Official Journal of the European Union

C 175

English edition

Information and Notices

Volume 57

10 June 2014

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(2014/C 175/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 10 April 2014 — European Commission v Siemens AG Österreich, VA Tech Transmission & Distribution GmbH & Co. KEG, Siemens Transmission & Distribution Ltd, Siemens Transmission & Distribution SA, Nuova Magrini Galileo SpA

(Joined Cases C-231/11 P to C-233/11 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Market in gas insulated switchgear projects — Joint and several liability for payment of the fine — Concept of an 'undertaking' — Principle of personal liability and the principle that the penalty must be specific to the offender and the offence — Unlimited jurisdiction of the General Court — The ultra petita rule — Principles of proportionality and equal treatment)

(2014/C 175/02)

Language of the case: German

Parties

Appellants: European Commission (represented by: A. Antoniadis, R. Sauer and N. von Lingen, acting as Agents) (C-231/11 P), Siemens Transmission & Distribution Ltd (C-232/11 P), Siemens Transmission & Distribution SA, Nuova Magrini Galileo SpA (C-233/11 P) (represented by: H. Wollmann and F. Urlesberger, Rechtsanwälte)

Other parties to the proceedings: Siemens AG Österreich, VA Tech Transmission & Distribution GmbH & Co. KEG, Siemens Transmission & Distribution Ltd, Siemens Transmission & Distribution SA, Nuova Magrini Galileo SpA (represented by: H. Wollmann and F. Urlesberger, Rechtsanwälte), European Commission (represented by: A. Antoniadis, R. Sauer and N. von Lingen, acting as Agents)

Re:

Appeals brought against the judgment of the General Court (Second Chamber) of 3 March 2011 in Joined Cases T 122/07 to T 124/07 Siemens Österreich and Others v Commission, being an application, primarily, for the partial annulment of Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.899 — Gas insulated switchgear) and, in the alternative, for a reduction of the fine imposed on the appellants

Operative part of the judgment

The Court:

1) *Sets aside paragraph 2 of the operative part of the judgment of the General Court of the European Union of 3 March 2011 in Joined Cases T-122/07 to T-124/07 Siemens Österreich and Others v Commission, in so far as it annuls Article 2(j) and (k) of Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article [81 EC] and Article 53 of the EEA Agreement (Case COMP/F/38.899 — Gas insulated switchgear);*

2) *Sets aside the first indent of paragraph 3 of the operative part of the judgment in Joined Cases T-122/07 to T-124/07 Siemens Österreich and Others v Commission;*

3) *Sets aside the second to fourth indents of paragraph 3 of the operative part of the judgment in Joined Cases T-122/07 to T-124/07 Siemens Österreich and Others v Commission, in so far as they fix by implication the share of the fines for the payment of which the applicants at first instance were held jointly and severally liable;*

4) *Dismisses the appeals as to the remainder;*

5) *Orders Siemens AG Österreich, VA Tech Transmission & Distribution GmbH & Co. KEG, Siemens Transmission & Distribution Ltd, Siemens Transmission & Distribution SA and Nuova Magrini Galileo SpA to pay the costs relating to the appeal in Case C-231/11 P;*

6) *Orders Siemens Transmission & Distribution Ltd to pay the costs relating to the appeal in Case C-232/11 P;*

7) *Orders the European Commission to pay the costs relating to the appeal in Case C-233/11 P;*

8) *The costs relating to the proceedings at first instance remain allocated in accordance with paragraphs 5 to 7 of the operative part of the judgment of 3 March 2011 in Joined Cases T-122/07 to T-124/07 Siemens Österreich and Others v Commission.*

([1]) OJ C 204, 9.7.2011.

Judgment of the Court (Fourth Chamber) of 10 April 2014 — Areva v Alstom SA, T&D Holding SA, formerly Areva T&D Holding SA, Alstom Grid SAS, formerly Areva T&D SA, Alstom Grid AG, formerly Areva T&D AG, European Commission

(Joined Cases C-247/11 P and C-253/11 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Market in gas insulated switchgear projects — Attributability of unlawful conduct of subsidiaries to their parent companies — Obligation to state reasons — Joint and several liability for payment of a fine — Concept of an 'undertaking' — 'De facto' joint and several liability — Principle of legal certainty and the principle that penalties must be specific to the offender and the offence — Principles of proportionality and equal treatment)

(2014/C 175/03)

Language of the case: French

Parties

Appellants: Areva (represented by: A. Schild, C. Simphal and E. Estellon, avocats) (C-247/11 P), Alstom SA, T&D Holding SA, Alstom Grid SAS, Alstom Grid AG (C-253/11 P) (represented by: J. Derenne, A. Müller-Rappard and M. Lagrue, avocats)

Other parties to the proceedings: Alstom SA, T&D Holding, formerly Areva T&D Holding SA, Alstom Grid SAS, formerly Areva T&D SA, Alstom Grid AG, formerly Areva T&D AG (represented by: J. Derenne, A. Müller-Rappard and M. Lagrue, avocats), European Commission (represented by: V. Bottka and N. von Lingen, acting as Agents), Areva (represented by: A. Schild, C. Simphal and E. Estellon, avocats)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 3 March 2011 in Joined Cases T-117/07 and T-121/07 Areva and Others v Commission, by which that court dismissed in part the application for annulment of Commission Decision C (2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.899) — Gas insulated switchgear — Infringement of the rights of the defence — Failure to fulfil the obligation to state reasons — Joint and several liability for payment of the fine — Attributability of the unlawful conduct

Operative part of the judgment

The Court:

1) *Annuls the second indent of paragraph 3 of the operative part of the judgment of the General Court of the European Union of 3 March 2011 in Joined Cases T-117/07 and T-121/07 Areva and Others v Commission;*

2) *Annuls Article 2(c) of Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article [81 EC] and Article 53 of the EEA Agreement (Case COMP/F/38.899 — Gas insulated switchgear);*

3) *For the infringements established in Article 1(b) to (f) of Decision C(2006) 6762 final, imposes a fine of EUR 27 795 000 on Alstom SA, jointly and severally with Areva Grid SAS, and a fine of EUR 20 400 000 on Areva SA, T&D Holding SA and Alstom Grid AG, jointly and severally with Alstom Grid SAS;*

4) *Dismisses the appeals as to the remainder;*

5) *Orders the European Commission, in addition to bearing its own cost in relation to both the proceedings at first instance and the appeals, to pay one fifth of the costs incurred by Areva SA, Alstom SA, T&D Holding SA, Alstom Grid SAS and Alstom Grid AG relating to the proceedings at first instance and the appeals;*

6) *Orders Areva SA, Alstom SA, T&D Holding SA, Alstom Grid SAS and Alstom Grid AG to bear four-fifths of their own costs relating to the proceedings at first instance and the appeals.*

([1]) OJ C 211, 16.7.2011.

Judgment of the Court (Fifth Chamber) of 9 April 2014 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — T-Mobile Austria GmbH v Verein für Konsumenteninformation

(Case C-616/11) ([1])

(Directive 2007/64/EC — Payment services — Article 4.23 — Concept of payment instrument — Ordering transfers through online banking and by paper transfer order — Article 52(3) — Right of the payee to request from the payer charges for the use of a payment instrument — Power of Member States to lay down a general prohibition — Contract between a mobile phone operator and individuals)

(2014/C 175/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: T-Mobile Austria GmbH

Defendant: Verein für Konsumenteninformation

Re:

Request for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 4.23 and Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1) — Scope — Concept of 'payment instrument' — Provisions of national law which lay down a general prohibition of the imposition of handling charges in respect of the use of a payment instrument — Contract between a mobile phone operator and an individual — Payment by way of signed cash payment form, by transfer of cash payment form, or by transfer through online banking

Operative part of the judgment

1) *Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC must be interpreted as being applicable to the use of a payment instrument in the course of the contractual relationship between a mobile phone operator, as payee, and that operator's customer, as payer.*

2) *Article 4.23 of Directive 2007/64 must be interpreted as meaning that both the procedure for ordering transfers by means of a transfer order form signed by the payer in person and the procedure for ordering transfers through online banking constitute payment instruments within the meaning of that provision.*

3) *Article 52(3) of Directive 2007/64 must be interpreted as meaning that it gives Member States the power to prohibit generally payees from levying charges on the payer for the use of any payment instrument, if the national legislation, as a whole, takes into account the need to encourage competition and the use of efficient payment instruments, which is for the referring court to ascertain.*

(1) OJ C 73, 10.3.2012.

Judgment of the Court (First Chamber) of 10 April 2014 (request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Bydgoszczy — Poland) — Emerging Markets Series of DFA Investment Trust Company v Dyrektor Izby Skarbowej w Bydgoszczy

(Case C-190/12) (1)

(Reference for a preliminary ruling — Freedom of establishment — Free movement of capital — Articles 63 TFEU and 65 TFEU — Tax on income of legal persons — Difference of treatment between dividends paid to resident and non-resident investment funds — Exclusion of tax exemption — Restriction not justified)

(2014/C 175/05)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Bydgoszczy

Parties to the main proceedings

Applicant: Emerging Markets Series of DFA Investment Trust Company

Defendant: Dyrektor Izby Skarbowej w Bydgoszczy

Re:

Request for a preliminary ruling — Wojewódzki Sąd Administracyjny w Bydgoszczy (Poland) — Interpretation of Articles 63 TFEU and 65 TFEU — Freedom of establishment and free movement of capital — Fiscal legislation exempting from tax on the income of legal persons dividends paid to investment funds established in the territory of Member States, but excluding from entitlement to that exemption investment funds established in non-member countries

Operative part of the judgment

1) *Article 63 TFEU on the free movement of capital applies in a situation, such as that at issue in the main proceedings, where, under national tax legislation, the dividends paid by companies established in a Member State to investment funds established in a non-Member State are not the subject of a tax exemption, while investment funds established in that Member State receive such an exemption.*

2) *Articles 63 TFEU and 65 TFEU must be interpreted as precluding tax legislation of a Member State, such as that at issue in the main proceedings, under which dividends paid by companies established in that Member State to an investment fund situated in a non-Member State cannot qualify for a tax exemption, provided that that Member State and the non-Member State concerned are bound by an obligation under a convention on mutual administrative assistance which enables the national tax authorities to verify any information which may be transmitted by the investment fund. It is for the referring court, in the main proceedings, to examine whether the mechanism for the exchange of information provided for within that cooperation framework is in fact capable of enabling the Polish tax authorities to verify, where necessary, the information provided by investment funds established in the United States on the conditions for their formation and the conduct of their business, in order to establish that they operate within a regulatory framework equivalent to that of the European Union.*

(1) OJ C 209, 14. 7. 2012.

Judgment of the Court (Grand Chamber) of 8 April 2014 — European Commission v Hungary

(Case C-288/12) ([1])

(Failure of a Member State to fulfil obligations — Directive 95/46/EC — Protection of individuals with regard to the processing of personal data and the free movement of such data — Article 28(1) — National supervisory authorities — Independence — National legislation prematurely bringing to an end the term served by the supervisory authority — Creation of a new supervisory authority and appointment of another person as head of that authority)

(2014/C 175/06)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: K. Talabér-Ritz and B. Martenczuk, Agents)

Defendant: Hungary (represented by: M.Z. Fehér, Agent)

Intervener in support of the applicant: European Data Protection Supervisor (EDPS) (represented by: I. Chatelier, A. Buchta, Z. Belényessy and H. Kranenborg, Agents)

Re:

Failure to fulfil obligations — Infringement of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Obligation of Member States to provide that the application of measures adopted pursuant to Directive 95/46 is monitored by one or more public authorities exercising their functions with complete independence — Adoption of national legislation ending the six-year term of the data protection supervisor before its expiry — Creation of a national authority for data protection and freedom of information — Appointment, for a nine-year term, of a person other than the data protection supervisor as head of that authority

Operative part of the judgment

The Court:

1) *Declares that, by prematurely bringing to an end the term served by the supervisory authority for the protection of personal data, Hungary has failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;*

2) *Orders Hungary to pay the costs;*

3) *Orders the European Data Protection Supervisor (EDPS) to bear its own costs.*

([1]) OJ C 227, 28. 7. 2012.

Judgment of the Court (Grand Chamber) of 8 April 2014 (requests for a preliminary ruling from the High Court of Ireland (Ireland) and the Verfassungsgerichtshof (Austria)) — Digital Rights Ireland Ltd (C-293/12) v Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General, and Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl and Others (C-594/12)

(Joined Cases C-293/12 and C-594/12) ([1])

(Electronic communications — Directive 2006/24/EC — Publicly available electronic communications services or public communications networks services — Retention of data generated or processed in connection with the provision of such services — Validity — Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union)

(2014/C 175/07)

Languages of the case: English and German

Referring courts

High Court of Ireland, Verfassungsgerichtshof

Parties to the main proceedings

Applicants: Digital Rights Ireland Ltd (C-293/12), Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl and others (C-594/12)

Defendants: Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General (C-293/12)

intervener: Irish Human Rights Commission

Re:

(Case C-293/12)

Request for a preliminary ruling — High Court of Ireland — Interpretation of Articles 3, 4 and 6 of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) — Limitation of the rights of the applicant with regard to mobile telephony — Compatibility with Article 5(4) TEU and with Article 21 TFEU — Compatibility with Articles 7, 8, 11 and 41 of the Charter of Fundamental Rights of the European Union

(Case C-594/12)

Request for a preliminary ruling — Verfassungsgerichtshof — Validity of Articles 3 to 9 of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) in the light of Articles 7, 9 and 11 of the Charter of Fundamental Rights of the European Union — Interpretation of the Charter of Fundamental Rights of the European Union, in particular Articles 7, 8, 52 and 53 thereof, of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) — Constitutional application concerning the possible unconstitutionality of certain provisions of the Austrian Federal Law on Telecommunications transposing Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks

Operative part of the judgment

Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC is invalid.

([1]) OJ C 258, 25.8.2012.
OJ C 79, 16.3.2013.

Judgment of the Court (Fourth Chamber) of 10 April 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — ACI Adam BV and Others v Stichting de Thuiskopie, Stichting Onderhandelingen Thuiskopie vergoeding

(Case C-435/12) ([1])

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Harmonisation of certain aspects of copyright and related rights in the information society — Directive 2001/29/EC — Article 5(2)(b) and (5) — Reproduction right — Exceptions and limitations — Reproduction for private use — Lawful nature of the origin of the copy — Directive 2004/48/EC — Scope)

(2014/C 175/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: ACI Adam BV, Alpha International BV, AVC Nederland BV, B.A.S. Computers & Componenten BV, Despec BV, Dexxon Data Media and Storage BV, Fuji Magnetics Nederland, Imation Europe BV, Maxell Benelux BV, Philips Consumer Electronics BV, Sony Benelux BV, Verbatim GmbH

Defendants: Stichting de Thuiskopie, Stichting Onderhandelingen Thuiskopie vergoeding

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Netherlands — Interpretation of Article 5(2) and (5) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and of Article 14 of Directive 2004/48/CE of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Reproduction right — Exceptions and limitations — Enforcement of intellectual property rights — Legal costs — Scope

Operative part of the judgment

1) *EU law, in particular Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, read in conjunction with paragraph 5 of that article, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful.*

2) *Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as not applying to proceedings, such as those in the main proceedings, in which those liable for payment of the fair compensation bring an action before the referring court for a ruling against the body responsible for collecting that remuneration and distributing it to copyright holders, which defends that action.*

([1]) OJ C 399, 22. 12. 2012.

Judgment of the Court (First Chamber) of 10 April 2014 (request for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — Maatschap T. van Oosterom en A. van Oosterom-Boelhouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie

(Case C-485/12) ([1])

(Agriculture — Common agricultural policy — Direct support schemes — Regulation (EC) No 73/2009 — Integrated administration and control system for certain aid schemes — Identification system for agricultural parcels — Eligibility conditions for aid — Administrative controls — On-the-spot checks — Regulation (EC) No 796/2004 — Determination of the areas eligible for aid — Remote sensing — Physical inspection of agricultural parcels)

(2014/C 175/09)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Maatschap T. van Oosterom en A. van Oosterom-Boelhouwer

Defendant: Staatssecretaris van Economische Zaken, Landbouw en Innovatie

Re:

Request for a preliminary ruling — College van Beroep voor het Bedrijfsleven (Netherlands) — Interpretation of Article 32 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system 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. 18) — On-the-spot checks in relation to single applications under the area payment scheme — Remote sensing — Where the competent authority has found, on the basis of aerial photographs, that the application for aid submitted by a farmer is inaccurate.

Operative part of the judgment

Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system provided for in 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, as amended by Commission Regulation (EC) No 972/2007 of 20 August 2007, must be interpreted as meaning that, where, owing to the fact that the identification system for agricultural parcels is in the course of being updated, automated cross-checks intended to verify the eligibility for aid of parcels as declared in the single payment application submitted by a farmer are supplemented by verification on the basis of recent aerial photographs, which results in the detection of inaccuracies in the application submitted, the competent authority is not required to carry out a physical inspection in the field, but, in accordance with Article 24(2) of that regulation, enjoys discretion as to the measures to be taken as a result. In particular, that authority cannot be required to carry out a physical measurement of the parcels in question where it has no doubts as to the measurement data inferred from the aerial photographs available.

([1]) OJ C 26, 26. 1. 2013.

Judgment of the Court (Second Chamber) of 9 April 2014 (request for a preliminary ruling from the Riigikohus — Estonia) — Sintax Trading OÜ v Maksu- ja Tolliamet

(Case C-583/12) ([1])

(Request for a preliminary ruling — Regulation (EC) No 1383/2003 — Measures to prevent counterfeit or pirated goods being placed on the market — Article 13(1) — Powers of the customs authorities to establish the infringement of an intellectual property right)

(2014/C 175/10)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Sintax Trading OÜ

Defendant: Maksu- ja Tolliamet

Re:

Request for a preliminary ruling — Riigikohus — Interpretation of Articles 13(1) and 17 of and recitals 1, 2 and 3 in the preamble to Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7) — Measures intended to prevent the placing on the market of counterfeit and pirated goods — Procedure to determine whether there has been an infringement of an intellectual property right — Competence of the customs authorities with respect to the ascertainment of an infringement of an intellectual property right — Right of the customs authorities to initiate of their own motion the procedure for determining whether there has been an infringement of an intellectual property right without it being necessary for the right-holder to initiate the procedure

Operative part of the judgment

Article 13(1) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights must be interpreted as meaning that it does not preclude the customs authorities, in the absence of any initiative by the holder of the intellectual property right, from initiating and conducting the proceedings referred to in that provision themselves, provided that the relevant decisions taken by those authorities may be subject to appeal ensuring that the rights derived by individuals from EU law and, in particular, from that regulation are safeguarded.

(1) OJ C 55, 23. 2. 2013.

Judgment of the Court (Fourth Chamber) of 10 April 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Ehrmann AG v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

(Case C-609/12) (1)

(Reference for a preliminary ruling — Consumer information and protection — Regulation (EC) No 1924/2006 — Nutrition and health claims made on foods — Labelling and presentation of those foods — Article 10(2) — Temporal application — Article 28(5) and (6) — Transitional measures)

(2014/C 175/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ehrmann AG

Defendant: Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 10(1) and (2), 28(5) and 29 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9), as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010 (OJ 2010 L 37, p. 16) — Health claims — Specific conditions — Temporal application

Operative part of the judgment

Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, must be interpreted as meaning that the obligations to provide information laid down in Article 10(2) of that regulation were already in force in 2010 as regards health claims that were not prohibited on the basis of Article 10(1), read in conjunction with Article 28(5) and (6) of that regulation.

(1) OJ C 101, 6.4.2013.

Judgment of the Court (Second Chamber) of 9 April 2014 (request for a preliminary ruling from the Debreceni Közigazgatási és Munkaügyi Bíróság — Hungary) — GSV Kft. v Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága,

(Case C-74/13) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — TARIC Codes 7019 59 00 10 and 7019 59 00 90 — Regulations imposing anti-dumping duties on imports of certain open mesh fabrics of glass fibres originating in China — Discrepancies between language versions — Obligation to pay the anti-dumping duty)

(2014/C 175/12)

Language of the case: Hungarian

Referring court

Debreceni Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: GSV Kft.

Defendant: Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

Re:

Request for a preliminary ruling — Debreceni Közigazgatási és Munkaügyi Bíróság — Interpretation of recital 14 and Article 1(1) of Commission Regulation (EU) No 138/2011 of 16 February 2011 imposing a provisional anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (OJ 2011 L 43, p. 9) — Exemption from payment of anti-dumping duties on imports of glass fibre fabrics which do not fall within the description of TARIC subheading 7019 59 00 10 as evidenced by the regulations published in the importer's language — Goods which may be classed under that subheading according to other language versions

Operative part of the judgment

1. *Code 7019 59 00 10 of the Integrated Tariff of the European Communities established by Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff must be interpreted as meaning that it covers products such as that at issue in the main proceedings, comprising in particular fabrics of glass fibres with openings of a cell size of 4 mm both in length and in width and weighing more than 35 g/m^2 and intended for the field of construction;*

2. *The fact that the product covered by the customs declaration at issue in the main proceedings, while corresponding to the characteristics laid down in code 7019 59 00 10 of the Integrated Tariff of the European Communities and set out in the regulations subjecting it to anti-dumping duties, does not correspond to the designation given to it in that code and those regulations as published in the language of the Member State of origin of the declarant and on which alone the latter based its declaration is not liable to entail the annulment of its tariff classification under that code made by the customs authorities on the basis of all the other language versions of that code and those regulations.*

([1]) OJ C 164, 8.6.2013.

Judgment of the Court (Tenth Chamber) of 10 April 2014 — European Commission v Italian Republic

(Case C-85/13) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Treatment of urban waste water — Articles 3 to 5 and 10 — Annex I(A) and (B))

(2014/C 175/13)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: E. Manhaeve and L. Cimaglia, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and M. Russo, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt or notify, within the prescribed period, the provisions necessary to comply with Articles 3, 4, 5 and 10 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40), as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 311, p. 1)

Operative part of the judgment

The Court:

1. *declares that by having failed to adopt the provisions necessary to ensure that:*

   — *the agglomerations of Melegnano, Mortara, Olona Nord, Olona Sud, Robecco sul Naviglio, San Giuliano Milanese Est, Trezzano sul Naviglio and Vigevano (Lombardy), which have a population equivalent of more than 10 000 and discharge urban waste water into receiving waters which are considered 'sensitive areas' within the meaning of Article 5(1) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008, are provided with collecting systems for urban waste water, in accordance with Article 3 of that directive;*

   — *in the agglomerations of Pescasseroli (Abruzzo), Cormons, Gradisca d'Isonzo, Grado (Friuli-Venezia Giulia), Broni, Calco, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, Trezzano sul Naviglio, Valle San Martino, Vigevano (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Nuoro (Sardinia), Castellammare del Golfo I, Cinisi, Terrasini (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto), which have a population equivalent of more than 10 000, urban waste water entering collecting systems is, before discharge, subject to secondary treatment or an equivalent treatment, in accordance with Article 4 of Directive 91/271, as amended by Regulation No 1137/2008;*

   — *in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Francavilla Fontana, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia), Castellammare del Golfo I, Cinisi, Partinico, Terrasini and Trappeto (Sicily), which have a population equivalent of more than 10 000 and discharge into receiving waters which are considered 'sensitive areas' within the meaning of Directive 91/271, as amended by Regulation No 1137/2008, urban waste water entering collecting systems is, before discharge, subject to more stringent treatment than secondary treatment or an equivalent treatment, in accordance with Article 5 of that directive, and*

   — *the urban waste water treatment plants built to comply with the requirements of Articles 4 to 7 of Directive 91/271, as amended by Regulation No 1137/2008, are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions and to ensure that the urban waste water treatment plants are designed in such a way as to take account of seasonal variations of the load in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Broni, Calco, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, Trezzano sul Naviglio, Valle San Martino, Vigevano (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Francavilla Fontana, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia), Castellammare del Golfo I, Cinisi, Partinico, Terrasini, Trappeto (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto),*

   the Italian Republic has failed to fulfil its obligations under Article 3 and/or Article 4 and/or Article 5 as well as Article 10 of Directive 91/271, as amended by Regulation No 1137/2008;

2. *orders the Italian Republic to pay the costs.*

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Sixth Chamber) of 10 April 2014 — European Commission v Hungary

(Case C-115/13) ([1])

(Failure of a Member State to fulfil obligations — Duties on alcohol and alcoholic beverages — Directive 92/83/EEC — Setting rates of excise duty — Customised production of ethyl alcohol in a distillery subject to a rate of excise duty equal to 0 — Exemption from excise duty for the production of ethyl alcohol by private individuals)

(2014/C 175/14)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: C. Barslev and A. Sipos, acting as Agents)

Defendant: Hungary (represented by: M. Z. Fehér, K. Szíjjártó and K. Molnár, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 19 to 21 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) read in conjunction with Article 22(7) of that directive, and Article 3(1) of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (OJ 1992 L 316, p. 29) — Setting excise duties — Customised production of ethyl alcohol in a distillery subject to a rate of excise duty equal to 0 — Exemption from excise duty for the production of ethyl alcohol by private individuals

Operative part of the judgment

The Court:

1) *Declares that by adopting and implementing legislation which provides that, under the conditions defined by that legislation, the customised production of ethyl alcohol in a distillery shall be subject to a rate of excise duty equal to 0 and that the production of ethyl alcohol by private individuals is exempt from excise duty, Hungary failed to fulfil its obligations under Articles 19 to 21 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages, as amended by the of the Act concerning the conditions of accession to the European Union of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, read in conjunction with Article 22(7) of that directive and with Article 3(1) of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages.*

2) *Orders Hungary to pay the costs.*

([1]) OJ C 129 of 4.5.2013

Judgment of the Court (Second Chamber) of 9 April 2014 (request for a preliminary ruling from the Conseil d'État — Belgium) — Ville d'Ottignies-Louvain-la-Neuve, Michel Tillieut, Willy Gregoire, Marc Lacroix v Région Wallonne

(Case C-225/13) ([1])

(Reference for a preliminary ruling — Environment — Waste — Directive 75/442/EEC — Article 7(1) — Management plan — Suitable sites or installations for the disposal of waste — Concept of waste management plan — Directive 1999/31/EC — Articles 8 and 14 — Landfills which have been granted a permit, or which are already in operation at the time of transposition of that directive)

(2014/C 175/15)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Ville d'Ottignies-Louvain-la-Neuve, Michel Tillieut, Willy Gregoire, Marc Lacroix

Defendant: Région wallonne

Intervening party: Shanks SA

Re:

Request for a preliminary ruling — Conseil d'État — Interpretation of Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) and Article 2(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Disposal of waste — Concept of waste management plan — National rule that no landfills may be authorised except on the sites provided for in the waste management plan — Derogating rule that authorises landfill permits issued before the entry into force of the waste management plan to be renewed — Concept of plan and programme

Operative part of the judgment

Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, must be interpreted as meaning that a national legislative provision, such as that at issue in the main proceedings, which provides that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by that article, landfills authorised before that waste management plan entered into force may, after such entry into force, be granted new permits in respect of the plots covered by the authorisation, does not constitute a 'waste management plan' within the meaning of that provision of Directive 2001/42, as amended by Decision 96/350.

Article 8 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, as amended by Council Directive 2011/97/EU of 5 December 2011, does not, however, preclude such a national legislative provision which may be based on Article 14 of that directive and apply to landfills which have been granted a permit or which are already in operation at the date of the transposition thereof, provided that the other conditions set out in Article 14 are met, which it is for the referring court to ascertain.

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Sixth Chamber) of 10 April 2014 — Acino AG v European Commission

(Case C-269/13 P) ([1])

(Appeal — Medicinal products for human use — Suspension of the marketing and the withdrawal of certain consignments of medicinal products containing the active ingredient Clopidogrel — Variation of marketing authorisations — Prohibition on marketing — Regulation (EC) No 726/2004 and Directive 2001/83/EC — Precautionary principle — Proportionality — Obligation to state reasons)

(2014/C 175/16)

Language of the case: German

Parties

Appellant: Acino AG (represented by: R. Buchner and E. Burk, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: M. Šimerdová and B.-R. Killmann, acting as Agents)

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 7 March 2013 in Case T-539/10 *Acino* v *Commission*, in so far as that Court dismissed an application for annulment of Commission Decisions C (2010) 2203, C (2010) 2205, C (2010) 2210 and C (2010) 2218 of 29 March 2010 and Commission Decisions C (2010) 6430, C (2010) 6432, C (2010) 6434 and C (2010) 6435 of 16 September 2010, relating to the suspension of the marketing of medicinal products for human use containing the active ingredient Clopidogrel manufactured at a certain site, the withdrawal of consignments of those medicinal products from the market, the variation of the marketing authorisations and the prohibition on marketing those medicinal products — Precautionary principle — Proportionality — Obligation to state reasons

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

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

([1]) OJ C 215, 27.07.2013.

Order of the Court (Fifth Chamber) of 6 February 2014 — Gabi Thesing and Bloomberg Finance LP v European Central Bank (ECB)

(Case C-28/13 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Article 169(2) of the Rules of Procedure of the Court of Justice — Content required in the application initiating an appeal)

(2014/C 175/17)

Language of the case: English

Parties

Appellants: Gabi Thesing, Bloomberg Finance LP (represented by: M. Stephens and R. Lands, Solicitors, and by T. Pitt-Payne QC)

Other party to the proceedings: European Central Bank (represented by: M. López Torres and S. Lambrinoc, acting as Agents)

Re:

Appeal brought against the judgment of 29 November 2012 in Case T-590/10 *Gabi Thesing and Bloomberg Finance LP* v *European Central Bank (ECB)*, by which the General Court (Seventh Chamber) dismissed an action for annulment of the decision of the European Central Bank of 21 October 2010 refusing to grant the appellants access to two documents concerning public debt and the budgetary deficit

Operative part of the order

1. *The appeal is dismissed.*

2. *Ms Gabi Thesing and Bloomberg Finance LP are ordered to pay the costs.*

([1]) OJ C 101, 6. 4. 2013.

Order of the Court (Fifth Chamber) of 6 February 2014 (reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Łodzi — Poland) — Marcin Jagiełło v Dyrektor Izby Skarbowej w Łodzi

(Case C-33/13) ([1])

(Request for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Taxation — VAT — Sixth Directive — Right of deduction — Refusal — Invoice issued by a company acting as a front)

(2014/C 175/18)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Łodzi

Parties to the main proceedings

Applicant: Marcin Jagiełło

Defendant: Dyrektor Izby Skarbowej w Łodzi

Re:

Request for a preliminary ruling — Wojewódzki Sąd Administracyjny w Łodzi — Interpretation of Article 4(1) and (2), read in conjunction with Article 5(1), and of Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Right to deduct input VAT — Refusal to allow a recipient of supplies to deduct VAT in the case where the vendor uses the corporate name of another person — Intentional non-disclosure of the vendor's own activity — Invoice issued by a person other than the vendor — No need to establish that the purchaser was aware of the fact that the transaction in question was linked to criminal activity or to some other irregularity committed by the vendor or by the body cooperating with it

Operative part of the order

Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/115/EC of 20 December 2001, must be interpreted as meaning that a taxable person may not be refused the right to deduct VAT due or paid in respect of goods supplied to him on the ground that, in view of fraud or irregularities committed by the issuer of the invoice for that supply, the supply is considered not to have actually been made by the issuer, unless it is established, on the basis of objective evidence and without requiring of the taxable person checks which are not his responsibility, that that taxable person knew, or should have known, that that supply was connected with VAT fraud — a matter which it is for the referring court to determine.

([1]) OJ C 141, 18.05.2013

Order of the Court (Grand Chamber) of 3 February 2014 (requests for a preliminary ruling from the Tribunalul Sibiu and the Curtea de Apel Bucureşti — Romania) — Silvia Georgiana Câmpean v Administrația Finanțelor Publice a Municipiului Mediaş, Administrația Fondului pentru Mediu (Case C-97/13), Administrația Finanțelor Publice a Municipiului Alexandria v George Ciocoiu (Case C-214/13)

(Joined Cases C-97/13 and C-241/13) ([1])

(Reference for a preliminary ruling — Internal taxation — Article 110 TFEU — Pollution tax charged on first registration of motor vehicles — Neutrality of tax between imported second-hand motor vehicles and similar vehicles already on the domestic market)

(2014/C 175/19)

Language of the case: Romanian

Referring courts

Tribunalul Sibiu, Curtea de Apel Bucureşti

Parties to the main proceedings

Applicants: Silvia Georgiana Câmpean (Case C-97/13), Administrația Finanțelor Publice a Municipiului Alexandria (Case C-214/13)

Defendants: Administrația Finanțelor Publice a Municipiului Mediaş, Administrația Fondului pentru Mediu (Case C-97/13), George Ciocoiu (Case C-214/13)

Re:

Request for a preliminary ruling — Tribunalul Sibiu, Curtea de Apel Bucureşti — Tax on pollutant emissions levied on motor vehicles on their first registration or when a right of ownership is first recorded — Exemption for motor vehicles subject to earlier taxes — Possibility of recovering through the courts the taxes to which those vehicles have been subject — Possible discouragement of the putting into circulation of second-hand vehicles purchased in other Member States — Compatibility of the national legislation with Article 110 TFEU

Operative part of the order

Article 110 TFEU must be interpreted as precluding a system of taxation, such as that introduced and then delimited by the national legislation at issue in the disputes in the main proceedings, by which a Member State levies a pollution tax on motor vehicles which is structured in such a way as to discourage the putting into circulation in that Member State of second-hand vehicles purchased in other Member States, but without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market.

([1]) OJ C 129, 4.5.2013.
OJ C 189, 29.6.2013.

Order of the Court (Seventh Chamber) of 6 February 2014 — Kingdom of the Netherlands v European Commission

(Case C-223/13) ([1])

(Action for annulment — Regulation (EU) No 93/2013 — Referral to the General Court of the European Union)

(2014/C 175/20)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman and J. Langer, acting as Agents)

Defendant: European Commission (represented by: M. Clausen and P. Van Nuffel, acting as Agents)

Re:

Annulment of Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (OJ 2013 L 33, p. 14)

Operative part of the order

1. *Refer Case C-223/13 back to the General Court of the European Union.*

2. *Costs are reserved.*

(1) OJ C 189, 29.06.2013

Order of the Court (Sixth Chamber) of 6 February 2014 — El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-301/13 P) (1)

(Appeal — Community trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — Word mark CLUB GOURMET and CLUB DEL GOURMET — Rejection of the opposition — Rules of Procedure of the Court of Justice — Article 181 — Appeal clearly inadmissible in part and clearly unfounded in part)

(2014/C 175/21)

Language of the case: Spanish

Parties

Appellant: El Corte Inglés, SA (represented by: J. L. Rivas Zurdo and E. Seijo Veiguela, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Re:

Appeal lodged against the judgment of the General Court (Fourth Chamber) of 20 March 2013 in Case T-571/11 El Corte Inglés v Chez Gerard (CLUB GOURMET), by which that court dismissed the action brought against the decision of the First Board of Appeal of OHIM of 28 July 2011 (Case R 1946/2010-1) concerning opposition proceedings between El Corte Inglés, SA and Groupe Chez Gerard Restaurants Ltd

Operative part of the order

1. *The appeal is dismissed.*

2. *El Corte Inglés SA shall pay the costs.*

(1) OJ C 207, 20.07.2013.

Order of the Court (Third Chamber) of 30 January 2014 (request for a preliminary ruling from the Polimeles Protodikio Athinon) — Warner — Lambert Company LLC, Pfizer Ellas AE v SiegerPharma Anonimi Farmakeftiki Etairia

(Case C-372/13) (1)

(Article 99 of the Rules of Procedure of the Court — Questions referred for a preliminary ruling which are identical to questions on which the Court has already made a ruling — Agreement on Trade-Related Aspects of International Property Rights (TRIPs) — Article 27 — Patentable Subject Matter — Article 70 — Protection of Existing Subject Matter)

(2014/C 175/22)

Language of the case: Greek

Referring court

Polimeles Protodikio Athinon

Parties to the main proceedings

Applicants: Warner — Lambert Company LLC, Pfizer Ellas AE

Defendant: SiegerPharma Anonimi Farmakeftiki Etairia

Re:

Request for a preliminary ruling — Polimeles Protodikio Athinon — Interpretation of Articles 27 and 70 of the Agreement on Trade-Related Aspects of International Property Rights ('TRIPs') annexed to the Agreement establishing the 'World Trade Organisation' (OJ 1994, L 336, p. 214) — Distinction drawn between fields falling within the scope of Community law and those falling within the competence of the Member States — Field of patents — Chemical and pharmaceutical products

Operative part of the order

1. *Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), falls under the common trade policy.*

2. *Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights must be interpreted as meaning that the invention of a pharmaceutical product such as the active chemical compound of a medicinal product is, in the absence of a derogation in accordance with Article 27(2) or (3), capable of being the subject-matter of a patent, under the conditions set out in Article 27 (1).*

3. *A patent obtained following an application claiming the invention both of the process of manufacture of a pharmaceutical product and of the pharmaceutical product as such, but granted solely in relation to the process of manufacture, must not, by reason of the rules set out in Articles 27 and 70 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, be regarded, as from the date of entry into force of that agreement, as covering the invention of that pharmaceutical product.*

([1]) OJ C 78 of 15.3.2014.

Order of the Court (Eighth Chamber) of 29 January 2014 — Simone Gbagbo v Council of the European Union, European Commission, Republic of Côte d'Ivoire

(Case C-397/13 P) ([1])

(Appeal — Time-limit — Formal requirements — Manifest inadmissibility)

(2014/C 175/23)

Language of the case: French

Parties

Appellant: Simone Gbagbo (represented by: J.-C. Tchikaya, lawyer)

Other parties to the proceedings: Council of the European Union (represented by: B. Driessen and M. Chavrier, Agents, European Commission, Republic of Côte d'Ivoire (represented by: J.-P. Mignard, lawyer)

Re:

Appeal brought against the judgment of the General Court (Fifth Chamber) of 25 April 2013, in Case T-119/11 *Gbagbo* v *Council* in which the General Court dismissed the action seeking an annulment, first, of Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 11, p. 36) and, secondly, of Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1), in so far as they relate to the appellant — Freezing of funds — Obligation to state reasons — Manifest error of assessment

Operative part of the order

1. *The appeal is dismissed.*

2. *Simone Gbagbo is ordered to bear, in addition to her own costs, those incurred by the Council of the European Union.*

3. *The Republic of Côte d'Ivoire shall bear its own costs.*

([1]) OJ C 274, 21.09.2013.

Order of the Court (Third Chamber) of 30 January 2014 (request for a preliminary ruling from the Polymeles Protodikeio Athinon — Greece) — Warner — Lambert Company LLC, Pfizer Ellas AE v Minerva Farmakeftiki AE

(Case C-462/13) ([1])

(Article 99 of the Rules of Procedure of the Court of Justice — Questions referred for a preliminary ruling identical to questions on which the Court has already ruled — Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) — Article 27 — Patentable Subject Matter — Article 70 — Protection of Existing Subject Matter)

(2014/C 175/24)

Language of the case: Greek

Referring court

Polymeles Protodikeio Athinon

Parties to the main proceedings

Applicants: Warner — Lambert Company LLC, Pfizer Ellas AE

Defendant: Minerva Farmakeftiki AE

Re:

Request for a preliminary ruling — Polymeles Protodikeio Athens — Interpretation of Articles 27 and 70 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') annexed to the Agreement establishing the 'World Trade Organization' (OJ L 336, p. 214) — Distinction between areas of Community law and those within the competence of Member States — Patenting — chemicals and pharmceuticals

Operative part of the order

1. *Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights must be interpreted as meaning that the invention of a pharmaceutical product such as the active chemical compound of a medicinal product is, in the absence of a derogation in accordance with Article 27(2) or (3), capable of being the subject-matter of a patent, under the conditions set out in Article 27 (1).*

2. *A patent obtained following an application claiming the invention both of the process of manufacture of a pharmaceutical product and of the pharmaceutical product as such, but granted solely in relation to the process of manufacture, does not, by reason of the rules set out in Articles 27 and 70 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, have to be regarded from the entry into force of that agreement as covering the invention of that pharmaceutical product.*

3. *Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), falls within the field of the common commercial policy.*

([1]) OJ C 78, 15.03.2014.

Request for a preliminary ruling from the Judecătoria Oradea (Romania) lodged on 7 March 2014 — Horațiu Ovidiu Costea v SC Volksbank România SA

(Case C-110/14)

(2014/C 175/25)

Language of the case: Romanian

Referring court

Judecătoria Oradea

Parties to the main proceedings

Applicant: Horațiu Ovidiu Costea

Defendant: SC Volksbank România SA

Question referred

Must Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) be interpreted as including in, or as excluding from, the definition of 'consumer' a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit concerned is not specified, when in that agreement that natural person's law firm is stated to be the guarantor for the mortgage?

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

Request for a preliminary ruling from the Oberlandesgericht Koblenz (Germany) lodged on 11 March 2014 — RegioPost GmbH & Co. KG v Stadt Landau

(Case C-115/14)

(2014/C 175/26)

Language of the case: German

Referring court

Oberlandesgericht Koblenz

Parties to the main proceedings

Applicant: RegioPost GmbH & Co. KG

Defendant: Stadt Landau

Parties to the proceedings: PostCon Deutschland GmbH, Deutsche Post AG

Questions referred

1. Is Article 56(1) of the Treaty on the Functioning of the European Union in conjunction with Article 3(1) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]) to be interpreted as precluding a national provision which makes it mandatory for a contracting authority to award contracts only to undertakings which undertake and whose subcontractors undertake in writing, at the time of submitting the tender, to pay their employees who perform the contract a minimum wage fixed by the State for public contracts only but not for private ones, where there is neither a general statutory minimum wage nor a universally binding collective agreement that binds potential contractors and possible subcontractors?

2. If the first question is answered in the negative:

   Is European Union law in the area of public procurement, in particular Article 26 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([2]) to be interpreted as precluding a national provision such as the third sentence of Paragraph 3(1) of the [Rhineland-Palatinate Land Law on guaranteeing compliance with collective agreements and minimum wages in public contract awards (LTTG)] which provides for the mandatory exclusion of a tender if an economic operator does not, already when submitting the tender, undertake in a separate declaration to do something which he would be contractually obliged to do if awarded the contract even without making that declaration?

([1]) OJ 1996 L 18, p. 1.
([2]) OJ 2004 L 134, p. 114.

Action brought on 17 March 2014 — European Commission v Italian Republic

(Case C-124/14)

(2014/C 175/27)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Cattabriga and M. van Beek, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic, by withholding from National Health Service 'executive' staff (namely, doctors) the right to a maximum average working week of 48 hours, and from all National Health Service medical staff the right to 11 consecutive hours of rest per day without guaranteeing them an equivalent period of compensatory rest, has failed to fulfil its obligations under Articles 3, 6 and 17(2) of Directive 2003/88/EC; ([1])

— order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

Articles 3 and 6 of Directive 2003/88/EC require that the Member States take the measures necessary to ensure, first, that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period and, second, that the average working time for each seven-day period, including overtime, does not exceed 48 hours. Derogations from those provisions, although not entirely excluded, are nonetheless subject to specific conditions.

When transposing Directive 2003/88, the Italian legislature breached those provisions by excluding all National Health Service 'executive' doctors from the scope of the rules relating to the maximum weekly working time and all National Health Service medical staff from the rules relating to the daily rest period.

In particular, the Commission claims that, in the first place, in Italy all doctors who work in the National Health Service are officially classified as 'executives' by legislation and by national collective agreements relating to the National Health Service, without necessarily benefitting from executive prerogatives or autonomy over their own working time. In the second place, the Italian authorities have not been able to show that National Health Service medical staff, although excluded from the right to a daily rest period of 11 consecutive hours, none the less benefit from an adequate period of uninterrupted compensatory rest immediately after their period of work has ended.

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9)

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 18 March 2014 — Iron & Smith Kft. v Unilever NV

(Case C-125/14)

(2014/C 175/28)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Iron & Smith Kft.

Other party to the proceedings: Unilever NV

Questions referred

1. Is it sufficient, for the purposes of proving that a Community trade mark has a reputation within the meaning of Article 4(3) of Directive 2008/95/EC to approximate the laws of the Member States relating to trade marks ('the Directive'), ([1]) for that mark to have a reputation in one Member State, including where the national trade mark application which has been opposed on the basis of such a reputation has been lodged in a country other than that Member State?

2. May the principles laid down by the Court of Justice of the European Union regarding the genuine use of a Community trade mark be applied in the context of the territorial criteria used when examining the reputation of such a mark?

3. If the proprietor of an earlier Community trade mark has proved that that mark has a reputation in countries other than the Member State in which the national trade mark application has been lodged — which cover a substantial part of the territory of the European Union — may he also be required, notwithstanding that fact, to adduce conclusive proof in relation to that Member State?

4. If the answer to the previous question is no, bearing in mind the specific features of the internal market, may a mark used intensively in a substantial part of the European Union be unknown to the relevant national consumer and therefore the other condition for the ground precluding registration in accordance with Article 4(3) of the Directive not be met, since there is no likelihood of detriment to, or unfair advantage being taken of, a mark's repute or distinctive character? If so, what facts must the Community trade mark proprietor prove in order for that second condition to be met?

([1]) 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).

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas lodged on 17 March 2014 — Sveda UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-126/14)

(2014/C 175/29)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Claimant: Sveda UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Interested third party: Klaipėdos apskrities valstybinė mokesčių inspekcija

Question referred

May Article 168 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax be interpreted as granting a taxable person the right to deduct the input VAT paid in producing or acquiring capital goods intended for business purposes, such as those in the present case, which (i) are directly intended for use by members of the public free of charge, but (ii) may be recognised as a means of attracting visitors to a location where the taxable person, in carrying out his economic activities, plans to supply goods and/or services?

([1]) OJ 2006 L 347, p. 1.

Action brought on 21 March 2014 — European Parliament v Council of the European Union

(Case C-132/14)

(2014/C 175/30)

Language of the case: French

Parties

Applicant: European Parliament (represented by: I. Liukkonen and L. Visaggio, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Regulation (EU) No 1385/2013 of 17 December 2013 amending Council Regulations (EC) No 850/98 and (EC) No 1224/2009, and Regulations (EC) No 1069/2009, (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union; ([1])

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

Pleas in law and main arguments

The European Parliament seeks the annulment of Council Regulation No 1385/2013 which the Council adopted on the basis of Article 349 TFEU.

The Parliament contests the choice of legal basis operated by the Council as Article 349 TFEU cannot provide a legal basis for all the measures adopted, but only some of them consisting of derogations from the application of EU law to Mayotte. The contested regulation also implements measures which fall within the areas of the common fisheries policy and the protection of public health, without those measures being based on the structural social and economic situation specific to Mayotte.

In the opinion of the Parliament, the act in question should therefore have been adopted on the basis of Articles 43(2), 168 (4)(b) and 349 TFEU jointly, and not on the basis of Article 349 alone.

([1]) OJ 2013 L 354, p. 86

Action brought on 21 March — European Commission v Council of the European Union

(Case C-133/14)

(2014/C 175/31)

Language of the case: French

Parties

Applicant: European Commission (represented by: R. Lyal, W. Mölls, and D. Martin, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council Directive 2013/64/EU of 17 December 2013 amending Council Directives 91/271/EEC and 1999/74/EC, and Directives 2000/60/EC, 2006/7/EC, 2006/25/EC and 2011/24/EU of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union ([1]);

— Maintain the effects of Directive 2013/64/EU until such time as a new directive founded on an appropriate legal basis enters into effect;

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

Pleas in law and main arguments

The Commission seeks the annulment of Directive 2013/64/EU, which the Council adopted on the legal basis of Article 349 TFEU.

The Commission alleges that the Council adopted that directive when it had proposed to base that act on a sectoral legal basis, namely Articles 43(2), 114, 153(2), 168 and 192(1) TFEU.

It considers that, in accordance with the purpose and aim of the contested directive, Article 349 TFEU cannot validly be used as a legal basis. Article 349 TFEU only applies when derogating from the principle of the application of primary law to the outermost regions, as established in Article 355(1) TFEU. However, the directive in question, if it is not to derogate from the Treaties, only adapts the secondary law in order to respond to the situation created by the change in status of Mayotte. That interpretation is supported not only by the wording of Article 349 TFEU, but also by the system of legal bases of the Treaty, and by the historical origins of that article.

([1]) OJ 2013 L 355, p. 8.

Action brought on 21 March 2014 — European Commission v Council of the European Union

(Case C-134/14)

(2014/C 175/32)

Language of the case: French

Parties

Applicant: European Commission (represented by: R. Lyal, W. Mölls, and D. Martin, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council Directive 2013/62/EU of 17 December 2013 amending Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, following the amendment of the status of Mayotte with regard to the European Union ([1]);

— Maintain the effects of Directive 2013/62/EU until such time as a new directive founded on an appropriate legal basis enters into effect;

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

Pleas in law and main arguments

The Commission seeks the annulment of Directive 2013/62/EU, which the Council adopted on the legal basis of Article 349 TFEU.

The Commission alleges that the Council adopted that directive when it had proposed to base that act on a sectoral legal basis, namely Article 155(2) TFEU.

It considers that, in accordance with the purpose and aim of the contested directive, Article 349 TFEU cannot validly be used as a legal basis. Article 349 TFEU only applies when derogating from the principle of the application of primary law to the outermost regions, as established in Article 355(1) TFEU. However, the directive in question, if it is not to derogate from the Treaties, only adapts the secondary law in order to respond to the situation created by the change in status of Mayotte. That interpretation is supported not only by the wording of Article 349 TFEU, but also by the system of legal bases of the Treaty and by the historical origins of that article.

([1]) OJ 2013 L 353, p. 7.

Action brought on 21 March 2014 — European Commission v Council of the European Union

(Case C-135/14)

(2014/C 175/33)

Language of the case: French

Parties

Applicant: European Commission (represented by: R. Lyal, W. Mölls, and D. Bianchi, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Regulation (EU) No 1385/2013 of 17 December 2013 amending Council Regulations (EC) No 850/98 and (EC) No 1224/2009, and Regulations (EC) No 1069/2009, (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union. ([1])

— maintain the effects of Regulation (EU) No 1385/2013 until the entry into force of a new regulation based on appropriate legal bases.

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

Pleas in law and main arguments

The Commission seeks annulment of Regulation (EU) No 1385/2013 that the Council adopted on the legal basis of Article 349 TFEU.

The Commission alleges that the Council adopted that regulation although the Commission had proposed that the act be based on sector-specific legal bases, namely Article 43(2) and Article 168(4)(b) TFEU.

It submits that, in accordance with the purpose and aim of the contested regulation, Article 349 TFEU cannot legitimately be used as a legal basis. Article 349 TFEU can be applied only when it involves derogation from the principle of application of primary law to the outermost regions, as established in Article 355(1) TFEU. However, the regulation at issue, without derogating from the Treaties, merely adapts secondary law to respond to the situation created by the change of the status of Mayotte. That interpretation is supported not only by the wording of Article 349 TFEU, but also by the system of legal bases of the Treaty, as well as by the historical origins of that article.

(1) OJ 2013 L 354, p. 86.

Action brought on 21 March 2014 — European Parliament v Council of the European Union

(Case C-136/14)

(2014/C 175/34)

Language of the case: French

Parties

Applicant: European Parliament (represented by: J. Rodrigues and L. Visaggio, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Directive 2013/64/EU of 17 December 2013 amending Council Directives 91/271/EEC and 1999/74/EC, and Directives 2000/60/EC, 2006/7/EC, 2006/25/EC and 2011/24/EU of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union. (1)

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

Pleas in law and main arguments

The European Parliament seeks annulment of Directive 2013/64/EU which the Council adopted on the legal basis of Article 349 TFEU.

According to the Parliament, the legal basis chosen by the Council is incorrect, on the ground that the measures provided for in the contested directive come under the responsibilities of the European Union pursuant to various common policies. Those measures should therefore have been adopted under sector-specific legal bases concerning the areas of environment, agriculture, social policy and public health, namely Articles 43(2), 114, 153(2), 168 and 192(1) TFEU and not on the basis of Article 349 TFEU.

For the Parliament, measures which are not designed to deal with the economic or social constraints which an outermost region is facing by means of derogation from the full application of EU law in the region concerned cannot legitimately be based on the legal basis of Article 349 TFEU. Accordingly, measures which merely seek to postpone the application of certain provisions of EU law to an outermost region do not fall within the scope of that Article.

([1]) OJ 2013 L 353, p. 8.

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 28 March 2014 — Direktsia 'Migratsia' pri Ministerstvo na vatreshnite raboti v Bashir Mohamed Ali Mahdi

(Case C-146/14)

(2014/C 175/35)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Direktsia 'Migratsia' pri Ministerstvo na vatreshnite raboti

Defendant: Bashir Mohamed Ali Mahdi

Questions referred

1. Is Article 15(3) and (6) of Directive 2008/115/EC ([1]) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying thirdcountry nationals, in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union and the right to a judicial review and effective [legal protection], to be interpreted as meaning that:

   a) where an administrative authority is obliged under the national law of a Member State to conduct a monthly review of detention without there being an express obligation to take administrative action and where it has to submit to the court ex officio a list of third-country nationals detained beyond the statutorily prescribed maximum length of the initial detention due to obstacles to removal, the administrative authority is obliged, on the expiry of the period laid down in the individual decision to detain for the first time, to either pronounce an express detention review measure having regard to the grounds for an extension of detention provided for under European ('EU') law or to release the person in question?

   b) where the national law of the Member State provides for the courts to have the power, on the expiry of the maximum period for initial detention laid down under national law, to order an extension of the period of detention for removal purposes, to replace the same with a less coercive measure or to order the release of the third-country national, the court is obliged in a situation such as that in the main proceedings to examine the legality of a detention review measure that gives the legal and factual reasons for the need to extend the period of detention and the length thereof by deciding on the merits on the continuation of detention, its replacement or the release of the person in question?

   c) it permits the court, having regard to the grounds for an extension of detention provided for under EU law, to examine the legality of a detention review measure that only gives reasons for which the decision to remove a third-country national cannot be implemented, by deciding the merits of the dispute in a decision on the continuation of detention, its replacement or the release of the person in question solely on the basis of facts stated and evidence adduced by the administrative authority and facts and objections stated by the third-country national?

2. Is Article 15(1) and (6) of Directive 2008/115 to be interpreted, in a situation such as that pertaining in the main proceedings, as meaning that the autonomous reason for extending detention provided for under national law, namely that 'the person in question (…) [has] no identity documents', is permissible from the point of view of EU law as subsumable under both cases in Article 15(6) of the directive where, under the national law of the Member State, due to the said circumstances it can be assumed that there is reason to believe that the person in question will attempt to circumvent implementation of the removal decision, which in turn presents a risk of absconding within the meaning of the law of that Member State?

3. Is Article 15(1)(a) and (b) and Article 15(6) of Directive 2008/115, in conjunction with recitals 2 and 13 in the preamble to the directive with regard to respect for the fundamental rights and dignity of third-country nationals and the application of the principle of proportionality, to be interpreted in a situation such as that pertaining in the main proceedings as permitting the conclusion that there is a reasonable risk of absconding due to the fact that the person in question has no identity documents, has crossed the state boundary illegally and has said that he will not return to his country of origin, even though he has previously completed a statement as to his voluntary return and provided correct details of his identity, when these circumstances fall within the concept of a 'risk of absconding' in the case of the addressee of a return decision within the meaning of the directive, which is defined under national law as reason to believe, based on the facts, that the person in question will attempt to circumvent implementation of the return decision?

4. Is Article 15(1)(a) and (b) and Article 15(4) and (6) of Directive 2008/115, in conjunction with recitals 2 and 13 in the preamble to the directive with regard to respect for the fundamental rights and dignity of third-country nationals and the application of the principle of proportionality, to be interpreted in a situation such as that pertaining in the main proceedings as meaning that:

   a) the third-country national does not demonstrate cooperation in the preparation of implementation of the decision to return him to his country of origin if he states verbally to an embassy official of that country that he does not wish to return to his country of origin even though he has previously completed a statement as to his voluntary return and provided correct details of his identity and there are delays in obtaining the necessary documentation from a third country and there is a reasonable prospect of implementation of the return decision, if in these circumstances the embassy of that country does not issue the document necessary for the person in question to travel to his country of origin even though it has confirmed the identity of the person in question?

   b) in the event of the release of a third-country national on account of the absence of an adequate prospect of implementation of a removal decision where that third-country national has no identity documents, has crossed the state border illegally and states that he does not wish to return to his country of origin, it is to be assumed that the Member State is under an obligation to issue a temporary document on the status of the person in question if the embassy of the country of origin does not in these circumstances issue the document required for the person in question to travel to his country of origin even though it has confirmed the identity of the person in question?

([1]) OJ L 348, p. 98.

Request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on 4 April 2014 — 'Koela-N' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-159/14)

(2014/C 175/36)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: 'Koela-N' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. Is Article 14(1) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax to be interpreted as meaning that the ability to dispose of tangible property as owner also includes the right to instruct a carrier to deliver the goods to a third person other than the intended recipient stated on the invoice, and, on that basis, the receipt of the goods by that person on its own constitutes proof of previously effected supplies of goods?

2. Is Article 14(1) of Directive 2006/112 to be interpreted as meaning that the fact that the goods are not actually in the possession of the direct supplier — regardless of whether the buyer has received the goods — means that the conditions for the existence of a supply under the directive are not satisfied?

3. Do the fact that the upstream suppliers in the supply chain have not assisted the tax authorities and the non-loading of the goods constitute objective grounds from which it may be inferred that the taxable person knew, or ought to have known, that the transaction relied on as a basis for the right to deduct is connected with tax fraud?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Varas Cíveis de Lisboa (5ª Vara Cível) (Portugal) lodged on 4 April 2014 — João Filipe Ferreira da Silva e Brito and Others v Portuguese State

(Case C-160/14)

(2014/C 175/37)

Language of the case: Portuguese

Referring court

Varas Cíveis de Lisboa

Parties to the main proceedings

Applicants: João Filipe Ferreira da Silva e Brito and Others

Defendant: Portuguese State

Questions referred

1. Must 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, ([1]) in particular Article 1(1) thereof, be interpreted as meaning that the concept of a 'transfer of a business' encompasses a situation in which an undertaking active on the charter flights market is wound up by decision of its majority shareholder, itself an undertaking active in the aviation sector and, in the context of the winding up, the parent company:

   (i)- replaces the company being wound up under aircraft leasing contracts and ongoing charter flight contracts with tour operators;

   (ii)- carries out activities previously pursued by the company being wound up;

(iii)- re-employs some workers until that point employed by the company being wound up and engages them to perform identical tasks;

(iv)- receives small equipment from the company being wound up?

2. Must Article 267 (formerly Article 234 [EC]) TFEU be interpreted as meaning that, in the light of the facts set out in the preceding question and the fact that the lower national courts adjudicating on the case adopted contradictory decisions, the Supremo Tribunal de Justiça was under an obligation to refer to the Court of Justice of the European Union for a preliminary ruling the question of the correct interpretation of the concept of a 'transfer of a business' within the meaning of Article 1(1) of Directive 2001/23/EC?

3. Do Community law, in particular, the principles laid down by the Court of Justice in *Köbler* ([2]) on State liability for loss or damage caused to individuals as a result of an infringement of Community law by a national court adjudicating at last instance preclude the application of a national provision which makes a claim for damages against the State conditional upon the adverse decision having first been set aside?

([1]) OJ 2001 L 82, p. 16.
([2]) C-224/01, EU:C:2003:513

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 April 2014 — Alfredo Rendón Marín v Administración del Estado

(Case C-165/14)

(2014/C 175/38)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Section: Tercera

Parties to the main proceedings

Applicant: Alfredo Rendón Marín

Defendant: Administración del Estado

Question referred

Is national legislation which excludes the possibility of granting a residence permit to the parent of a European Union citizen who is a child and dependent on that parent, because the parent has a criminal record in the country in which the request is made, compatible with Article 20 of the Treaty on the Functioning of the European Union, interpreted in the light of the decisions of 19 October 2004 (Case C-200/02 *Zhu-Chen*) ([1]) and 8 March 2011 (Case C-34/09 *Ruiz Zambrano*), ([2]) even if this results in the removal of the child from the territory of the European Union, as that child has to follow the parent?

([1]) EU:C:2004:639.
([2]) EU:C:2011:124.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 April 2014 — Grupo Itevelesa SL and Others v OCA Inspección Técnica de Vehículos SA and Another

(Case C-168/14)

(2014/C 175/39)

Language of the case: Spanish

Referring court

Tribunal Supremo, Section Three of the Chamber for Contentious Administrative Proceedings

Parties to the main proceedings

Applicants: Grupo Itevelesa SL, Applus Iteuve Technology SL, Certio ITV SL and Asistencia Técnica Industrial SAE

Other parties to proceedings: OCA Inspección Técnica de Vehículos SA and Generalidad de Cataluña

Questions referred

1) Does Article 2(2)[(d)] of Directive 2006/123/EC ([1]) of the European Parliament and of the Council of 12 December 2006 on services in the internal market exclude vehicle roadworthiness tests from the scope of the directive where national legislation provides that these are to be carried out by private commercial entities under the supervision of the authorities of a Member State?

2) If the previous question is answered in the negative (and vehicle roadworthiness tests do, in principle, fall within the scope of Directive 2006/123/EC), are the grounds for exclusion referred to in Article 2(2)(i) of the directive applicable due to the fact that the private entities providing the service are empowered, as a precautionary measure, to order that vehicles found to have safety defects such that they would represent an imminent danger if driven, should be taken off the road?

3) If Directive 2006/123/EC applies to vehicle roadworthiness tests, does that directive, when interpreted in conjunction with Article 2 of Directive 2009/40/EC ([2]) of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers (or the equivalent provision of its predecessor, Directive 96/96/EC), mean that it is permissible to make such activities subject to prior administrative authorisation in every case? Does what is said in paragraph 26 of the judgment of the Court of Justice of the European Union in Case C-438/08 ([3]) have any bearing on the reply to this question?

4) Is it compatible with Articles 10 and 14 of Directive 2006/123/EC or, if that directive is not applicable, Article 43 EC (now Article 49 TFEU), for national legislation to make the number of licences for roadworthiness testing centres subject to a local plan which justifies the quantitative restriction on the grounds of ensuring adequate local coverage, ensuring the quality of the service and encouraging competition between operators and, to that end, includes factors relating to economic planning?

([1]) OJ 2006 L 376, p. 36.
([2]) OJ 2009 L 141, p. 12.
([3]) EU: C:2099:651.

Request for a preliminary ruling from the Audiencia Provincial de Castellón (Spain) lodged on 7 April 2014 — Juan Carlos Sánchez Morcillo, María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-169/14)

(2014/C 175/40)

Language of the case: Spanish

Referring court

Audiencia Provincial de Castellón

Parties to the main proceedings

Applicants: Juan Carlos Sánchez Morcillo, María del Carmen Abril García

Defendant: Banco Bilbao Vizcaya Argentaria, S.A.

Questions referred

1. Is it compatible with Article 7(1) of Directive 93/13/EEC, ([1]) which imposes on Member States the obligation to ensure that, in the interests of consumers, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers, for a procedural rule of the kind laid down in Article 695(4) of the Spanish Law on Civil Procedure, applicable to appeals against a decision determining the outcome of an objection to enforcement proceedings in relation to mortgaged or pledged goods, to allow an appeal to be brought only against an order staying the proceedings or disapplying an unfair term and to exclude appeals in other cases, the immediate consequence of which is that whilst the party seeking enforcement may appeal when an objection to enforcement is upheld and the proceedings are brought to an end or an unfair term is disapplied[,] the consumer against whom enforcement is sought may not appeal if his objection is dismissed?

2. Within the ambit of the EU legislation on the protection of consumers contained in Directive 93/13/EEC, is it compatible with the principle of the right to an effective remedy and a fair trial in accordance with the principle of equality of arms, affirmed in Article 47 of the Charter of Fundamental Rights of the European Union, ([2]) for a provision of national law of the kind laid down in Article 695(4) of the Spanish Law on Civil Procedure, applicable to appeals against a decision determining the outcome of an objection to enforcement proceedings in relation to mortgaged or pledged goods, to allow an appeal to be brought only against an order staying the proceedings or disapplying an unfair term and to exclude appeals in other cases, the immediate consequence of which is that whilst the party seeking enforcement may appeal when an objection to enforcement is upheld and the proceedings are brought to an end or an unfair term is disapplied, the party against whom enforcement is sought may not appeal if his objection is dismissed?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, p. 29.
([2]) OJ 2000 C 364, p. 1.

Order of the President of the Court of 16 January 2014 (request for a preliminary ruling from the Audiencia Provincial de Salamanca — Spain) — Josune Esteban Garcia v Cachorros Plus CBF SCP

(Case C-451/12) ([1])

(2014/C 175/41)

Language of the case: Spanish

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

([1]) OJ C 399, 22. 12. 2012.

Order of the President of the Eighth Chamber of the Court of 7 February 2014 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — SKP k.s. v Ján Bríla

(Case C-460/12) ([1])

(2014/C 175/42)

Language of the case: Slovak

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

([1]) OJ C 46, 16. 2. 2013.

Order of the President of the Court of 31 January 2014 (request for a preliminary ruling from the Tribunal d'instance d'Orléans — France) — Facet SA, BNP Paribas Personal Finance SA v Saïda Bouchelaghem, Nathalie Cousin, Clémentine Benoni, Hili Aziz, Mohamed Zouhir, Jean Morel, Jalid Anissa, Marine Bourreau, Anthony Cartier, Patrick Rousselière, Karine Lenfant

(Case C-298/13) ([1])

(2014/C 175/43)

Language of the case: French

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

([1]) OJ C 215, 27. 7. 2013.

Order of the President of the Court of 16 January 2014 (request for a preliminary ruling from the Tribunalul Brașov — Romania) — Imre Solyom, Luiza Solyom v Direcția Generală a Finanțelor Publice a Județului Brașov

(Case C-444/13) ([1])

(2014/C 175/44)

Language of the case: Romanian

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

([1]) OJ C 325, 9. 11. 2013.

GENERAL COURT

Judgment of the General Court of 10 April 2014 — Evropaïki Dynamiki v Commission

(Case T-340/09) ([1])

(Public service contracts — Call for tenders by the Publications Office — Assistance in the provision of publishing and communication services in connection with the CORDIS website — Rejection of a tenderer's offers and decision to award the contracts to other tenderers — Classification of the tenderer's offer — Obligation to state reasons — Article 148(1) and (3) of the Implementing Rules — Manifest error of assessment — Non-contractual liability)

(2014/C 175/45)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, (Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Commission (represented by: represented initially by S. Delaude and N. Bambara, and subsequently by S. Delaude, acting as Agents, assisted by C. Erkelens, lawyer)

Re:

Application, first, for annulment of the decision of the Office for Official Publications of the European Communities, notified to the applicant by letter of 9 June 2009, not to select its tenders submitted in response to call for tender No 10017 (CORDIS) in relation to Lot B, entitled 'Editorial and publishing services', and Lot C, entitled 'Provision of New Digital Information Services', respectively, and to place its tender, submitted in response to that call for tenders in third position for Lot E, entitled 'Development and Maintenance of Core Services', and, second, for damages.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear 90% of its own costs and 90% of the costs incurred by the European Commission and orders the Commission to bear 10% of its own costs and 10% of the costs incurred by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis.*

([1]) OJ C 267, 7. 11. 2009.

Judgment of the General Court of 9 April 2014 — Pico Food v OHIM — Sobieraj (MILANÓWEK CREAM FUDGE)

(Case T-623/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community trade mark MILANÓWEK CREAM FUDGE — Earlier national figurative marks representing a cow, Original Sahne Muh-Muhs HANDGESCHNITTEN HANDGEWICKELT and SAHNE TOFFEE LUXURY CREAM FUDGE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) and Article 76(1) of Regulation (EC) No 207/2009)

(2014/C 175/46)

Language of the case: English

Parties

Applicant: Pico Food GmbH (Tamm, Germany) (represented by: M. Douglas, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Bogumił Sobieraj (Milanówek, Poland) (represented by: O. Bischof, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 September 2011 (Case R 553/2010-1), relating to opposition proceedings between PICO Food GmbH and Bogumił Sobieraj.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Pico Food GmbH to pay the costs.*

([1]) OJ C 32, 4. 2. 2012.

Judgment of the General Court of 9 April 2014 — Comsa v OHIM — COMSA (COMSA)

(Case T-144/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark COMSA — Earlier company name Comsa, SA — Relative ground for refusal — Lack of use in the course of trade of a sign of more than mere local significance — Similarity of the services — Article 8(4) of Regulation (EC) No 207/2009)

(2014/C 175/47)

Language of the case: Spanish

Parties

Applicant: Comsa, SA (Barcelona, Spain) (represented initially by M. Aznar Alonso, and subsequently by A. Gómez López, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Constructora de obras municipales, SA (COMSA) (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 January 2012 (Joined cases R 518/2011-2 and R 795/2011-2) relating to opposition proceedings between Comsa, SA and Constructora de obras municipales, SA (COMSA).

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 10 January 2012 (Joined cases R 518/2011-2 and R 795/2011-2) relating to opposition proceedings between Comsa, SA and Constructora de obras municipales, SA (COMSA), in so far as it annulled the decision of the Opposition Division with respect to the services in Class 42 and authorised registration of the mark applied for in relation to those same services;*

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

3. *Orders Comsa to bear its own costs and to pay three quarters of the costs incurred by OHIM. Orders OHIM to bear one quarter of its costs.*

([1]) OJ C 194, 30.6.2012.

Judgment of the General Court of 9 April 2014 — Greece v Commission

(Case T-150/12) ([1])

(State aid — Interest-free loans, accompanied by a State guarantee, granted by the Greek authorities to cereal-collecting agricultural cooperatives — Decision declaring the aid incompatible with the internal market — Obligation to state reasons — Advantage — Aid to remedy a serious disturbance in the economy of a Member State)

(2014/C 175/48)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias, X. Basakou and A. Vasilopoulou)

Defendant: European Commission (represented initially by S. Thomas and D. Triantafyllou, and subsequently by M. Triantafyllou and P. Němečkova, acting as Agents)

Re:

Application for annulment of Commission Decision 2012/320/EU of 25 January 2012 concerning aid granted by Greece to cereal-producing farmers and cereal-collecting cooperatives (OJ L 164, p. 10).

Operative part of the judgment

1. *The application is rejected.*

2. *The Hellenic Republic is ordered to pay the costs.*

([1]) OJ C 184, 23. 6. 2012.

Judgment of the General Court of 9 April 2014 — EI du Pont de Nemours v OHIM — Zueco Ruiz (ZYTeL)

(Case T-288/12) ([1])

(Community trade mark — Opposition proceedings — Application for the figurative mark ZYTeL — Earlier Community word mark and well-known mark within the meaning of Article 6bis of the Paris Convention ZYTEL — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Detriment to the distinctive character or repute of the earlier mark — Article 8(5) of Regulation No 207/2009)

(2014/C 175/49)

Language of the case: English

Parties

Applicant: EI du Pont de Nemours and Company (Wilmington, Delaware, United States) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Enrique Zueco Ruiz (Zaragoza, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 March 2012 (Case R 464/2011-2) relating to opposition proceedings between EI du Pont de Nemours and Company and Mr Enrique Zueco Ruiz

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders EI du Pont de Nemours and Company to pay the costs.*

(1) OJ C 273, 8. 9. 2012.

Judgment of the General Court of 9 April 2014 — Elite Licensing v OHIM — Aguas De Mondariz Fuente del Val (elite BY MONDARIZ)

(Case T-386/12) (1)

(Community trade mark — Opposition proceedings — Application for a Community figurative mark elite BY MONDARIZ — Earlier Community and international figurative marks ELITE — Language of appeal proceedings — Time-limits — Admissibility of an appeal to the Board of Appeal — Rule 48(2), Rule 49 (1) and Rule 96(1) of Regulation (EC) No 2868/95 — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Damage to reputation — Article 8(5) of Regulation No 207/2009)

(2014/C 175/50)

Language of the case: Spanish

Parties

Applicant: Elite Licensing Company SA (Fribourg, Switzerland) (represented by: J. Albrecht, 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: Aguas De Mondariz Fuente del Val, SL (Mondariz, Spain) (represented by: T. Andrade Boué, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 6 June 2012 (Case R 9/2011-5), relating to invalidity proceedings between Elite Licensing Company SA and Aguas de Mondariz Fuente del Val, SL.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 June 2012 (Case R 9/2011-5), relating to invalidity proceedings between Elite Licensing Company SA and Aguas de Mondariz Fuente del Val, SL;*

2. *Orders OHIM to pay, in addition to its own costs, the costs incurred by Elite Licensing Company;*

3. *Orders Aguas de Mondariz Fuente del Val to pay its own costs.*

(1) OJ C 355, 17.11.2012.

Judgment of the General Court of 9 April 2014 — CITEB and Belgo-Metal v Parliament

(Case T-488/12) (1)

(Public works contracts — Tender procedure — Work for the renovation and extension of the Eastman building in Brussels — Rejection of a tenderer's bid — Notification of the evaluation committee's report — Duty to state reasons)

(2014/C 175/51)

Language of the case: French

Parties

Applicants: Cit Blaton SA (CITEB) (Schaerbeek, Belgium); and Belgo-Metal (Wetteren, Belgium) (represented by: R. Simar, lawyer)

Defendant: European Parliament (represented by: F. Poilvache and L. Fedel, acting as Agents)

Re:

Application for annulment of the Parliament's decision of 7 September 2012 rejecting the tender made by the applicants in response to a contract notice of 19 May 2012, published in the Supplement to the *Official Journal of the European Union* (OJ 2012/S 92-1563620) under reference NINLO.AO-2012-005-BRU-UPIB-02, concerning the carrying out of work for the renovation and extension of the Eastman building in Brussels (Belgium) and awarding that contract to another tenderer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cit Blaton SA (CITEB) and Belgo-Metal to pay the costs.*

([1]) OJ C 9, 12.1.2013.

Judgment of the General Court of 9 April 2014 — Farmaceutisk Laboratorium Ferring v OHIM — Tillotts Pharma (OCTASA)

(Case T-501/12) ([1])

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

(2014/C 175/52)

Language of the case: English

Parties

Applicant: Farmaceutisk Laboratorium Ferring A/S (Copenhagen, Denmark) (represented initially by I. Fowler, Solicitor, A. Renck and J. Fuhrmann, lawyers, and subsequently by I. Fowler, A. Renck and D. Slopek, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Tillotts Pharma AG (Ziefen, Switzerland) (represented by: T. Alkin, Barrister)

Re:

Action against the decision of the Fourth Board of Appeal of OHIM of 6 September 2012 (Case R 1214/2011-4), concerning opposition proceedings between Farmaceutisk Laboratorium Ferring A/S and Tillotts Pharma AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 September 2012 (Case R 1214/2011-4);*

2. *Orders OHIM to bear its own costs and to pay half of the costs incurred by Farmaceutisk Laboratorium Ferring A/S;*

3. *Orders Tillotts Pharma AG to bear its own costs and to pay half of the costs incurred by Farmaceutisk Laboratorium Ferring.*

([1]) OJ C 26, 26. 1. 2013.

Judgment of the General Court of 9 April 2014 — Ferring v OHIM — Tillotts Pharma (OCTASA)

(Case T-502/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark OCTASA — Earlier national, Benelux and international word marks PENTASA and OCTOSTIM — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 175/53)

Language of the case: English

Parties

Applicant: Ferring BV (Haarlem, Netherlands) (represented initially by I. Fowler, Solicitor, A. Renck and J. Fuhrmann, lawyers, and subsequently by I. Fowler, A. Renck and D. Slopek, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Tillotts Pharma AG (Ziefen, Switzerland) (represented by: T. Alkin, Barrister)

Re:

Action against the decision of the Fourth Board of Appeal of OHIM of 6 September 2012 (Case R 1216/2011-4), concerning opposition proceedings between Ferring BV and Tillotts Pharma AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 September 2012 (Case R 1216/2011-4);*

2. *Orders OHIM to bear its own costs and to pay half of the costs incurred by Ferring BV;*

3. *Orders Tillotts Pharma AG to bear its own costs and to pay half of the costs incurred by Ferring.*

([1]) OJ C 26, 26. 1. 2013.

Judgment of the General Court of 11 April 2014 — Olive Line International v OHIM (OLIVE LINE)

(Case T-209/13) ([1])

(Community trade mark — Application for registration of the Community figurative mark OLIVE LINE — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2014/C 175/54)

Language of the case: Spanish

Parties

Applicant: Olive Line International, SL (Madrid, Spain) (represented by: M. Aznar Alonso, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 31 January 2013 (Case R 1447/2012-1) concerning an application for registration of the figurative sign OLIVE LINE as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Olive Line International, SL to pay the costs.*

([1]) OJ C 178, 22.6.2013

Judgment of the General Court of 9 April 2014 — MHCS v OHIM — Ambra (DORATO)

(Case T-249/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark DORATO — Earlier Community and national figurative trade marks representing bottle neck labels — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Rule 50(1) of Regulation (EC) No 2868/95)

(2014/C 175/55)

Language of the case: English

Parties

Applicant: MHCS (Épernay, France) (represented by: P. Boutron, N. Moya Fernández and L.-É. Balleydier, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, N. Bambara and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Ambra SA (Warsaw, Poland) (represented by: M. KaczanParchimowicz, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 February 2013 (Case R 1877/2011-2), relating to opposition proceedings between MHCS and Ambra SA.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders MHCS to pay the costs, including the costs necessarily incurred by Ambra SA for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 207, 20. 7. 2013.

Order of the General Court of 2 April 2014 — CNIEL v Commission

(Case T-293/09) ([1])

(State aid — Framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented — Financing by voluntary levies made compulsory — Decision declaring the aid scheme compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 175/56)

Language of the case: French

Parties

Applicant: Centre national interprofessionnel de l'économie laitière (CNIEL) (Paris, France) (represented initially by: A. Cabanes and V. Kostrzewski-Pugnat, subsequently by: A. Cabanes, A.-C. Jeux and L. Sersiron, and finally by: A. Cabanes, L. Sersiron and M. Spy, lawyers)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, subsequently by: B. Stromsky and S. Thomas, and finally by: B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 concerning State aid No 561/2008, on the framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented

Operative part of the order

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

2. *The European Commission shall pay the costs.*

([1]) OJ C 244, 10.10.2009.

Order of the General Court of 2 April 2014 — CNIPT v Commission

(Case T-302/09) ([1])

(State aid — Framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented — Financing by voluntary levies made compulsory — Decision declaring the aid scheme compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 175/57)

Language of the case: French

Parties

Applicant: Comité national interprofessionnel de la pomme de terre (CNIPT) (Paris, France) (represented by: V. Ledoux and B. Néouze, lawyers)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, subsequently by: B. Stromsky and S. Thomas, and finally by: B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 concerning State aid No 561/2008, on the framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented

Operative part of the order

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

2. *The European Commission shall pay the costs.*

([1]) OJ C 244, 10.10.2009.

Order of the General Court of 2 April 2014 — Val'hor v Commission

(Case T-306/09) ([1])

(State aid — Framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented — Financing by voluntary levies made compulsory — Decision declaring the aid scheme compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 175/58)

Language of the case: French

Parties

Applicant: Val'hor (Paris, France) (represented by: V. Ledoux and B. Néouze, lawyers)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, subsequently by: B. Stromsky and S. Thomas, and finally by: B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 concerning State aid No 561/2008, on the framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented

Operative part of the order

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

2. *The European Commission shall pay the costs.*

([1]) OJ C 244, 10.10.2009.

Order of the General Court of 2 April 2014 — Onidol v Commission

(Case T-313/09) ([1])

(State aid — Framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented — Financing by voluntary levies made compulsory — Decision declaring the aid scheme compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 175/59)

Language of the case: French

Parties

Applicant: Organisation nationale interprofessionnel des grains et fruits oléagineux (Onidol) (Paris, France) (represented initially by: B. Le Bret and L. Olza Moreno, and subsequently by: B. Le Bret and C. Renner, lawyers)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, subsequently by: B. Stromsky and S. Thomas, and finally by: B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 concerning State aid No 561/2008, on the framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented

Operative part of the order

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

2. *The European Commission shall pay the costs.*

(1) OJ C 244, 10.10.2009.

Order of the General Court of 2 April 2014 — Intercéréales and Grossi v Commission

(Case T-314/09) (1)

(State aid — Framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented — Financing by voluntary levies made compulsory — Decision declaring the aid scheme compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 175/60)

Language of the case: French

Parties

Applicant: Intercéréales (Paris, France); and Alain Grossi (Nimes, France) (represented initially by: B. Le Bret and L. Olza Moreno, and subsequently by: B. Le Bret and C. Renner, lawyers)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, subsequently by: B. Stromsky and S. Thomas, and finally by: B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 concerning State aid No 561/2008, on the framework system of actions able to be undertaken by the recognised French agricultural interprofessional organisations in favour of members of the agricultural sectors represented

Operative part of the order

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

2. *The European Commission shall pay the costs.*

(1) OJ C 244, 10.10.2009.

Order of the General Court of 31 March 2014 — SACBO v Commission and INEA

(Case T-270/13) (1)

(Action for annulment — Community financial aid to projects of common interest in the field of trans-European transport and energy networks — Lack of direct concern — Non-actionable measure — Preparatory act — Inadmissibility)

(2014/C 175/61)

Language of the case: Italian

Parties

Applicant: Società per l'aeroporto civile di Bergamo-Orio al Serio SpA (SACBO SpA) (Grassobbio, Italy) (represented by: M. Muscardini and G. Greco, lawyers)

Defendants: European Commission (represented by: J. Hottiaux and E. Montaguti, Agents) and the Innovation and Networks Executive Agency (INEA) (represented by: I. Ramallo, Agent, and M. Merola, C. Santacroce and L. Armati, lawyers)

Re:

Application for annulment of the decision of 18 March 2013 of the Trans-European Transport Network Executive Agency (TEN-T EA) relating to certain expenditure incurred in carrying out a feasibility study concerning the intermodal nature of the Bergamo-Orio al Serio airport (Italy) following the grant of financial aid by the Commission to the Ente Nazionale per l'Aviazione Civile (ENAC, Italian national civil aviation authority).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the application by the Republic of Poland for leave to intervene.*

3. *The Società per l'aeroporto civile di Bergamo-Orio al Serio SpA (SACBO SpA) shall bear its own costs and pay those incurred by the European Commission and the Innovation and Networks Executive Agency (INEA).*

([1]) OJ C 207, 20. 7. 2013.

Order of the President of the General Court of 4 February 2014 — Serco Belgium and Others v Commission

(Case T-644/13 R)

(Interim proceedings — Public procurement — Tendering procedure — Rejection of a tender — Application for suspension of operation — Prima facie case)

(2014/C 175/62)

Language of the case: English

Parties

Applicants: Serco Belgium SA (Brussels, Belgium); SA Bull NV (Brussels); and Unisys Belgium SA (Brussels) (represented by: V. Ost and M. Vanderstraeten, lawyers)

Defendant: European Commission (represented by: S. Delaude, L. Cappelletti and F. Moro, acting as Agents)

Re:

Application for, first, suspension of operation of the decision of the Commission of 30 October 2013 rejecting the tender submitted by the consortium formed by the applicants in the public tendering procedure DIGIT/R2/PO/2012/026 — ITIC-SM (IT service management for the integrated and consolidated IT desktop environment of the European Commission) (OJ 2012/S 69 — 112095) and awarding the contract to another consortium, secondly, an order that the Commission refrain from concluding the framework contract at issue and from concluding specific contracts under that framework contract and, thirdly, the grant of any other appropriate interim measures.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 7 March 2014 — ANKO v Commission

(Case T-154/14)

(2014/C 175/63)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Declare that the entire amount of EUR 185 664,10 which the Commission has already paid to the applicant in respect of the OASIS project and the entire amount of EUR 465 062,84 which the Commission has already paid to the applicant in respect of the PERFORM project constitute eligible costs;

— Declare that the amount of EUR 1 824,05 which the Commission has not paid in respect of the OASIS project and the amount of EUR 637 117,17 which the Commission has not paid as a portion in respect of the PERFORM project constitute eligible costs and consequently the Commission is under an obligation to pay those sums to ANKO, and

— order the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

This action concerns the liability of the Commission under the contracts (a) 215 754 and (b) 215 952 for the performance of the (a) OASIS and (b) PERFORM projects respectively, under Article 272 TFEU.

In particular, the applicant maintains that, although it complied with its contractual obligations, the Commission, in breach of the abovementioned contracts, the principle of good faith, the prohibition of abuse of rights and the principle of proportionality, sought the recovery of sums paid to ANKO as not being eligible costs and refused to pay its outstanding portion. For that reason, the applicant maintains, first, that the rejection as constituting ineligible costs of almost all of the Commission's portion in respect of the OASIS and PERFORM projects is contrary to the Commission's contractual obligations to ANKO. Second, the applicant maintains that the attempt to recover almost all of those amounts is disproportionate and abusive.

Action brought on brought on 7 March 2014 — ANKO v Commission.

(Case T-155/14)

(2014/C 175/64)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Declare that the entire amount of EUR 325 823,16 which the Commission seeks to recover as constituting ineligible costs and which it has already paid to the applicant in respect of the PERSONA project and the entire amount of EUR 280 747,45 which the Commission seeks to recover as constituting ineligible costs and which it has already paid in respect of the TERREGOV project constitute eligible costs;

— Declare that the amount of EUR 6 752,74 constitutes eligible costs incurred by ANKO in the context of the PERSONA project and, consequently that the Commission is under an obligation to make payment to ANKO;·

— Order the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

This action concerns the liability of the Commission under the contracts (a) 045 459 and (b) 507 749 for the performance of the (a) PERSONA and (b) TERREGOV projects respectively, under Article 272 TFEU.

In particular, the applicant maintains that, although it complied with its contractual obligations, the Commission, in breach of the abovementioned contracts, the principle of good faith, the prohibition of abuse of rights and the principle of proportionality, sought the recovery of sums paid to ANKO as not being eligible costs. For that reason, the applicant maintains, first, that the rejection of the eligibility of almost all the sums which the Commission paid in respect of the PERSONA and TERREGOV projects and the attempt to recover those sums as improperly paid is contrary to the Commission's contractual obligations to ANKO. Second, the applicant maintains that the attempt to recover the whole of those amounts is disproportionate and abusive.

Action brought on 7 March 2014 — ANKO v Commission and REA

(Case T-165/14)

(2014/C 175/65)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission and Research Executive Agency (REA)

Form of order sought

The applicant claims that the General Court should:

— Declare that the suspension of payment which was imposed and is maintained by the REA acting under powers delegated to it by the Commission in respect of the amount which the Commission remains liable to pay to the applicant as its portion in respect of the ESS project is a breach of the latter's contractual obligations;

— Declare that the amount of EUR 125 253,82 which the Commission continues not to have paid as its portion in respect of the ESS project constitutes eligible costs and, consequently, the Commission is under an obligation to pay it to ANKO;

— Declare that the entire amount of EUR 216 172,68 which the Commission has already paid to the applicant as its portion in respect of the ESS project constitutes eligible costs,·and

— Order the REA and the Commission to pay the applicant's legal costs.

Pleas in law and main arguments

This action concerns the liability of the REA and the Commission under the contract No 217 951 for the performance of the ESS project, under Article 272 TFEU.

In particular, the applicant maintains that the REA, acting under powers delegated to it by the Commission, without any justification and in the breach of the ESS project agreement, suspended payment to ANKO. Further, the applicant maintains that the Commission, by seeking to apply the 'extrapolation' method, disputed, without any legal basis and in breach of both the agreement and of applicable law, the eligibility of almost the whole of the costs declared by ANKO in respect of the ESS project.

Action brought on 19 March 2014 — Compagnie des gaz de pétrole Primagaz v OHIM — Reeh (PRIMA KLIMA)

(Case T-195/14)

(2014/C 175/66)

Language in which the application was lodged: French

Parties

Applicant: Compagnie des gaz de pétrole Primagaz SA (Paris, France) (represented by: D. Régnier, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gerhard Reeh (Radnice, Czech Republic)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 7 January 2014 in case R 2304/2012-1

Pleas in law and main arguments

Applicant for the Community trade mark: Gerhard Reeh

Community trade mark concerned: Figurative mark including the word elements 'PRIMA KLIMA' for goods and services in Classes 11 and 42

Proprietor of the mark or sign cited in the opposition proceedings: Applicant

Mark or sign cited in opposition: Figurative mark including the word element 'PRIMAGAZ' and national word marks 'PRIMALOTISSEMENT', 'PRIMACOMPTEUR', 'PRIMAVILLAGE', 'PRIMAFAMILLE', 'PRIMAPAC', 'PRIMAENERGY', 'PRIMA CHAUFFAGE', 'PRIMA CLIM', 'PRIMAGRILL' and 'PRIMAWATT', for goods in Class 11

Decision of the Opposition Division: Reject the opposition

Decision of the Board of Appeal: Dismiss the appeal

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

Action brought on 8 April 2014 — Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo v Commission

(Case T-215/14)

(2014/C 175/67)

Language of the case: Polish

Parties

Applicants: Gmina Miasto Gdynia (Municipality of Gdynia) (Gdynia, Poland) and Port Lotniczy Gdynia Kosakowo sp. z o.o. (Gdynia) (represented by: T. Koncewicz, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— Annul the decision published in Case SA. 35 388 by the European Commission on 11 February 2014 ordering Poland to recover from the Gdynia-Kosakowo Airport improperly paid State aid;

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

Pleas in law and main arguments

In support of their action the applicants put forward the following pleas in law.

1. The first plea in law:

   — Arbitrariness and flagrant error in the findings of fact taken as the basis on which the contested decision was adopted, a consequent failure on the part of the Commission to remain within the limits of its discretion, and manifest errors in the appraisal of the evidence.

2. The second plea in law:

   — Failure on the part of the Commission to take account of factors and circumstances relevant to the legal appraisal of the investment in the Gdynia-Kosakowo Airport.

3. The third plea in law:

   — Failure on the part of the Commission to remain within the limits of its discretion within the meaning of the case-law emphasising the obligation of an institution which enjoys discretion to explain why specific evidence and facts are taken into consideration, whereas others are rejected.

4. The fourth plea in law:

   — Breach of Article 107(1) TFEU in conjunction with a general principle of European law — the principle of legal certainty and loyalty of the institution towards persons subject to the law — by reason of defective application and interpretation.

5. The fifth plea in law:

   — Infringement comprising an erroneous legal classification of the facts and evidence, resulting in a breach by the contested decision of Article 107(1) TFEU by reason of the finding that, in this case, the conditions for recognition of the actions of the applicants as satisfying the private investor test were not met and it was not established that the investment project would have been carried out by a private investor, with the consequence that the Gdynia-Kosakowo investment was dependent on unauthorised public aid.

Action brought on 2 April 2014 — Regione autonoma della Sardegna v Commission

(Case T-219/14)

(2014/C 175/68)

Language of the case: Italian

Parties

Applicant: Regione autonoma della Sardegna (represented by: T. Ledda, S. Sau, G. Roberti. G. Bellitti and I. Perego, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul, in whole or in part, the contested decision in so far as:

   — it classified the compensation paid for public services pursuant to Regional Law No 15 of 7 August 2012 and the capital finance approved by the general meeting of Saremar's shareholders on 15 June 2012 as State aid;

— it found those measures to be incompatible with the internal market and ordered that they be recovered;

— declare, pursuant to Article 277 TFEU, that Article 4(f) of Decision 2012/21/EU and point 9 of the European Union Framework for State aid in the form of public service compensation (2011) are unlawful and inapplicable;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the Decision of the European Commission of 22 January 2014 on aid measures SA.32014 (2011/C), SA.32015 (2011/C) and SA.32016 (2011/C) implemented by the Region of Sardinia in favour of Saremar. That decision found to be incompatible with the internal market the aid granted by the applicant to Saremar for the provision of services of general economic interest in the form of a cabotage transport service between Sardinia and mainland Italy, which operated between 2011 and 2012 and was intended to make the service as affordable as possible for users.

The applicant relies on six pleas in law in support of its action.

1. First plea in law, alleging that the defendant infringed Article 106(2) [TFEU], incorrectly assessing the facts and failing to state adequate reasons, in so far as, in addition to failing correctly to identify Saremar's public service obligations, it did not confine itself checking whether the Member State had made a manifest error, but intervened in the substance of the Member State's decision, thus interfering with decisions on economic and social policy.

2. Second plea in law, alleging that the defendant infringed Article 107(1) TFEU and Article 106(2) TFEU by taking the view that the requirements laid down by the *Altmark* line of case-law are not satisfied in the present case. In that regard, the Commission incorrectly assessed the facts and failed to state adequate reasons by concluding, inter alia, that the market provided appropriate guarantees that were sufficient for the purpose of meeting the public service requirements identified by the Region.

3. Third plea in law, alleging that the defendant also infringed Article 106(2) TFEU and Decisions 2005/824/EC and 2012/21/EU, incorrectly assessed the facts and failed to state adequate reasons, in so far as it (i) found that Decision 2005/824/EC was not applicable *ratione temporis* and (ii) concluded, in any event, that the principles established by those decisions were not met in the circumstances of the present case.

4. Fourth plea in law, alleging that the defendant infringed Article 106(2) TFEU, incorrectly assessed the facts and failed to state adequate reasons, in so far as it classified Saremar as an undertaking in difficulty within the meaning of the Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty.

5. Fifth plea in law, alleging that the defendant infringed Article 106(2) TFEU and incorrectly assessed the facts and law, in so far as it concluded that the requirements laid down by the European Union Framework for State aid in the form of public service compensation (2011) for ensuring that the measure in question was compatible were not satisfied.

6. Sixth plea in law, alleging that the defendant infringed Article 107(1) TFEU and incorrectly assessed the facts and law as regards the nature of the recapitalisation of Saremar carried out by the Region of Sardinia by finding that it gave Saremar an advantage and was in any event incompatible with the market-economy investor principle.

Action brought on 2 April 2014 — Saremar v Commission

(Case T-220/14)

(2014/C 175/69)

Language of the case: Italian

Parties

Applicant: Saremar — Sardegna Regionale Marittima SpA (Caglliari, Italy) (represented by: G. Roberti, G. Bellitti and I. Perego, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul, in whole or in part, the contested decision in so far as:

  — it classified the compensation paid for public services pursuant to Regional Law No 15 of 7 August 2012 and the capital finance approved by the general meeting of Saremar's shareholders on 15 June 2012 as State aid;

  — it found those measures to be incompatible with the internal market and ordered that they be recovered;

— declare, pursuant to Article 277 TFEU, that Article 4(f) of Decision 2012/21/EU and point 9 of the European Union Framework for State aid in the form of public service compensation (2011) are unlawful and inapplicable;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied on are the same as those put forward in Case T-219/14 *Regione della Sardegna* v *Commission*.

Action brought on 10 April 2014 — Deluxe Laboratories v OHIM (deluxe)

(Case T-222/14)

(2014/C 175/70)

Language of the case: Spanish

Parties

Applicant: Deluxe Laboratories, Inc (Burbank, United States) (represented by: S. Serrat Viñas, lawyer)

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 22 January 2014 in Case R 1250/2013-2;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark with word element 'deluxe' for goods and services in Classes 9, 35, 37, 39, 40, 41, 42 and 45 — Community trade mark application No 11 253 044

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

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

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

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

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

— Infringement of the principles of then protection of legitimate expectations, acquired rights and the lawfulness of Community measures

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Order of the General Court of 1 April 2014 — Hangzhou Zhejiang University Sunny Energy Science and Technology v Commission

(Case T-144/13) ([1])

(2014/C 175/71)

Language of the case: French

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

([1]) OJ C 123, 27. 4. 2013.

Order of the General Court of 1 April 2014 — Ningbo Qixin Solar Electrical Appliance v Commission

(Case T-145/13) ([1])

(2014/C 175/72)

Language of the case: French

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

([1]) OJ C 123, 27. 4. 2013.

Order of the General Court of 1 April 2014 — Zhejiang Sunflower Light Energy Science & Technology v Commission

(Case T-146/13) ([1])

(2014/C 175/73)

Language of the case: French

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

([1]) OJ C 123, 27. 4. 2013.

Order of the General Court of 1 April 2014 — Zhejiang Yuhui Solar Energy Source v Commission

(Case T-147/13) ([1])

(2014/C 175/74)

Language of the case: French

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

([1]) OJ C 123, 27. 4. 2013.

Order of the General Court of 2 April 2014 — Lesaffre et Compagnie v OHIM — Louis Baking Company (BAKING CENTER BY TECHNOLINE)

(Case T-575/13) ([1])

(2014/C 175/75)

Language of the case: French

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

([1]) OJ C 31, 1. 2. 2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 17 February 2014 — ZZ v Commission

(Case F-14/14)

(2014/C 175/76)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: A. Carrozzini, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for the recovery of various sums withheld from the applicant's invalidity allowance for the months April to September 2013.

Form of order sought

— Annul the decisions, contained in the pension statements for the months April to September 2013, to reduce the invalidity allowance to which the applicant was entitled for those months by EUR 504,67 for the month of April, EUR 504,72 for the month of May and EUR 508,38 for the months June to September;

— in so far as necessary, annul the decisions, whatever the form in which they were adopted, rejecting the complaints of 16 July 2013 and 7 October 2013 against the decisions referred to above;

— annul each decision in the note of 24 October 2013 bearing the reference 'Ref Ares(2013)3327388 — 24/10/2013' in the top right-hand corner of the first page of that note;

— annul each decision in the note of 17 May 2013;

— order the Commission to pay to the applicant the following sums: (1) EUR 504,67 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 May 2013 until actual payment of that sum; (2) EUR 504,72 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 June 2013 until actual payment of that sum; (3) EUR 508,38 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 July 2013 until actual payment of that sum; (4) EUR 508,38 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 August 2013 until actual payment of that sum; (5) EUR 508,38 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 September 2013 until actual payment of that sum; (6) EUR 508,38 together with interest on that sum at the rate of 10% per annum and annual capitalisation from 1 October 2013 until actual payment of that sum;

— order the Commission to pay the costs.

Action brought on 24 February 2014 — ZZ v Commission

(Case F-16/14)

(2014/C 175/77)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision on the transfer of the applicant's pension rights to the European Union pension scheme which applies the new GIP relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

The applicant claims that the Tribunal should:

— declare unlawful Article 9 of the general provisions implementing Article 11(2) of Annex VIII to the Staff Regulations;

— annul the decision of 24 May 2013 to calculate the accredited pension rights acquired by the applicant before his entry into service, in the context of the transfer of those rights to the pension scheme of the institutions of the European Union, pursuant to the general provisions implementing Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— order the Commission to pay the costs.

Action brought on 10 March 2014 — ZZ v EESC

(Case F-20/14)

(2014/C 175/78)

Language of the case: French

Parties

Applicant: ZZ (represented by: N. Nikolajsen, lawyer)

Defendant: European Economic and Social Committee

Subject-matter and description of the proceedings

Application for annulment of the decision of the EESC rejecting the applicant's request to be entitled to early retirement without a reduction of his pension rights, pursuant to Article 9(2) of Annex VIII to the Staff Regulations.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the EESC refusing to allow the applicant to benefit, in respect of 2013, from Article 9(2) of Annex VIII to the Staff Regulations, in the version applicable until 31 December 2013;

— order the EESC to pay the costs.

Action brought on 21 March 2014 — ZZ v OHIM

(Case F-24/14)

(2014/C 175/79)

Language of the case: English

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

Annulment of the applicant's appraisal report covering the period from 1st October 2011 to 31st December 2012 and claim for damages.

Form of order sought

— Annul the appraisal report issued to the applicant in respect of the period from 1st October 2011 to 31st December 2012 as finalized and signed by the Reporting Officer;

— Order OHIM to pay an adequate compensation at the discretion of the Court — not below an amount of 500 Euro — to the applicant for the moral and immaterial damages suffered by him as a result of the contested Appraisal Report;

— Order OHIM to pay the costs.

Action brought on 24 March 2014 — ZZ v Parliament

(Case F-26/14)

(2014/C 175/80)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi, C. Bernard-Glanz and A. Tymen, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for annulment of the decision rejecting the request for assistance submitted by the applicant in respect of psychological harassment.

Form of order sought

The applicant claims that the Tribunal should:

— annul the implied decision rejecting the applicant's request for assistance of 13 February 2013;

— annul the decision of 18 December 2013 rejecting the applicant's complaint of 26 August 2013;

— grant the applicant damages such as to compensate for the harm suffered of EUR 7 500 in respect of material harm and EUR 50 000 in respect of non-material harm;

— order the Parliament to pay the costs.

Action brought on 28 March 2014 — ZZ v European Commission

(Case F-30/14)

(2014/C 175/81)

Language of the case: French

Parties

Applicant: ZZ (represented by: V. Wellens, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision to impose on the applicant the disciplinary penalty of downgrading.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision to downgrade the applicant for having failed to declare to the Commission that he was receiving, in addition to the family allowances for dependent children under Article 67(2) of the Staff Regulations of Officials, a national allowance of the same nature;

— Order the Commission to pay the costs.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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