 129/03)

Language of the case: German

**Referring court**

Oberster Patent- und Markensenat

**Parties to the main proceedings**

*Applicant:* Backaldrin Österreich The Kornspitz Company GmbH

*Defendant:* Pfahnl Backmittel GmbH

**Re:**

Request for a preliminary ruling — Oberster Patent- und Markensenat — Interpretation of Article 12(2)(a) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25) — Grounds for revocation — Registered word mark which has become the common name for the product concerned for consumers on account of the absence of information given by intermediaries as to the existence of the mark — No alternative names to describe the product concerned — Inactivity of the proprietor of the mark.

**Operative part of the judgment**

1. Article 12(2)(a) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that, in a case such as that at issue in the main proceedings, a trade mark is liable to revocation in respect of a product for which it is registered if, in consequence of acts or inactivity of the proprietor, that trade mark has become the common name for that product from the point of view solely of end users of the product.
2. Article 12(2)(a) of Directive 2008/95 must be interpreted as meaning that it may be classified as ‘inactivity’ within the meaning of that provision if the proprietor of a trade mark does not encourage sellers to make more use of that mark in marketing a product in respect of which the mark is registered.
3. Article 12(2)(a) of Directive 2008/95 must be interpreted as meaning that the revocation of a trade mark does not presuppose that it must be ascertained whether there are other names for a product for which that trade mark has become the common name in the trade.

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<sup>(1)</sup> OJ C 399, 22.12.2012.

**Judgment of the Court (Ninth Chamber) of 6 March 2014 (request for a preliminary ruling from the Tribunale di Trento (Italy)) — Lorenzo Amatori and Others v Telecom Italia SpA, Telecom Italia Information Technology Srl**

(Case C-458/12) <sup>(1)</sup>

*(Request for a preliminary ruling — Social policy — Transfer of undertakings — Safeguarding of employees' rights — Directive 2001/23/EC — Transfer of employment relationships in the event of a legal transfer of part of a business that cannot be identified as a pre-existing autonomous economic entity)*

(2014/C 129/04)

Language of the case: Italian

**Referring court**

Tribunale di Trento

**Parties to the main proceedings**

*Applicants:* Lorenzo Amatori, Adrian Gottardi

*Defendants:* Telecom Italia SpA, Telecom Italia Information Technology Srl

**Re:**

Request for a preliminary ruling — Tribunale di Trento — Interpretation of Article 1(1)(a) and (b) and Article 3(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Transfer to another undertaking, on the basis of an agreement, of a part of a business which cannot be identified as a pre-existing independent economic entity and over which, after the transfer, the transferring undertaking will exercise dominant control through commercial relations and a sharing of business risk — National rules under which the taking over of employment relations is not conditional upon the consent of the employees transferred.

**Operative part of the judgment**

1. Article 1(1)(a) and (b) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, which, on the transfer of part of the undertaking, permits the transferee to take over the employment relationship from the transferor if that part of the undertaking does not constitute a functionally autonomous economic entity existing before the transfer.
2. Article 1(1)(a) and (b) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables the transferee to take over the employment relationships from the transferor if, after the transfer of part of an undertaking concerned exercises extensive, overriding powers over the transferee.

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<sup>(1)</sup> OJ C 389, 15.12.2012

**Judgment of the Court (First Chamber) of 6 March 2014 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy)) — Loredana Napoli v Ministero della Giustizia — Dipartimento dell'Amministrazione penitenziaria**

(Case C-595/12) <sup>(1)</sup>

*(Reference for a preliminary ruling — Social policy — Directive 2006/54/EC — Equal treatment of men and women in matters of employment and occupation — Training course for acquiring the status of a public official — Exclusion on grounds of a prolonged absence — Absence attributable to maternity leave)*

(2014/C 129/05)

Language of the case: Italian

**Referring court**

Tribunale Amministrativo Regionale per il Lazio

**Parties to the main proceedings**

*Applicant:* Loredana Napoli

*Defendant:* Ministero della Giustizia — Dipartimento dell'Amministrazione penitenziaria

**Re:**

Request for a preliminary ruling — Tribunale Amministrativo Regionale per il Lazio — Interpretation of Articles 2(2)(c), 14(2) and 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23) — Direct effect — Course for acquiring the status of a public official — National legislation providing, in the event of justified absence exceeding 30 consecutive days, for exclusion from the course and enrolment on the next course — Absence attributable to maternity leave.

**Operative part of the judgment**

1. Article 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as precluding national legislation which, on grounds relating to the public interest, excludes a woman on maternity leave from a vocational training course which forms an integral part of her employment and which is compulsory in order to be able to be appointed definitively to a post as a civil servant and in order to benefit from an improvement in her employment conditions, while guaranteeing her the right to participate in the next training course organised, the date of which is nevertheless uncertain.
2. Article 14(2) of Directive 2006/54 does not apply to national legislation, such as that at issue in the main proceedings, which does not limit a specified activity solely to male workers but which delays access to that activity for female workers who have been unable to receive full vocational training as a result of compulsory maternity leave.
3. The provisions of Article 14(1)(c) and Article 15 of Directive 2006/54 are sufficiently clear, precise and unconditional to have direct effect.

<sup>(1)</sup> OJ C 86, 23.3.2013.

**Judgment of the Court (Seventh Chamber) of 6 March 2014 (requests for a preliminary ruling from the Commissione tributaria provinciale Genova (Italy)) — DresserRand SA v Agenzia delle Entrate Direzione Provinciale Ufficio Controlli**

(Joined Cases C-606/12 and C-607/12) <sup>(1)</sup>

*(Request for a preliminary ruling — Taxation — VAT — Directive 2006/112/EC — Article 17(2)(f) — Condition relating to the return of goods to the Member State from which they were initially dispatched or transported)*

(2014/C 129/06)

Language of the case: Italian

**Referring court**

Commissione tributaria provinciale Genova

**Parties to the main proceedings**

*Applicant:* DresserRand SA

*Defendant:* Agenzia delle Entrate Direzione Provinciale Ufficio Controlli

**Re:**

Requests for a preliminary ruling — Commissione tributaria provinciale di Genova — Interpretation of Article 17(2)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Transfer to another Member State — ‘Work on the goods’ — Verifying the adaptability to other goods — Condition that the goods be returned to the Member State from which they were initially dispatched or transported — Possibility of treating the dispatch as constituting a transfer to another Member State in the case of dispatch to a Member State other than that from which they were sent

**Operative part of the judgment**

Article 17(2)(f) 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 order for the dispatch or transport of goods not to be classified as a transfer to another Member State, those goods, after the work on them has been carried out in the Member State in which dispatch or transport of the goods ends, must necessarily be returned to the taxable person in the Member State from which they were initially dispatched or transported.

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<sup>(1)</sup> OJ C 101, 6.4.2013.

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**Judgment of the Court (Tenth Chamber) of 6 March 2014 (request for a preliminary ruling from the Tribunale amministrativo regionale per la Sicilia (Italy)) — Cruciano Siragusa v Regione Sicilia — Soprintendenza Beni Culturali e Ambientali di Palermo**

(Case C-206/13) <sup>(1)</sup>

*(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — General principles of EU law — Implementation of EU law — Scope of EU law — A sufficient connection — Lack of such a connection — Lack of jurisdiction of the Court)*

(2014/C 129/07)

*Language of the case: Italian*

**Referring court**

Tribunale amministrativo regionale per la Sicilia

**Parties to the main proceedings**

*Applicant:* Cruciano Siragusa

*Defendant:* Regione Sicilia — Soprintendenza Beni Culturali e Ambientali di Palermo

**Re:**

Request for a preliminary ruling — Tribunale amministrativo regionale per la Sicilia — Interpretation of Article 17(1) of the Charter of Fundamental Rights — Principle of proportionality — National legislation under which any alterations made by the owner to property in an area of scenic interest are conditional upon prior clearance being granted — Obligation, in the absence of such clearance, to demolish the building, even where the owner shows afterwards that the alteration has no adverse effect on the scenery or landscape.

**Operative part of the judgment**

The Court of Justice of the European Union has no jurisdiction to answer the question referred by the Tribunale amministrativo regionale per la Sicilia (Italy).

(<sup>1</sup>) OJ C 207, 20.7.2013.

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**Request for a preliminary ruling from the Tribunal d'instance de Bordeaux (France) lodged on 9 December 2013 — Thierry Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde**

(Case C-650/13)

(2014/C 129/08)

*Language of the case: French*

**Referring court**

Tribunal d'instance de Bordeaux

**Parties to the main proceedings**

*Applicant:* Thierry Delvigne

*Defendants:* Commune de Lesparre Médoc and Préfet de la Gironde

**Questions referred**

1. Is Article 49 of the Charter of Fundamental Rights of the European Union to be interpreted as preventing a provision of national law from maintaining a ban — which, moreover, is indefinite and disproportionate — on allowing persons who were convicted before the entry into force of a more lenient criminal law, namely, Law No 94-89 of 1 February 1994, to receive a lighter penalty?
2. Is Article 39 of the Charter of Fundamental Rights of the European Union, applicable to elections to the European Parliament, to be interpreted as precluding the Member States of the European Union from making provision for a general, indefinite and automatic ban on exercising civil and political rights, in order to avoid creating any inequality of treatment between nationals of the Member States?

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**Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 13 December 2013 — Astellas Pharma Inc. v Polpharma SA Pharmaceutical Works**

(Case C-661/13)

(2014/C 129/09)

*Language of the case: German*

**Referring court**

Oberlandesgericht Düsseldorf

**Parties to the main proceedings**

*Applicant:* Astellas Pharma Inc.

*Defendant:* Polpharma SA Pharmaceutical Works

**Questions referred**

1. Is Article 10(6) of Directive 2001/83/EC (<sup>1</sup>) to be interpreted as meaning that the exclusion from patent protection also applies to acts of provision by which a third party for purely commercial reasons offers or supplies to a manufacturer of generic medicinal products a patent-protected active substance which that generic pharmaceutical undertaking has planned to use for conducting studies or trials for a marketing authorisation under medicinal product law as provided for in Article 10(6)?

2. If the first question is to be answered in the affirmative:
- (a) Does the third party's enjoyment of the exemption depend on the manufacturer of generic medicinal products who is supplied by him actually using the provided active substance for exempted studies or trials under Article 10(6) of Directive 2001/83/EC? Does the exclusion from patent protection apply in such a case even where the third party has no knowledge of the intentions of his customer to use the active substance for purposes covered by the exemption and has also not satisfied himself in this regard?

Or, in order for the third party to enjoy the exemption, does it matter only that at the time of his act of provision he can legitimately assume on the basis of all the circumstances (for example, the focus of the undertaking supplied, the small quantity of the active substance provided, the imminent expiry of the patent protection for the active substance in question, experiences as to the customer's reliability) that the generic pharmaceutical undertaking supplied will use the active substance provided exclusively for exempted trials or studies in the context of a marketing authorisation?

- (b) Must the third party, in connection with performance of his act of provision, take measures of his own to ensure that the active substance is actually used by his customer only for exempted trials or studies and do the measures to be taken by him differ according to whether the patent-protected active substance is only offered or also supplied?

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<sup>(1)</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2011 L 311, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34).

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**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 9 January 2014  
— Wucher Helicopter GmbH, Euro-Aviation Versicherungs AG v Fridolin Santer**

**(Case C-6/14)**

(2014/C 129/10)

*Language of the case: German*

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Defendants and appellants on a point of law:* Wucher Helicopter GmbH, Euro-Aviation Versicherungs AG

*Applicant and respondent:* Fridolin Santer

**Questions referred**

1. Is Article 3(g) of Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators <sup>(1)</sup> to be interpreted as meaning that the occupant of a helicopter held by a Community air carrier,
- who is carried on a contractual basis (specifically: a contract between the air carrier and the occupant's employer),
  - but who is carried for the purpose of a particular job of work (specifically: the blasting of avalanches) and
  - who is involved in that operation as a 'guide familiar with the terrain' and must at the pilot's direction open the helicopter door during the flight and then hold it open in a particular manner and for a particular period of time,

- (a) is a 'passenger' or
- (b) ranks among 'on-duty members of both the flight crew and the cabin crew'?

2. If Question 1(a) is answered in the affirmative:

Is Article 17(1) of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air of 28 May 1999 <sup>(2)</sup> to be interpreted as meaning that the term 'passenger' (German: 'Reisender') in any event includes a 'passenger' (German: 'Fluggast') within the meaning of Article 3(g) of Regulation (EC) No 785/2004?

3. If Question 2 is answered in the negative:

Is Article 17(1) of the Montreal Convention to be interpreted as meaning that under the conditions stated in Question 1 the occupant of a helicopter held by a Community air carrier is a 'passenger' ('Reisender')?

<sup>(1)</sup> OJ 2004 L 138, p. 1.

<sup>(2)</sup> OJ 2001 L 194, p. 39.

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**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 13 January 2014 — J.B.G.T. Miljoen; Other party: Staatssecretaris van Financiën**

**(Case C-10/14)**

(2014/C 129/11)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant in cassation:* J.B.G.T. Miljoen

*Other party to the appeal in cassation:* Staatssecretaris van Financiën

**Questions referred**

1. Does the application of Article 63 TFEU require that the comparison of a non-resident with a resident in a case such as the present, in which dividend tax was withheld on a dividend payment by the source State, be extended to the income tax payable on the dividend income, against which, in the case of residents, the dividend tax is set off?
2. If the answer to Question 1 is in the affirmative, in the assessment as to whether the effective tax burden for a non-resident is heavier than the tax burden for a resident, should a comparison be made between the Netherlands dividend tax withheld in respect of the non-resident and the Netherlands income tax payable by a resident, calculated in respect of the flat-rate income which, in the year in which the dividends were received, is attributable to the total holding of investment shares in Netherlands companies, or does European Union law require that a different standard of comparison be taken into account?

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**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 15 January 2014 — X; Other party: Staatssecretaris van Financiën**

**(Case C-14/14)**

(2014/C 129/12)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant in cassation:* X

*Other party to the appeal in cassation:* Staatssecretaris van Financiën

**Questions referred**

1. Does the application of Article 63 TFEU require that the comparison of a non-resident with a resident in a case such as the present, in which dividend tax is withheld on a dividend payment by the source State, be extended to the income tax payable on the dividend income, against which, in the case of residents, the dividend tax is set off?
2. If the answer to Question 1 is in the affirmative, in the assessment as to whether the effective tax burden for a non-resident is heavier than the tax burden for a resident, should a comparison be made between the Netherlands dividend tax withheld in respect of the non-resident and the Netherlands income tax payable by a resident, calculated in respect of the flat-rate income which, in the year in which the dividends were received, is attributable to the total holding of investment shares in Netherlands companies, or does European Union law require that a different standard of comparison be taken into account? Must the tax-free capital allowance which applies to residents also be taken into account when making that comparison, and, if so, to what extent (see the judgment of the Court of Justice of 17 October 2013 in Case C-181/12 *Welte*, V-N 2013/51.20.1)?
3. If Question 1 is to be answered in the affirmative, is it sufficient, in the assessment as to whether a potentially discriminatory withholding tax levied at source is effectively neutralised on the basis of a convention for the avoidance of double taxation concluded by the source State, that (i) the double taxation convention concerned makes provision for a tax reduction in the State of residence by means of the setting-off of the withholding tax levied at source and that, although that option is not unconditional, (ii) in the case in question the tax reduction granted by the State of residence, by levying tax only on the net dividend received, offsets in full the discriminatory portion of the withholding tax levied at source?

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**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 16 January 2014 — Société Générale SA; other party: Staatssecretaris van Financiën**

(Case C-17/14)

(2014/C 129/13)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant in cassation:* Société Générale SA

*Other party to the appeal in cassation:* Staatssecretaris van Financiën

**Questions referred**

1. Does the application of Article 63 TFEU require that the comparison of a non-resident with a resident in a case in which dividend tax is withheld on a dividend payment by the source State be extended to the corporation tax against which the dividend tax is set off in the case of residents?
2. (a) If the answer to Question 1 is in the affirmative, should account be taken, in making that comparison, of all the costs which, in an economic sense, are connected with the shares from which the dividend arises?  
(b) If the answer to the previous question is in the negative, should account then be taken of a possible write-off of a bought dividend and of a possible financing burden resulting from ownership of the shares concerned?



3. If the answer to Question 1 is in the affirmative, is it sufficient, in the assessment as to whether a potentially discriminatory withholding tax levied at source is effectively neutralised on the basis of a convention for the avoidance of double taxation concluded by the source State, that (i) the double taxation convention concerned contains a provision in that regard, and that, although that option is not unconditional, (ii) in the case in question it has the result that the Netherlands tax burden for a non-resident is not heavier than that for a resident? In the case of inadequate compensation in the year in which the dividends are received, is it relevant, in the assessment of that neutralisation, that there is the possibility of carrying forward the deficit and of utilising the set-off in subsequent years?

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**Request for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 17 January 2014 — BGW Marketing- & Management-Service GmbH v Bodo Scholz**

(Case C-20/14)

(2014/C 129/14)

*Language of the case: German*

**Referring court**

Bundespatentgericht

**Parties to the main proceedings**

*Applicant:* BGW Marketing- & Management-Service GmbH

*Defendant:* Bodo Scholz

**Question referred**

Must Article 4(1)(b) of Directive 2008/95/EC<sup>(1)</sup> be interpreted as meaning that, in the case of identical and similar goods and services, there may be taken to be a likelihood of confusion for the public if a distinctive sequence of letters which dominates the earlier word/figurative trade mark of average distinctiveness is made use of in a third party's later mark in such a way that the sequence of letters is supplemented by a descriptive combination of words relating to it which explains the sequence of letters as an abbreviation of the descriptive words?

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<sup>(1)</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks; OJ 2008 L 299, p. 25.

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**Request for a preliminary ruling from the Bundesverfassungsgericht (Germany) lodged on 10 February 2014 — Peter Gauweiler and Others**

(Case C-62/14)

(2014/C 129/15)

*Language of the case: German*

**Referring court**

Bundesverfassungsgericht

**Parties to the main proceedings**

*Applicants:* Peter Gauweiler, Bruno Bandulet, Wilhelm Hankel, Wilhelm Nölling, Karl Albrecht Schachtschneider, Joachim Starbatty, Roman Huber and Others, Johann Heinrich von Stein and Others, Fraktion DIE LINKE im Deutschen Bundestag

*Respondent:* German Bundestag

*Joined party:* Federal Government

**Questions referred**

1. (a) Is the decision of the Governing Council of the European Central Bank of 6 September 2012 on Technical features of Outright Monetary Transactions incompatible with Article 119 and Article 127(1) and (2) of the Treaty on the Functioning of the European Union and with Articles 17 to 24 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank because it exceeds the monetary policy mandate of the European Central Bank laid down in the abovementioned provisions and encroaches upon the competence of the Member States?

Is the mandate of the European Central Bank exceeded in particular because the decision of the Governing Council of the European Central Bank of 6 September 2012

- (aa) is linked to economic assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (conditionality)?
- (bb) provides for the purchase of government bonds of selected Member States only (selectivity)?
- (cc) provides for the purchase of government bonds of programme countries in addition to assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (parallelism)?
- (dd) could undermine the limits and conditions laid down by assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (circumvention)?
- (b) Is the decision of the Governing Council of the European Central Bank of 6 September 2012 on Technical features of Outright Monetary Transactions incompatible with the prohibition of monetary financing enshrined in Article 123 of the Treaty on the Functioning of the European Union?

Is compatibility with Article 123 of the Treaty on the Functioning of the European Union precluded in particular by the fact that the decision of the Governing Council of the European Central Bank of 6 September 2012

- (aa) does not provide for quantitative limits for government bond purchases (volume)?
- (bb) does not provide for a time gap between the issue of government bonds on the primary market and their purchase by the European System of Central Banks on the secondary market (market pricing)?
- (cc) allows all purchased government bonds to be held to maturity (interference with market logic)?
- (dd) does not contain any specific requirements for the credit standing of the government bonds to be purchased (default risk)?
- (ee) provides for the same treatment of the European System of Central Banks as private or other holders of government bonds (debt cut)?
2. In the alternative, in the event that the Court does not consider the decision of the Governing Council of the European Central Bank of 6 September 2012 on Technical features of Outright Monetary Transactions, qua act of a EU institution, to be an appropriate object for a request pursuant to point (b) of the first paragraph of Article 267 of the Treaty on the Functioning of the European Union:
- (a) Are Article 119 and Article 127 of the Treaty on the Functioning of the European Union and Articles 17 to 24 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank to be interpreted as permitting the Eurosystem, alternatively or cumulatively,
- (aa) to make government bond purchases conditional on the existence of and compliance with economic assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (conditionality)?

- (bb) to purchase government bonds of selected Member States only (selectivity)?
  - (cc) to purchase government bonds of programme countries in addition to assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (parallelism)?
  - (dd) to undermine the limits and conditions laid down by assistance programmes of the European Financial Stability Facility or of the European Stability Mechanism (circumvention)?
- (b) Having regard to the prohibition of monetary financing, is Article 123 of the Treaty on the Functioning of the European Union to be interpreted as permitting the Eurosystem, alternatively or cumulatively,
- (aa) to purchase government bonds without quantitative limits (volume)?
  - (bb) to purchase government bonds without a minimum time gap from their issue on the primary market (market pricing)?
  - (cc) to hold all purchased government bonds to maturity (interference with market logic)?
  - (dd) to purchase government bonds without minimum credit standing requirements (default risk)?
  - (ee) to accept the same treatment of the European System of Central Banks as private and other holders of government bonds (debt cut)?
  - (ff) to influence pricing, by communicating the intention to purchase or otherwise, coinciding with the issue of government bonds by Member States of the euro area (encouragement to purchase newly issued bonds)?

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**Request for a preliminary ruling from the Tribunal du Travail de Nivelles (Belgium) lodged on 10 February 2014 — Charlotte Rosselle v Institut national d'assurance maladie-invalidité (INAMI), Union nationale des mutualités libres (UNM Libres)**

**(Case C-65/14)**

(2014/C 129/16)

*Language of the case: French*

### **Referring court**

Tribunal du Travail de Nivelles

### **Parties to the main proceedings**

*Applicant:* Charlotte Rosselle

*Defendants:* Institut national d'assurance maladie-invalidité (INAMI), Union nationale des mutualités libres (UNM Libres)

*Intervener:* Institut pour l'Égalité des Femmes et des Hommes (IEFH)

### **Question referred**

Do sections 1 and 2 of title III, chapter III, of the Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 coordinating compulsory medical care and sickness benefit insurance infringe Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding<sup>(1)</sup> and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)<sup>(2)</sup> in failing to provide for an exemption from the minimum contribution period for a public servant assigned non-active status for personal reasons who is on maternity leave, whereas such an exemption is provided for a public servant who has resigned or has been dismissed?

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<sup>(1)</sup> OJ 1992 L 348, p. 1.

<sup>(2)</sup> OJ 2006 L 204, p. 23.

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**Appeal brought on 18 February 2014 by Forgital Italy SpA against the order of the General Court (Sixth Chamber) delivered on 4 December 2013 in Case T-438/10 Forgital Italy SpA v Council of the European Union**

**(Case C-84/14 P)**

(2014/C 129/17)

*Language of the case: Italian*

**Parties**

*Appellant:* Forgital Italy SpA (represented by: R. Mastroianni and V. Turinetti di Priero, avvocati)

*Other parties to the proceedings:* Council of the European Union and European Commission

**Form of order sought**

Forgital Italy claims that the Court should:

- set aside the order of 4 December 2013 in Case T-438/10 by which the General Court dismissed as inadmissible the action for annulment of Council Regulation (EU) No 566/2010 of 29 June 2010 amending Regulation (EC) No 1255/96 temporarily suspending the autonomous Common Customs Tariff duties on certain industrial, agricultural and fishery products (OJ 2010 L 163, p. 4), in so far as that regulation alters the designation of certain goods in respect of which the autonomous Common Customs Tariff duties are suspended;
- refer Case T-438/10 back to the General Court for judgment, pursuant to Article 61 of the Statute of the Court of Justice of the European Union;
- order the Council and the Commission to pay the costs at first instance and on appeal.

**Pleas in law and main arguments**

Forgital Italy alleges infringement of the following: Article 113 of the Rules of Procedure of the General Court; the right to an effective remedy referred to in Article 47 of the Charter of Fundamental Rights of the European Union; the general principle of effective judicial protection of rights; and the right of defence. It submits that the General Court erred in law in so far as it raised an objection of inadmissibility of its own motion in respect of the action brought by Forgital Italy in Case T-438/10 without setting out the reasons of fact and law on which that objection was based or allowing the parties to submit their comments in that regard, as required under Article 113 of the Rules of Procedure of the General Court. In that regard, the fact that the General Court addressed a question to the parties relating to the possible implications for Case T-438/10 of its order of 5 February 2013 in Case T-551/11 *BSI v Council* is irrelevant, because, contrary to the finding of the General Court, the parties should not have been required to infer from that question that the General Court was considering the possibility of raising an objection of inadmissibility of its own motion.

Secondly, Forgital Italy claims that the General Court erred in law with regard to the interpretation of the last part of the fourth paragraph of Article 263 TFEU, in conjunction with the general principle of effective judicial protection referred to in Article 47 of the Charter of Fundamental Rights of the European Union. According to Forgital Italy, Council Regulation (EU) No 566/2010 of 29 June 2010 does not constitute a regulatory act which entails implementing measures.

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**Appeal brought on 28 February 2014 by the European Medical Association Asbl (EMA) against the judgment of the General Court (Second Chamber) delivered on 11 December 2013 in Case T-116/11 European Medical Association v European Commission**

**(Case C-100/14 P)**

(2014/C 129/18)

*Language of the case: Italian*

**Parties**

*Appellant:* European Medical Association Asbl (EMA) (represented by: A. Franchi, L. Picciano and G. Gangemi, avvocati)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court of the European Union delivered on 11 December 2013 in Case T-116/11 and refer the case back to the General Court;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

EMA has brought an appeal before the Court of Justice against the judgment of 11 December 2013 in Case T-116/11 in so far as the General Court dismissed EMA's action, brought under Articles 268 TFEU, 272 TFEU and 340 TFEU, for reimbursement of personnel costs for Contracts Nos 507760 (Dicoems) and 507126 (Cocoon).

EMA relies on the following grounds of appeal:

**First ground of appeal:** Misinterpretation of the terms of the contracts and the legal rules, and manifest error in assessing the evidence

EMA submits that the judgment under appeal is vitiated by a misinterpretation of the terms of the contracts and of the applicable law and by a manifest error in assessing the evidence in so far as the General Court found that the Commission had correctly deduced that the costs invoiced but not yet paid had neither been borne by EMA nor entered in its accounts by the date on which the audit certificate was drawn up under the Belgian accounting rules.

**Second ground of appeal:** Manifest error in assessing the evidence and failure to state reasons

EMA submits that various sections of the judgment under appeal are vitiated by serious procedural errors in that they contain no statement of reasons, inadequate statements of reasons, or contradictory statements of reasons. In addition, the General Court made several omissions or manifest errors in its assessment of the evidence produced during the proceedings. It can be inferred from the judgment under appeal that the General Court often failed to carry out an assessment specifically focusing on the evidence produced by EMA and failed *de facto* to rule on the heads of claim set out by that party in its application and reply. On a number of occasions, the General Court unconditionally relied on the results of the final audit report carried out on the Dicoems and Cocoon contracts on the Commission's behalf, despite the fact that, in the main action, EMA specifically challenged those results.

**Third ground of appeal:** Misapplication of the principle of good faith and sincere cooperation in performing a contract

EMA submits that the General Court made an error in its assessment of Belgian law with regard to the application of the principle of good faith and sincere cooperation in performing a contract. In relation to the Dicoems and Cocoon projects, the Commission failed to fulfil its own monitoring obligations as laid down in Article 11.3.4 of the general conditions of each of the contracts in question, which makes specific reference to the Commission's obligation to ensure that the project is correctly carried out from a scientific, technological and financial point of view. The General Court wrongly concluded that the Commission had not failed in its duty of supervision and that it had not infringed any specific provision of either contract and that it had thus been right in terminating immediately the two contracts relating to the Dicoems and Cocoon projects. The General Court also dismissed EMA's claim for damages under those contracts.

**Fourth ground of appeal:** Breach of Community law principles

EMA submits that the General Court committed several infringements of Community law — in particular, it alleges misapplication of the principles of proportionality and non-discrimination — and that it infringed EMA's right of defence.

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**Action brought on 10 March 2014 — Federal Republic of Germany v European Parliament, Council of the European Union**

**(Case C-113/14)**

(2014/C 129/19)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: T. Henze, A. Wiedemann, Agents)

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

**Form of order sought**

The applicant claims that the General Court should:

- annul Article 7 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/01 and (EC) No 1234/2007 <sup>(1)</sup>;
- annul Article 2 of Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products, <sup>(2)</sup> which refers to Article 7 of Regulation (EU) No 1308/2013;
- rule that the effects of the aforementioned legal provisions be considered definitive until provisions adopted on the correct legal basis enter into force;
- order the European Parliament and the Council of the European Union to pay the costs.

**Pleas in law and main arguments**

The Federal Republic of Germany seeks annulment of Article 7 of Regulation (EU) No 1308/2013. Regulation (EU) No 1308/2013 which establishes the common organisation of agricultural markets, was adopted in its entirety on the legal basis of Article 43(2) TFEU.

However, according to the Federal Government, Article 7 of Regulation (EU) No 1308/2013 constitutes a 'measure on fixing prices' within the meaning of Article 43(3) TFEU. The Federal Government therefore takes the view that Article 7 of Regulation (EU) No 1308/2013 should not have been adopted on the legal basis of Article 43(2) TFEU but on the legal basis of Article 43(3) TFEU. According to the Federal Government, Article 7 of Regulation (EU) No 1308/2013 therefore uses an incorrect legal basis.

The Federal Government claims that, for reasons of legal certainty and clarity, Article 2 of Regulation (EU) No 1370/2013, which refers to Article 7 of Regulation (EU) No 1308/2013, must also be annulled. By referring to Article 7 of Regulation (EU) No 1308/2013, which must, in its view, be annulled, Article 2 contributes to giving the false impression that it uses the correct legal basis and is lawful.

In the Federal Government's opinion, the effects of the aforementioned legal provisions must be considered definitive until provisions adopted on the correct legal basis enter into force, in order to protect overriding interests, on grounds of the protection of legitimate expectations for agricultural holdings and on grounds of legal certainty, in accordance with the second paragraph of Article 264 TFEU.

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<sup>(1)</sup> OJ 2013 L 347, p. 671.

<sup>(2)</sup> OJ 2013 L 346, p. 12.

## GENERAL COURT

**Judgment of the General Court of 12 March 2014 — El Corte Inglés v OHIM — Technisynthese (BTS)**

(Case T-592/10) <sup>(1)</sup>

**(Community trade mark — Opposition proceedings — Application for the Community word mark BTS — Earlier Community and national figurative marks TBS — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)**

(2014/C 129/20)

Language of the case: Spanish

### Parties

*Applicant:* El Corte Inglés, SA (Madrid, Spain) (represented by M. López Camba and J. L. Rivas Zurdo initially, then J. L. Rivas Zurdo, E. Seijo Veiguela and I. Munilla Muñoz, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Technisynthese SARL (Saint-Pierre-Montlimart, France)

### Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 September 2010 (Case R 1380/2009-1) relating to opposition proceedings between Technisynthese SARL and El Corte Inglés, SA.

### Operative part of the judgment

*The Court:*

1. Dismisses the action;
2. Orders El Corte Inglés, SA to pay the costs.

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<sup>(1)</sup> OJ C 80, 12.3.2011.

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**Judgment of the General Court of 12 March 2014 — American Express Marketing & Development v OHIM (IP ZONE)**

(Joined Cases T-102/11 and T-369/12 to T-371/12) <sup>(1)</sup>

**(Community trade mark — Applications for Community word marks IP ZONE, EUROPE IP ZONE, IP ZONE EUROPE and EUROPEAN IP ZONE — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)**

(2014/C 129/21)

Language of the cases: English

### Parties

*Applicant:* American Express Marketing & Development Corp. (New York, New York, United States) (represented by: V. Spitz, A. Gaul, T. Golda and S. Kirschstein-Freund, lawyers)

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

**Re:**

Actions brought against the decisions of the Second Board of Appeal of OHIM of 1 December 2010 (Case R 1125/2010-2) and 12 June 2012 (Cases R 1451/2011-2, R 1452/2011-2 and R 1453/2011-2) concerning applications for registration of the sign IP ZONE and of the signs EUROPE IP ZONE, IP ZONE EUROPE and EUROPEAN IP ZONE, respectively, as Community trade marks.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the actions;*
2. *Orders American Express Marketing & Development Corp. to pay the costs.*

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<sup>(1)</sup> OJ C 130, 30.4.2011.

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**Judgment of the General Court of 12 March 2014 — Al Assad v Council**

(Case T-202/12) <sup>(1)</sup>

***(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Entry of an individual on the lists of persons subject to restrictive measures — Personal ties to members of the regime — Rights of the defence — Fair hearing — Obligation to state reasons — Burden of proof — Right to effective judicial protection — Proportionality — Right to property — Right to privacy)***

(2014/C 129/22)

*Language of the case: French*

**Parties**

*Applicant:* Bouchra Al Assad (Damascus, Syria) (represented by: G. Karouni and C. Dumont, lawyers)

*Defendant:* Council of the European Union (represented by: G. Étienne and M.-M. Joséphidès, acting as Agents)

**Re:**

Application for annulment in part, first, of Council Implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ 2012 L 87, p. 103); secondly, of Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP (OJ 2012 L 330, p. 21); thirdly, of Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2013 L 111, p. 1, corrigendum OJ 2013 L 127, p. 27); and, fourthly, of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), in so far as those acts relate to the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*
2. *Orders Ms Bouchra Al Assad to pay the costs.*

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<sup>(1)</sup> OJ C 217, 21.7.2012.



**Judgment of the General Court of 12 March 2014 — Tubes Radiatori v OHIM — Antrax It (Radiator)**(Case T-315/12) <sup>(1)</sup>

**(Community design — Invalidity proceedings — Registered Community design representing a radiator for heating — Earlier design — Ground for invalidity — Lack of individual character — Overall impression not different — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002 — No scope for innovation — Obligation to state reasons)**

(2014/C 129/23)

Language of the case: Italian

**Parties**

*Applicant:* Tubes Radiatori Srl (Resana, Italy) (represented by S. Verea, K. Muraro, M. Balestriero and P. Menapace, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court:* Antrax It Srl (Resana) (represented by L. Gazzola, lawyer)

**Re:**

Action brought against the decision of the Third Board of Appeal of OHIM of 3 April 2012 (Case R 953/2011-3) relating to invalidity proceedings between Antrax It Srl and Tubes Radiatori Srl.

**Operative part of the judgment**

*The Court:*

1. Annuls the decisions of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 3 April 2012 (Case R 953/2011-3);
2. Dismisses the action as to the remainder;
3. Orders OHIM to bear its own costs and to pay those incurred by Tubes Radiatori Srl;
4. Orders Antrax It Srl to bear its own costs.

<sup>(1)</sup> OJ C 273, 8.9.2012.

**Judgment of the General Court of 12 March 2014 — Globosat Programadora v OHIM — Sport TV Portugal (SPORT TV INTERNACIONAL)**(Case T-348/12) <sup>(1)</sup>

**(Community trade mark — Opposition proceedings — Application for Community word mark SPORT TV INTERNACIONAL — Earlier national figurative mark SPORTV — Relative ground for refusal — Proof of use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009 and Rule 22 of Regulation (EC) No 2868/95)**

(2014/C 129/24)

Language of the case: English

**Parties**

*Applicant:* Globosat Programadora Ltda (Rio de Janeiro, Brazil) (represented by: S. Micallef, 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:* Sport TV Portugal, SA (Lisbon, Portugal) (represented by: B. Braga da Cruz and J. Pimenta, lawyers)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 May 2012 (case R 2079/2010-4), relating to opposition proceedings between Globosat Programadora Ltda and Sport TV Portugal, SA.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Globosat Programadora Ltda to pay the costs.

<sup>(1)</sup> OJ C 311, 13.10.2012.

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**Judgment of the General Court of 12 March 2014 — Borrajo Canelo and Others v OHIM**

(Case T-381/12) <sup>(1)</sup>

**(Community trade mark — Proceedings for revocation — Community word mark PALMA MULATA — Genuine use — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Form differing in elements which do not alter the distinctiveness)**

(2014/C 129/25)

Language of the case: Spanish

**Parties**

*Applicants:* Ana Borrajo Canelo (Madrid, Spain); Carlos Borrajo Canelo (Madrid); and Luis Borrajo Canelo (Madrid) (represented by: A. Gómez López, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Tecnoazúcar (Havana, Cuba) (represented by: J. Carbonell Callicó, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 21 May 2012 (Case R 2265/2010-2) concerning proceedings for revocation between Ana Borrajo Canelo, Carlos Borrajo Canelo and Luis Borrajo Canelo, of the one part, and Tecnoazúcar, of the other.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Ms Ana Borrajo Canelo, Mr Carlos Borrajo Canelo and Mr Luis Borrajo Canelo to pay the costs.

<sup>(1)</sup> OJ C 343, 10.11.2012.

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**Judgment of the General Court of 13 March 2014 — Heinrich v OHIM — Commission (European Network Rapid Manufacturing)**

(Case T-430/12) <sup>(1)</sup>

**(Community trade mark — Invalidity proceedings — Community figurative mark European Network Rapid Manufacturing — Absolute ground for refusal — Imitation of the emblem of an international intergovernmental organisation — Article 7(1)(h) of Regulation (EC) No 207/2009 — Article 6b of the Paris Convention)**

(2014/C 129/26)

Language of the case: German

**Parties**

*Applicant:* Heinrich Beteiligungs GmbH (Witten, Germany) (represented by: A. Theis, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* European Commission

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 5 July 2012 (Case R 793/2011-1) relating to invalidity proceedings between the European Commission and Heinrich Beteiligungs GmbH.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the application;*
2. *Orders Heinrich Beteiligungs GmbH to bear its own costs and pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

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<sup>(1)</sup> OJ C 355, 17.11.2012.

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**Judgment of the General Court of 12 March 2014 — Alsteens v Commission**

(Case T-373/13) <sup>(1)</sup>

**(Appeal — Civil Service — Temporary agents — Extension of contract — Manifest inadmissibility of the action at first instance — Right to a hearing — Severability of the codicil extending the contract)**

(2014/C 129/27)

*Language of the case: French*

**Parties**

*Appellant:* Geoffroy Alsteens (Marcinelle, Belgium) (represented by: S. Orlandi, D. de Abreu Caldas and J.-N. Louis, lawyers)

*Other party to the proceedings:* European Commission (represented by: J. Currall and D. Martin, acting as Agents)

**Re:**

Appeal lodged against the order of the European Union Civil Service Tribunal (Third Chamber) of 8 May 2013 in Case F-87/12 *Alsteens v Commission* seeking the annulment of that order.

**Operative part of the judgment**

*The Court:*

1. *Annuls the order of the Civil Service Tribunal of the European Union (Third Chamber) of 8 May 2013 in Case F-87/12 Alsteens v Commission;*
2. *Refers the action back to the Civil Service Tribunal;*
3. *Orders the costs to be reserved.*

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<sup>(1)</sup> OJ C 325, 9.11.2013.

**Action brought on 15 January 2014 — Argo Development and Manufacturing v OHIM — Clapbanner (Advertising articles)**

**(Case T-41/14)**

(2014/C 129/28)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Argo Development and Manufacturing Ltd (Ra'anana, Israel) (represented by: B. Brisset, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Clapbanner Ltd (London, United Kingdom)

**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 22 October 2013 given in Case R 981/2012-3;
- Order the defendant to pay the costs of proceedings.

**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 'advertising articles' — registered under No 1684325-0001

*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:* It was alleged that the design lacked novelty (Article 5 CDR) and individual character (Article 6 CDR)

*Decision of the Cancellation Division:* Declared the contested RCD invalid

*Decision of the Board of Appeal:* Granted the appeal and dismissed the application for a declaration of invalidity

*Pleas in law:* Infringement of Articles 4, 5 and 6 CDR.

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**Action brought on 13 January 2014 — Heidrick & Struggles International v OHIM (THE LEADERSHIP COMPANY)**

**(Case T-43/14)**

(2014/C 129/29)

*Language of the case: English*

**Parties**

*Applicant:* Heidrick & Struggles International, Inc. (Chicago, United States) (represented by: A. Norris, Barrister)

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

**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) of 10 October 2013 given in Case R 338/2013-2;

— Order the defendant to pay the costs of proceedings.

### **Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'THE LEADERSHIP COMPANY' for services in Classes 35 and 44 — Community trade mark application No 11 031 457

*Decision of the Examiner:* Refused to register the trade mark applied for

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Articles 7(1)(b), (c) and 7(2) CTMR.

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## **Action brought on 20 January 2014 — Ludwig-Bölkow-Systemtechnik v Commission**

**(Case T-53/14)**

(2014/C 129/30)

*Language of the case: German*

### **Parties**

*Applicant:* Ludwig-Bölkow-Systemtechnik GmbH (Ottobrunn, Germany) (represented by: M. Núñez Müller and T. Becker, lawyers)

*Defendant:* European Commission

### **Form of order sought**

- Declare that, in the context of Contracts SES6-CT-2004-502596 (HyWays), SES6-CT-2005-019813 (HyApproval) and SES6-CT-2005-513542 (HarmonHy) concluded between the Commission and, inter alia, the applicant, the applicant calculated its project costs in accordance with the applicable contractual provisions, in particular Article II.19 of the General Conditions, and that the Commission has thus infringed its contractual obligations in so far as it calculated the applicant's project costs differently when issuing debit notes No 3241314522 and No 3241315423 (HyWays); No 3241314527 and No 3241314526 (HyApproval); and No 3241314519 and No 3241313756 (HarmonHy);
- declare that, in the context of Contract SES6-CT-2004-502596 (HyWays), the applicant received a financial contribution from the Community of only EUR 495 269.48, and that in issuing its debit notes No 3241314522 and No 3241315423, the Commission thus wrongly proceeded on the assumption that the applicant had been granted a financial contribution of EUR 604 240.79;
- declare that the costs which, in the context of Contract SES-CT-2005-019813 (HyApproval), were reclassified by the Commission on the basis of the Final Audit Report of 15 July 2011 from management costs (MGT) to research costs (RTD) are in fact management costs;
- declare that the applicant is not required under the aforementioned contracts to pay liquidated damages pursuant to Article II.30 of the General Conditions;
- declare that, with the exception of the amount of EUR 1 323.02 in respect of debit note No 3241314523 (HyWays), EUR 3 870.02 in respect of debit note No 3241314527 (HyApproval), and EUR 16 868.66 in respect of debit note No 3241314519 (HarmonHy), the Commission wrongly issued the abovementioned debit notes, and that, with the exception of the amounts mentioned here, the amounts stated in the debit notes are not payable by the applicant to the Commission;
- order the Commission to pay the costs of the proceedings.

### **Pleas in law and main arguments**

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

1. First plea in law

The applicant submits under the first plea in law that it used a method of calculation of its project costs which accords with Article II.19 of the General Conditions of the contracts at issue. It therefore takes the view that the Commission was not entitled to query the method of calculation of project costs used by the applicant or to apply a different method of calculation when issuing the debit notes at issue.

2. Second plea in law

The applicant submits that it received a financial contribution of only EUR 495 269.48 in respect of the HyWays project. The Commission therefore wrongly proceeded on the assumption, when issuing the debit notes, that the applicant had been granted a financial contribution of EUR 604 240.79.

3. Third plea in law

The applicant submits under the third plea in law that the Commission wrongly reclassified certain costs in the HyApproval project from 'management' to 'research'.

4. Fourth plea in law

The applicant submits that the Commission is not entitled to claim liquidated damages from it under Article II.30 of the General Conditions of the contracts at issue.

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**Action brought on 23 January 2014 — Blackrock v OHIM (INVESTING FOR A NEW WORLD)**

**(Case T-59/14)**

(2014/C 129/31)

*Language of the case: English*

**Parties**

*Applicant:* Blackrock, Inc. (New York, United States) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Blair, Solicitors)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 October 2013 given in Case R 573/2013-1;
- Order the defendant to pay the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'INVESTING FOR A NEW WORLD' for services in Classes 35 and 36 — Community trade mark application No 11 144 706

*Decision of the Examiner:* Found the trade mark applied for not eligible for registration

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and 7(2) CTMR.

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**Action brought on 27 January 2014 — Stührk Delikatessen Import v Commission**

**(Case T-58/14)**

(2014/C 129/32)

*Language of the case:* German

**Parties**

*Applicant:* Stührk Delikatessen Import GmbH & Co. KG (Marne, Germany) (represented by: J. Sparr, lawyer)

*Defendant:* European Commission

**Form of order sought**

- Annul Commission Decision C(2013) 8286 final of 27 November 2013 in Case AT.39633 — Shrimps, notified to the applicant on 29 November 2013, in so far as it concerns the applicant;
- in the alternative, cancel in its entirety the fine imposed on the applicant;
- in the further alternative, reduce the amount of the fine imposed on the applicant and set a fine not exceeding EUR 188 300;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies, inter alia, on the following pleas in law:

- The Commission erred in assuming that the applicant participated in an overall cartel in the Netherlands, Belgium, France and Germany, as the applicant merely took account of the price range provided by two undertakings with significant market power in respect of a customer in Northern Germany and, therefore, merely participated in an anti-competitive agreement which, in geographical and substantive terms, was very limited.
- The applicant submits that it neither supported nor was aware of the other participants' price and volume agreements or customer allocation agreements identified by the Commission in respect of the markets in the Netherlands, Belgium and France.
- The applicant submits that the Commission failed in part to have regard to correctly established facts and erred in part in its assessment of those facts, contrary to the dates and substance of those facts. In that regard the applicant also complains of a failure to take into account numerous mitigating circumstances in the context of the determination of the amount of the fine.
- The applicant further maintains that the Commission's 2006 Guidelines on the method of setting fines and their application are unlawful and contrary to the principle of precision and the framework established by the legislature for the setting of fines.

- In the alternative, the applicant relies on the fact that, in the proceedings at issue, the Commission departed materially from the methodology of the Guidelines on fines. It thus failed to have regard to the fact that it was bound by its own guidelines and thereby exceeded the bounds of its discretion. Furthermore, in this particular case, the Commission arbitrarily set the fines imposed on the participants, and granted the main participants and instigators of the overall cartel identified by the Commission greater reductions than it granted the applicant, contrary to its own findings regarding the respective gravity of the infringements.

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**Action brought on 23 January 2014 — Blackrock v OHIM (INVESTING FOR A NEW WORLD)**

**(Case T-59/14)**

(2014/C 129/33)

*Language of the case: English*

**Parties**

*Applicant:* Blackrock, Inc. (New York, United States) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Blair, Solicitors)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 October 2013 given in Case R 573/2013-1;
- Order the defendant to pay the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'INVESTING FOR A NEW WORLD' for services in Classes 35 and 36 — Community trade mark application No 11 144 706

*Decision of the Examiner:* Found the trade mark applied for not eligible for registration

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and 7(2) CTMR.

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**Action brought on 28 January 2014 — Monster Energy v OHIM — Balaguer (icexpresso + energy coffee)**

**(Case T-61/14)**

(2014/C 129/34)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

*Other party to the proceedings before the Board of Appeal:* Luis Yus Balaguer (Movera, Spain)



**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) of 15 November 2013 given in Case R 821/2013-2;
- Order the defendant to pay the costs of proceedings.

**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 trade mark containing the verbal elements 'icexpresso + energy coffee' for goods and services in Classes 9, 30, 32 and 35 — Community trade mark application No 9 950 403

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

*Mark or sign cited in opposition:* The earlier marks: CTM registrations Nos 8 445 711, 8 815 722 and 8 815 748 for goods in Classes 5 and 32

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) CTMR.

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**Action brought on 29 January 2014 — Post Bank Iran v Council**

(Case T-68/14)

(2014/C 129/35)

*Language of the case:* English

**Parties**

*Applicant:* Post Bank Iran (Tehran, Iran) (represented by: D. Luff, lawyer)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- Annul paragraph 1 of the Annex to Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 306, p. 18);
- Annul paragraph 1 of the Annex to Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 306, p. 3);
- Declare Article 20(1)(c) of Council Decision 2010/413/CFSP<sup>(1)</sup>, as amended by Article 1(7) of Council Decision 2012/35/CFSP<sup>(2)</sup> of 23 January 2012, and Articles 23 (2) (d) and 46(2) of Regulation 267/2012<sup>(3)</sup> of 23 March 2012 inapplicable to the applicant;
- Order the defendant to pay the applicant's costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Court has jurisdiction to review both paragraph 1 of the Annex to Council Decision 2013/661/CFSP and paragraph 1 of the Annex to Council Implementing Regulation (EU) No 1154/2013 and their conformity with the general principles of European law.
2. Second plea in law, alleging that Council Decision 2010/413/CFSP, as amended by Article 1(7) of Council Decision 2012/35/CFSP of 23 January 2012 and Council Regulation 267/2012 of 23 March 2012, violates EU law and should be declared inapplicable to the Applicant, thus invalidating Council Decision 2013/661/CFSP of 15 November 2013 and Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 which are based on them, for the following reasons:
  - Article 46(2) of Council Regulation 267/2012 of 23 March 2012 violates Article 215 TFEU, since it enables the Council to decide sanctions against the Applicant without abiding by the procedure provided in Article 215 TFEU.
  - Article 20(1)(c) of Council Decision 2010/413/CFSP, as amended by Article 1(7) of Council Decision 2012/35/CFSP of 23 January 2012 and Article 23 (2)(d) of Regulation 267/2012 of 23 March 2012 violate the persons' fundamental rights as protected in Articles 2, 21 and 23 of the TEU and the EU Charter of fundamental rights insofar as they provide the Council with the arbitrary powers to decide which person and entity the Council wants to sanction when the Council determines that such person or entity provides support to the Government of Iran.
3. Third plea in law, alleging that the Council erred in law and in fact when it adopted Council Decision 2013/661/CFSP of 15 November 2013 and Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 as far as the Applicant is concerned, for the following reasons:
  - The specific reason for the listing of Post Bank Iran is unsubstantiated. The Applicant clearly denied it provided financial support to the Government of Iran. Furthermore, the Applicant has not provided nuclear support to Iran. Hence the requirements of Article 20.1(c) of Council Decision 2010/413/CFSP (as subsequently amended by Article 1(7) of Council Decision 2012/35/CFSP of 23 January 2012, Article 1(8) of Council Decision 2012/635/CFSP of 15 October 2012 and Article 1(2) of Council Decision 2012/829/CFSP of 21 December 2012), and the requirements of Article 23(2)(d) of Council Regulation (EU) No 267/2012 (as subsequently amended by Article 1 (11) of Council Regulation 1263/2012 of 21 December 2012) are not met.
  - By sanctioning Post Bank Iran on the sole grounds it is a Government-owned company, the Council discriminated against the Applicant as compared with other publicly-owned companies of Iran which are not sanctioned. While doing so, the Council violated the principles of equality, non-discrimination and sound administration.
  - The Council did not adequately state the reasons of its decision to maintain the Applicant in the list of sanctioned entities. While referring to the 'impact of the measures in the context of the Union's policy objectives', it failed to specify the type of impact it refers to and how the measures would address such impact.
  - By maintaining the Applicant in the List of sanctioned companies, the Council has misused its powers. The Council refused in practice to comply with the Judgment of the General Court in case T-13/11. The Council undermined the institutional construct of the European Union and the Applicant's right to obtain justice and see it applied. The Council also evaded its own responsibilities and obligations under Council Decision 2013/661/CFSP of 15 November 2013 and Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013, as they were clearly specified to the Council by the Court in its above-mentioned Judgment.
  - The Council violated the principle of legitimate expectations by not complying with a judgment of the Court, in which the Council was a party against the Applicant and which the Council lost, by failing to even comply with the rationale and motivations of the Judgment, by making a factual mistake regarding the Applicant's business and its presumed role towards the Government of Iran, by failing to carry out the slightest investigation into the Applicant's actual role and business in Iran whereas this was indicated by the Court as an important aspect of the EU's sanctions' regime against Iran, and by maintaining the sanctions beyond 20 January 2014, date at which the EU agreed on revenue generating activities for Iran, since Iran is no longer considered to engage in nuclear proliferation activities.

- The Council violated the principle of proportionality. The sanctions target nuclear proliferation activities of Iran. The Council has not established and cannot establish that the Applicant has directly or indirectly provided support for nuclear proliferation in Iran. It even no longer alleges that it is contributing specifically to nuclear proliferation in Iran. Given the lack of impact of the sanctions on nuclear proliferation, the objective of the sanctions does not justify the annulment of the benefits accruing to the Applicant from the Court's judgment and the stress they impose on the overall system of judicial protection in the EU, let alone the violation of the Applicant's right of property and of commerce. This conclusion is reinforced by the adoption on 20 January 2014 of the Council's regulation lifting certain sanctions based on the acknowledgment that Iran is actually not engaging in nuclear proliferation activities.

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

<sup>(2)</sup> Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22)

<sup>(3)</sup> Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1)

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**Action brought on 30 January 2014 — Swatch v OHIM — Panavision Europe (SWATCHBALL)**

**(Case T-71/14)**

(2014/C 129/36)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Swatch AG (Biel, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Panavision Europe Ltd (Greenford, United Kingdom)

**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) of 11 November 2013 given in Case R 470/2012-2.

**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 word mark 'SWATCHBALL' for goods and services in Classes 9, 35, 41 and 42 — Community trade mark application No 6 543 524

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

*Mark or sign cited in opposition:* International Registrations and Community trade mark registrations of the figurative mark containing the verbal element 'swatch' and the word mark 'SWATCH'

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Articles 8(1)(b) and 8(5) CTMR.

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**Action brought on 7 February 2014 — Islamic Republic of Iran Shipping Lines and Others v Council****(Case T-87/14)**

(2014/C 129/37)

*Language of the case: English***Parties**

*Applicants:* Islamic Republic of Iran Shipping Lines (Tehran, Iran); Hafize Darya Shipping Lines (HDSL) (Tehran); Khazar Shipping Lines (Anzali Free Zone, Iran); IRISL Europe GmbH (Hamburg, Germany); IRISL Marine Services and Engineering Co. (Qeshm Island, Iran); Irano Misr Shipping Co. (Tehran); Safiran Payam Darya Shipping Lines (SAPID) (Tehran); Shipping Computer Services Co. (Tehran); Soroush Sarzamin Asatir Ship Management (Tehran); South Way Shipping Agency Co. Ltd (Tehran); et Valfajr 8th Shipping Line Co. (Tehran) (represented by: F. Randolph, QC, M. Lester, Barrister, and M. Taher, Solicitor)

*Defendant:* Council of the European Union

**Form of order sought**

The applicants claim that the Court should:

- Annul Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 316, p. 46) and Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ L 316, p. 1), in so far as they apply to the applicants;
- Declare the inapplicability as regards Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 272, p. 46) and Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ L 272, p. 1);
- Order the Council to pay the applicants' costs.

**Pleas in law and main arguments**

The applicants rely on the 'objection of illegality' in seeking to have the October Measures declared unlawful in that: they lack a proper legal basis; violate the applicants' legitimate expectations, and the principles of finality, legal certainty, *non bis in idem*, and *res judicata*; they discriminate against IRISL and violate its fundamental rights without justification or proportion; breach the applicants' rights of defence; and are an abuse of the Council's powers.

The applicants rely on the following grounds for the annulment of the Contested Measures.

1. First plea in law, alleging that there is no proper legal basis for the Contested Measures.
2. Second plea in law, alleging that the Council has erred manifestly in its decisions to include each of the applicants.
3. Third plea in law, alleging that the Council has breached the applicants' rights of defence.
4. Fourth plea in law, alleging that the Contested Measures breach the applicants' legitimate expectations, and the principles of finality, legal certainty, *res judicata*, *non bis in idem*, and non-discrimination.
5. Fifth plea in law, alleging that the Contested Measures violate, without justification or proportion, the applicants' fundamental rights, in particular their right to reputation and to respect for their property.

**Action brought on 13 February 2014 — Harry's New York Bar v OHIM — Harrys Pubar (HARRY'S NEW YORK BAR)**

**(Case T-97/14)**

(2014/C 129/38)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Harry's New York Bar SA (Paris, France) (represented by: S. Arnaud, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Harrys Pubar AB (Gothenburg, Sweden)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 November 2013 given in Joined Cases R 1038/2012-1 and R 1045/2012-1;
- Order the defendant to pay the costs of proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'HARRY'S NEW YORK BAR' for goods and services in Classes 25, 30, 32 and 43 — Community trade mark application No 3 383 445

*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:* Swedish trade mark registrations Nos 356 009, 320 026, 315 142, 55 6513-1066 for goods and services in Classes 25 and 42

*Decision of the Opposition Division:* Allowed the opposition in part

*Decision of the Board of Appeal:* Upheld the appeal in part in Case R 1038/2012-1 and dismissed the appeal in Case R 1045/2012-1

*Pleas in law:* Infringement of Article 8(1)(b) and 4 CTMR.

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**Action brought on 14 February 2014 — Hellenic Republic v Commission**

**(Case T-107/14)**

(2014/C 129/39)

*Language of the case: Greek*

**Parties**

*Applicant:* Hellenic Republic (represented by: I. Khalkias, E. Leftheriotou, and A. Vasilopoulou)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the Commission Implementing Decision of 12 December 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2013) 8743 and published OJ 2013 L 338 to the extent of the sections of it whereby there is excluded, from European Union financing, expenditure (a) to a total amount of EUR 78 813 783,87, which was incurred by the Hellenic Republic in the area of the single payment scheme for the financial years 2008-2010 and (b) to a total amount of EUR 22 230 822,10 which was incurred by the Hellenic Republic in the area of cross compliance for the financial years 2006-2010;
- order the Commission 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. In respect of the correction which is imposed by the contested decision in the framework of the single payment scheme of Regulation No 1782/2003<sup>(1)</sup> (payment entitlements):

First plea in law:

- Lack of legal basis for the imposition of corrections in relation to the calculation of the single payment entitlements and the allocation of the national reserve and misinterpretation and misapplication of Articles 42 and 43 of Regulation No 1782/2003, Article 21 and Article 28(1) and (2) of Regulation No 795/2004<sup>(2)</sup> and Article 31 of Regulation No 1290/2005,<sup>(3)</sup> and
- Unlawful imposition of flat-rate corrections in the framework of the single payment scheme, since there is no valid legal basis for the application of the old guidelines in Document VI/5530/1997 to the new CAP and to the single payment scheme, further, the application of the old guidelines to the new CAP constitutes a misuse of the powers of the EU in the area of financial corrections and at the same time is a serious infringement of the principle of proportionality.

Second plea in law, relating to the non-inclusion of all the forage areas in the calculation of the reference amounts:

- Contrary to the principles of legal certainty and proportionality and exceeding the bounds of its discretion, the Commission proposes a 5% flat-rate correction, though it should have proposed no correction, or should have limited it to an amount of 2%.

Third plea in law, relating to the non-inclusion of all the forage areas in the calculation of the reference amounts:

- Infringement of Article 4 of Regulation No 2529/2001, resulting in an incorrect basis for the calculation of the proposed flat-rate correction, which ought to be limited to the amount of EUR 162 920 267,28 for the year 2007, EUR 162 528 761,38 for the year 2008 and EUR 161 343 586,94 for the year 2009.

Fourth plea in law, in relation to the allocation of the national reserve:

- Misinterpretation of the provisions of Article 42 of Regulation No 1782/03 and Article 21 of Regulation No 795/2004 (criteria for the allocation of the national reserve) and erroneous assessment of the facts.

Fifth plea in law, in relation to the allocation of the national reserve:

- Absence of the required conditions for the application of Regulation No 1290/2005, since the Commission's findings in relation to the national criteria for the allocation of the national reserve do not constitute infringements of it, and
- Misinterpretation and misapplication of Article 31 of Regulation No 1290/2005 and of the guidelines in Document VI/5530/1997, since (a) the criticisms which the Commission relies on in relation to the criteria for the allocation of the national reserve even if assumed to be correct did not lead to the payment of sums to persons not entitled and did not create the risk of loss for the EAGF and (b) the criticisms in question are not linked to the failure to apply a key control and therefore do not justify the imposition of a flat-rate correction of 10%.

2. With regard to the correction imposed by the contested decisions in the area of cross compliance:

Sixth plea in law:

- The Commission's Document AGRI-2005-64043 issued on 9 June 2006 cannot constitute a legal basis for the imposition of a financial correction. In any event it cannot be applied retrospectively for the imposition of a correction for the 2006 claim year.

Seventh plea in law, specifically in respect of the 2008 claim year:

- The financial corrections have been imposed contrary to the procedure laid down in Article 11 of Regulation No 885/2006 and Article 31 of Regulation No 1290/2005, and
- In any event the Commission erred as to the facts and provided insufficient reasons in coming to the conclusion that there were weaknesses in the basic control system in the area of cross compliance.

Eighth plea in law: misapplication of Document AGRI-2005-64043:

- The Commission exceeded the bounds of its discretion when it decided on the imposition of corrections of a disproportionate amount in respect of the identified irregularities, to the extent that a correction of 5% is imposed for the years 2006 and 2007, and
- Error in the determination of the basis of calculation of the correction imposed.

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<sup>(1)</sup> Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

<sup>(2)</sup> Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

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### Action brought on 17 February 2014 — Bunge Argentina v Council

(Case T-116/14)

(2014/C 129/40)

*Language of the case: English*

#### Parties

*Applicant:* Bunge Argentina SA (Buenos Aires, Argentina) (represented by: J. Bellis and R. Luff, lawyers)

*Defendant:* Council of the European Union

#### Form of order sought

The applicant claims that the Court should:

- Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and
- Order the defendant to bear the costs.

### Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation <sup>(1)</sup>.
2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.
3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

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<sup>(1)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

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### Action brought on 17 February 2014 — BSH Bosch und Siemens Hausgeräte v OHIM — Arçelik (AquaPerfect)

(Case T-123/14)

(2014/C 129/41)

*Language in which the application was lodged: English*

### Parties

*Applicant:* BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany) (represented by: S. Biagosch, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Arçelik AS (Istanbul, Turkey)

### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 December 2013 given in Case R 314/2013-4;
- Order the defendant to pay the costs of proceedings.

### 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 word mark 'AquaPerfect' for the goods in Class 7 — Community trade mark application No 10 330 454

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

*Mark or sign cited in opposition:* Community registration No 9 444 118 of the word mark 'waterPerfect' for goods in Class 7

*Decision of the Opposition Division:* Partly upheld the opposition

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the opposition

*Pleas in law:* Infringement of Article 8(1)(b) CTMR.

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**Action brought on 3 March 2014 — adidas v OHIM — Shoe Branding Europe (Device of two parallel stripes)**

**(Case T-145/14)**

(2014/C 129/42)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* adidas (Herzogenaurach, Germany) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Shoe Branding Europe BVBA (Oudenaarde, Belgium)

**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) of 28 November 2013 given in Case R 1208/2012-2;
- Order the defendant to pay the costs of proceedings.

**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 mark ('other type of mark') for footwear in Class 25 — Community trade mark application No 8 398 141

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

*Mark or sign cited in opposition:* Community trade mark registrations Nos 3 517 646, 3 517 612, 3 517 588, 3 517 661, 4 269 072, 6 081 889; German trade mark registrations Nos 944 624, 944 623, 399 50 559, 897 134; International trade mark registration No 391 692 for goods in Classes 18, 25 and 28; and non-registered mark/sign used in the course of trade in Germany

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Articles 8(1)(b) and 8(4) CTMR.

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## EUROPEAN UNION CIVIL SERVICE TRIBUNAL

### Judgment of the Civil Service Tribunal (3rd Chamber) of 12 March 2014 — CR v Parliament

(Case F-128/12) <sup>(1)</sup>

*(Civil service — Remuneration — Family allowances — Dependent child allowance — Recovery of overpayments — Intention to mislead the administration — Evidence — Not possible to rely against the administration upon the five year time-limit for bringing the application for recovery of the overpayments — Plea of illegality — Pre-litigation procedure — Requirement of consistency between the complaint and the action — Plea of illegality raised for the first time in the action — Admissibility)*

(2014/C 129/43)

Language of the case: French

#### Parties

*Applicant:* CR (represented by: A. Salerno and B. Cortese, lawyers)

*Defendant:* European Parliament (represented by: V. Montebelle-Demogeot and E. Taneva, Agents)

*Intervener in support of the defendant:* Council of the European Union (represented by: M. Bauer and A. Bisch, Agents)

#### Re:

Application to annul the decision to recover, under Article 85(2) of the Staff Regulations, all of the dependent child allowance overpaid to the applicant and not only that overpaid to him during the last five years.

#### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the action;*
2. *Orders CR to bear his own costs and to pay the costs incurred by the European Parliament;*
3. *Orders the Council of the European Union, as the intervener, to bear its own costs.*

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<sup>(1)</sup> OJ C 26, 26.1.2013, p. 73.

### Order of the Civil Service Tribunal (3rd Chamber) of 5 March 2014 — DC v Europol

(Case F-77/13) <sup>(1)</sup>

*(Civil service — Europol staff — Invalidity — Invalidity allowance — Calculation of interest — Application for damages — Manifest inadmissibility)*

(2014/C 129/44)

Language of the case: Dutch

#### Parties

*Applicant:* DC (represented by: W. Brouwer, lawyer)

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

#### Re:

Application to annul the decision fixing the interest payable on the sum paid in respect of total incapacity for work following two accidents which occurred during two work-related journeys.

**Operative part of the order**

1. *The action is dismissed as manifestly inadmissible.*
2. *DC is to bear his own costs and is ordered to pay the costs incurred by the European Police Office.*

(<sup>1</sup>) OJ C 352, 30.11.2013, p. 27.

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**Action brought on 11 December 2013 — ZZ v Commission****(Case F-119/13)**

(2014/C 129/45)

*Language of the case: French***Parties**

*Applicants:* ZZ (represented by: D. de Abreu Caldas and J.-N. Louis, lawyers)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

The annulment of the decisions on the transfer of the applicants' pension rights to the European Union pension scheme which apply the new GIP relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

**Form of order sought**

- Annul the decisions concerning the calculation of the accredited pension rights acquired by the applicants before their entry into service with the Commission;
- Order the Commission to pay the costs.

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**Action brought on 20 December 2013 — ZZ v OHIM****(Case F-125/13)**

(2014/C 129/46)

*Language of the case: German***Parties**

*Applicant:* ZZ (represented by: H. Tettenborn, lawyer)

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

**Subject-matter and description of the proceedings**

Application for annulment of the appraisal report for 2012, covering the period from 1 October 2011 to 31 December 2012, and of the objectives set for the period from 1 January to 31 December 2013, and claim for damages

**Form of order sought**

- Annul the applicant's appraisal report of 15 March 2013 covering the period from 1 October 2011 to 31 December 2012;
- annul the objectives set for the applicant by OHIM in respect of the period January to December 2013;

- order OHIM to pay to the applicant damages of an appropriate amount at the discretion of the Tribunal for the non-material damage suffered;
  - order OHIM to pay the costs.
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**CORRIGENDA****Corrigendum to the notice in the Official Journal in Case T-689/13**

(Official Journal of the European Union C 85 of 22 March 2014, p. 21)

(2014/C 129/47)

The OJ notice in Case T-689/13 *Bilbaina de Alquitranes and Others v Commission* should read as follows:

**'Action brought on 20 December 2013 — Bilbaina de Alquitranes and Others v Commission**

**(Case T-689/13)**

(2014/C 85/37)

*Language of the case: English*

**Parties**

*Applicants:* Bilbaina de Alquitranes, SA (Luchana-Baracaldo, Vizcaya, Spain); Deza, a.s. (Valašské Meziříčí, Czech Republic); Industrial Química del Nalón, SA (Oviedo, Spain); Koppers Denmark A/S (Nyborg, Denmark); Koppers UK Ltd (Scunthorpe, United Kingdom); Koppers Netherlands BV (Uithoorn, Netherlands); Rütgers basic aromatics GmbH (Castrop-Rauxel, Germany); Rütgers Belgium NV (Zelzate, Belgium); Rütgers Poland Sp. z o.o. (Kędzierzyn-Koźle, Poland); Bawtry Carbon International Ltd (Doncaster, United Kingdom); Grupo Ferroatlántica, SA (Madrid, Spain); SGL Carbon GmbH (Meitingen, Germany); SGL Carbon GmbH (Bad Goisern am Hallstättersee, Austria); SGL Carbon (Passy, France); SGL Carbon, SA (La Coruña, Spain); SGL Carbon Polska S.A. (Racibórz, Poland); ThyssenKrupp Steel Europe AG (Duisburg, Germany); and Tokai Eftcarbon GmbH (Grevenbroich, Germany) (represented by: K. Van Maldegem and C. Mereu, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- Declare the Application admissible and well-founded;
- Annul the Contested Act as far as it classifies CTPHT as H400 and H410;
- Order the Commission to pay the costs and expenses of these proceedings.

**Pleas in law and main arguments**

The Applicants seek partial annulment of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures ('the CLP Regulation') (OJ L 261, p. 5), insofar as it classifies pitch, coal tar, high temp CAS Number 65996-93-2 ('CTPHT') as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) (the 'Contested Act').

In support of the action, the applicants rely on three pleas in law:

1. First plea in law, alleging that the contested act is unlawful because it infringes the REACH and CLP provisions regarding classification of substances as toxic for the aquatic environment and studies which must be accepted for this purpose, as well as the principle of equal treatment, in so far as it rejected studies performed according to REACH and OECD guidelines and it required testing without any accepted standardised method.

2. Second plea in law, alleging that the contested act is unlawful because it is based on a manifest error of assessment since it failed to take into consideration the inert inherent properties of CTPHT which have notably a significant impact on UV light testing and the application of the summation method; it established M-factors for PAH constituents without a proper assessment of the studies relied upon and it rejected information provided by the Applicants without valid justification.
  3. Third plea in law, alleging that the contested decision is unlawful because it breached the EU law principles of transparency and right of defence.'
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ISSN 1977-091X (electronic edition)  
ISSN 1725-2423 (paper edition)



**Publications Office of the European Union**  
2985 Luxembourg  
LUXEMBOURG

**EN**