Official Journal of the European Union

C 194

English edition

Information and Notices

Volume 57

24 June 2014

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 30 April 2014 — FLSmidth & Co. A/S v European Commission

(Case C-238/12 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Unlimited jurisdiction of the General Court — Duty to state reasons — Attribution to the parent company of the infringement committed by the subsidiary — Liability of the parent company for payment of the fine imposed on the subsidiary — Proportionality — Proceedings before the General Court — Adjudication within a reasonable time)

(2014/C 194/02)

Language of the case: English

Parties

Appellant: FLSmidth & Co. A/S (represented by: M. Dittmer, advokat)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and V. Bottka, acting as Agents, and M. Gray, Barrister)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 6 March 2012 in Case T-65/06 *FLSmidth* v *Commission* by which that court annulled in part Commission Decision C(2005) 4634 of 30 November 2005 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial Bags) concerning a cartel consisting in the fixing of prices and sales quotas by geographic region, the sharing of orders by major customers, the organisation of concerted bidding in response to certain invitations to tender and the implementation of mechanisms for the exchange of information on sales volumes in the market for plastic industrial bags, and reduced the fine imposed on the appellant — Imputability of the unlawful conduct

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders FLSmidth & Co. A/S to pay the costs.*

([1]) OJ C 303, 6.10.2012.

Judgment of the Court (Third Chamber) of 30 April 2014 (request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (previously Unabhängiger Verwaltungssenat des Landes Oberösterreich — Austria) — proceedings brought by Robert Pfleger, Autoart a.s., Mladen Vucicevic, Maroxx Software GmbH, Ing. Hans-Jörg Zehetner

(Case C-390/12) ([1])

(Article 56 TFEU — Freedom to provide services — Charter of Fundamental Rights of the European Union — Articles 15 to 17, 47 and 50 — Freedom to choose an occupation, right to engage in work, freedom to conduct a business, right to property, right to an effective remedy and access to an impartial tribunal, ne bis in idem principle — Article 51 — Scope — Implementation of EU law — Games of chance — Restrictive legislation of a Member State — Administrative and criminal penalties — Overriding reasons in the public interest — Proportionality)

(2014/C 194/03)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich (previously Unabhängiger Verwaltungssenat des Landes Oberösterreich, Austria)

Parties to the main proceedings

Robert Pfleger, Autoart a.s., Mladen Vucicevic, Maroxx Software GmbH, Ing. Hans-Jörg Zehetner

Re:

Request for a preliminary ruling — Unabhängiger Verwaltungssenat des Landes Oberösterreich — Interpretation of Article 56 TFEU and Articles 15 to 17, 47 and 50 of the Charter of Fundamental Rights of the European Union — Games of chance — Member State's rules prohibiting, with criminal penalties, the operation of gaming machines with small winnings ('kleines Glücksspiel') without a concession issued by the competent authority — Principle of proportionality

Operative part of the judgment

Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, where that legislation does not actually pursue the objective of protecting gamblers or fighting crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner.

([1]) OJ C 343, 10.11.2012.

Judgment of the Court (Second Chamber) of 30 April 2014 (request for a preliminary ruling from the Fővárosi Törvényszék (formerly Fővárosi Bíróság) — Hungary) — UPC DTH Sàrl v Nemzeti Média- és Hírközlési Hatóság Elnökhelyettese

(Case C-475/12) ([1])

(Telecommunications sector — Electronic communications networks and services — Freedom to provide services — Article 56 TFEU — Directive 2002/21/EC — Cross-border provision of a package of radio and television programmes — Conditional access — Competence of the national regulatory authorities — Registration — Requirement of establishment)

(2014/C 194/04)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék (formerly Fővárosi Bíróság)

Parties to the main proceedings

Applicant: UPC DTH Sàrl

Defendant: Nemzeti Média- és Hírközlési Hatóság Elnökhelyettese

Re:

Request for a preliminary ruling — Fővárosi Törvényszék (formerly Fővárosi Bíróság) — Interpretation of Article 56 TFEU and Article 2(c) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ 2009 L 337, p. 37) — Company established in a Member State engaged in the marketing of a package of radio and television broadcast services by satellite and supplying services to customers established in other Member States of the Union — National legislation of the Member State of the recipients of the service which allows it to be supplied only to undertakings established on its territory — Competence of the national regulatory authorities of the Member State of the recipients of the supply

Operative part of the judgment

1) *Article 2(c) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that a service consisting in the supply, for consideration, of conditional access to a package of programmes which contains radio and television broadcast services and is retransmitted by satellite falls within the definition of 'electronic communications service' within the meaning of that provision.*

   The fact that that service includes a conditional access system within the meaning of Article 2(ea) and (f) of Directive 2002/21, as amended by Directive 2009/140, is irrelevant in that regard.

   An operator supplying a service such as that at issue in the main proceedings must be regarded as a provider of electronic communications services under Directive 2002/21, as amended by Directive 2009/140.

2) *In circumstances such as those at issue in the main proceedings, a service consisting in the supply, for consideration, of conditional access to a package of programmes which contains radio and audio-visual broadcast services and is retransmitted by satellite constitutes a provision of services for the purposes of Article 56 TFEU.*

3) *Surveillance proceedings relating to electronic communications services, such as that at issue in the main proceedings, will be subject to the authorities of the Member State in which the recipients of those services are resident.*

4) *Article 56 TFEU must be interpreted as meaning that:*

   — *Member States are not precluded from requiring undertakings which supply electronic communications services, such as that at issue in the main proceedings, in their territory to register those services, provided that Member States act in compliance with the requirements set out in Article 3 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), as amended by Directive 2009/140; and*

   — *on the other hand, undertakings wishing to supply electronic communications services, such as that at issue in the main proceedings, in a Member State other than that in which they are established cannot be required to establish in that State a branch or a legal entity separate from that located in the Member State of transmission.*

([1]) OJ C 26, 26.1.2013.

Judgment of the Court (Fourth Chamber) of 30 April 2014 (request for a preliminary ruling from the Kúria — Hungary) — Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt

(Case C-26/13) ([1])

(Directive 93/13/EEC — Unfair terms in a contract concluded between a seller or supplier and a consumer — Articles 4(2) and 6(1) — Assessment of the unfairness of the contractual terms — Exclusion of terms relating to the main subjectmatter of the contract or the adequacy of the price and the remuneration provided they are drafted in plain intelligible language — Consumer credit contracts denominated in foreign currency — Terms relating to the exchange rate — Difference between the buying rate of exchange applicable to the advance of the loan and the selling rate of exchange applicable to its repayment — Powers of the national court when dealing with a term considered to be unfair — Substitution of the unfair term by a supplementary provision of national law — Whether lawful)

(2014/C 194/05)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicants: Árpád Kásler, Hajnalka Káslerné Rábai

Defendant: OTP Jelzálogbank Zrt

Re:

Request for a preliminary ruling — Kúria — Interpretation of Art. 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Assessment of unfairness of contractual terms — Loan contract denominated in a foreign currency and a mortgage concluded between an individual and a bank, under which the payment and repayment of the loan are to be made in the national currency — Debt calculated, at the time the contract was concluded, on the basis of the buying rate of the foreign currency — Term providing that the monthly instalments to be paid are determined by suing the current selling rate of the currency and not the buying rate

Operative part of the judgment

1) *Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that:*

   — *the expression the 'main subjectmatter of a contract' covers a term, incorporated in a loan agreement denominated in foreign currency concluded between a seller or supplier and a consumer and not individually negotiated, such as that at issue in the main proceedings, pursuant to which the selling rate of exchange of that currency is applied for the purpose of calculating the repayment instalments for the loan, only in so far as it is found, which it is for the national court to ascertain having regard to the nature, general scheme and stipulations of the contract and its legal and factual context, that that term lays down an essential obligation of that agreement which, as such characterises it;*

   — *such a term, in so far as it contains a pecuniary obligation for the consumer to pay, in repayment of instalments of the loan, the difference between the selling rate of exchange and the buying rate of exchange of the foreign currency, cannot be considered as 'remuneration' the adequacy of which as consideration for a service supplied by the lender cannot be the subject of an examination as regards unfairness under Article 4(2) of Directive 93/13.*

2) *Article 4(2) of Directive 93/13 must be interpreted as meaning that, as regards a contractual term such as that at issue in the main proceedings, the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it.*

3) *Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law.*

([1]) OJ C 156, 1. 6. 2013.

Judgment of the Court (Second Chamber) of 30 April 2014 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

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

(Common system of financial transaction tax — Authorisation of enhanced cooperation under Article 329 (1) TFEU — Decision 2013/52/EU — Action for annulment in respect of infringement of Articles 327 TFEU and 332 TFEU and of customary international law)

(2014/C 194/06)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and S. Behzadi Spencer, acting as Agents, and by M. Hoskins QC, P. Baker QC and V. Wakefield, Barrister)

Defendant: Council of the European Union (represented by: A.-M. Colaert, F. Florindo Gijón and A. de Gregorio Merino, acting as Agents)

Interveners in support of the defendant: Kingdom of Belgium (represented by: J.-C. Halleux and M. Jacobs, acting as Agents), Federal Republic of Germany (represented by: T. Henze, J. Möller and K. Petersen, acting as Agents), French Republic (represented by: D. Colas and J.-S. Pilczer, acting as Agents), Republic of Austria (represented by: C. Pesendorfer, acting as Agent), Portuguese Republic (represented by L. Inez Fernandes, J. Menezes Leitão and A. Cunha, acting as Agents), European Parliament (represented by: A. Neergaard and R. van de Westelaken, acting as Agents), European Commission (represented by: R. Lyal, B. Smulders and W. Mölls, acting as Agents)

Re:

Action for annulment — Annulment of Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax (OJ 2013 L 22, p. 11) — Infringement of Articles 327 TFEU and 332 TFEU

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

3. *Orders the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Republic of Austria, the Portuguese Republic, the European Parliament and the European Commission to bear their own costs.*

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Ninth Chamber) of 30 April 2014 (request for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — Birgit Wagener v Bundesagentur für Arbeit — Familienkasse Villingen-Schwenningen

(Case C-250/13) ([1])

(Reference for a preliminary ruling — Social security — Agreement between the European Community and the Swiss Confederation — Regulation (EEC) No 574/72 — Article 107(1) and (6) — Regulation (EC) No 987/2009 — Article 90 — Migrant workers — Currency conversion — Account taken of family benefits received in Switzerland at the time of the calculation, by a Member State, of dependent child allowance — Differential supplement — Date to be taken into account for the purposes of the conversion into euros of Swiss family benefits)

(2014/C 194/07)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Birgit Wagener

Defendant: Bundesagentur für Arbeit — Familienkasse Villingen-Schwenningen

Re:

Request for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of Article 10(1)(a) and of Article 107(1), (2), (4) and (6) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1972 L 74, p. 1), of Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1), and of Decision No H3 of 15 October 2009 concerning the date to be taken into consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council (OJ 2010 C 106, p. 56) — National of a Member State residing with his family in his State of origin and working in the Swiss Confederation — Overlapping entitlement to family benefits — Account taken of family allowances received in Switzerland at the time of calculation of the benefits by the Member State of residence ('Differenzkindergeld') — Rate of conversion to be applied

Operative part of the judgment

1) *In circumstances such as those of the case before the referring court, the currency conversion of family allowances must be carried out in accordance with Article 107(6) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001.*

2) *Article 107(6) of Regulation No 574/72 in the version amended and updated by Regulation No 118/97, as amended by Regulation No 1386/2001, must be interpreted as meaning that the currency conversion of family allowances, such as those at issue in the main proceedings, for the purposes of calculating the differential supplement to family allowances under Article 10(1)(a) of that regulation, must be made at the official rate of exchange for the day on which those allowances are paid by the Member State in which the worker is employed.*

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Sixth Chamber) of 30 April 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Nutricia NV v Staatssecretaris van Financiën

(Case C-267/13) ([1])

(Combined Nomenclature — Tariff headings — Medicaments within the meaning of heading 3004 — Notion — Nutritional preparations intended to be administered only enterally under medical supervision to persons undergoing medical treatment — Beverages within the meaning of heading 2202 — Notion — Nutritional liquids intended to be administered enterally and not to be drunk)

(2014/C 194/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Nutricia NV

Respondent: Staatssecretaris van Financiën

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Combined Nomenclature — Tariff headings — Medicaments within the meaning of heading 3004 — Notion — Food preparations intended exclusively to be administered enterally, under medical supervision, to persons undergoing medical treatment as a result of a disease or ailment — Beverages within the meaning of heading 2202 — Notion — Liquid foodstuffs for enteral administration, not intended to be drunk

Operative part of the judgment

Tariff heading 3004 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as meaning that the term 'medicaments' within the meaning of that heading includes food preparations intended exclusively to be administered enterally (by means of a stomach tube) under medical supervision to persons who are receiving medical care, provided that that product is administered, as part of the control of the disease or ailment affecting them, in order to prevent or control their malnutrition.

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Sixth Chamber) of 30 April 2014 (request for a preliminary ruling from the Juzgado de Primera Instancia N°4 de Palma de Mallorca — Spain) — Barclays Bank SA v Sara Sánchez García, Alejandro Chacón Barrera

(Case C-280/13) ([1])

(Request for a preliminary ruling — Directive 93/13/EEC — Thirteenth recital in the preamble — Article 1(2) — Consumer contracts — Mortgage loan agreement — Mortgage enforcement proceedings — National statutory and regulatory provisions — Contractual balance)

(2014/C 194/09)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia N°4 de Palma de Mallorca

Parties to the main proceedings

Applicant: Barclays Bank SA

Defendant: Sara Sánchez García, Alejandro Chacón Barrera

Re:

Request for a preliminary ruling — Juzgado de Primera Instancia de Palma de Mallorca — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Consumer protection in relation to mortgage loans — Balance in the parties' contractual rights and obligations — Principle of consumer protection — National civil procedure rules applicable to the procedure for enforcing a mortgage

Operative part of the judgment

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the principles of EU law relating to consumer protection and a balance in the parties' rights and obligations must be interpreted as meaning that statutory and regulatory provisions of a Member State, such as those at issue in the main proceedings, are excluded from their scope, when there is no contractual term altering the effect or ambit of those provisions.

([1]) OJ C 226, 3.8.2013.

Judgment of the Court (Ninth Chamber) of 30 April 2014 (request for a preliminary ruling from the Conseil d'État — Belgium) — Ordre des architectes v État belge

(Case C-365/13) ([1])

(Reference for a preliminary ruling — Directive 2005/36/EC — Articles 21 and 49 — Recognition of professional qualifications — Access to the profession of architect — Exemption from professional traineeship)

(2014/C 194/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ordre des architectes

Defendant: État belge

Re:

Request for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Articles 21, 46 and 49 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) — Access to and pursuit of the profession of architect — Enrolment in the Ordre des architectes — National legislation restricting enrolment to holders of evidence of formal qualifications issued in Belgium on completion of a professional traineeship of a 2 year duration — Prohibition on requiring holders of an architect's diploma obtained in another Member State to have completed such a traineeship or to have equivalent experience

Operative part of the judgment

Articles 21 and 49 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 279/2009 of 6 April 2009, must be interpreted as precluding the host Member State from requiring the holder of a professional qualification obtained in the home Member State and listed in point 5.7.1 of Annex V, or in Annex VI, to that directive to undertake a traineeship, or to prove that he possesses equivalent professional experience, in order to be authorised to practise the profession of architect.

([1]) OJ C 274, 21.9.2013.

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 24 January 2014 — A v Hauptzollamt Nürnberg

(Case C-34/14)

(2014/C 194/11)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: A

Defendant: Hauptzollamt Nürnberg

Questions referred

1. Are Council Regulation (EC) No 1472/2006 ([1]) of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and Council Implementing Regulation (EU) No 1294/2009 ([2]) of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96, ([3]) valid as a whole in so far as they were not annulled by the judgments of the Court of Justice of the European Union of 2 February 2012 and 15 November 2012 in Cases C-49/10 P and C-247/10 P?

2. In the event that the answer to question 1 is in the negative, but the abovementioned regulations are not invalid as a whole:

   (a) In relation to which exporters and producers in the People's Republic of China (PRC) and in Vietnam, from which the applicant purchased goods in the period from 2006 to 2011, are Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive antidumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96, invalid?

   (b) Does a declaration that the abovementioned regulations are invalid in whole or in part constitute unforeseeable circumstances or *force majeure* within the meaning of the second subparagraph of Article 236(2) of the Customs Code (CCC)?

([1]) OJ 2006 L 275, p. 1.
([2]) OJ 2009 L 352, p. 1.
([3]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Request for a preliminary ruling from the Tribunale di Cuneo (Italy) lodged on 5 March 2014 — Criminal proceedings against Ivo Taricco and Others

(Case C-105/14)

(2014/C 194/12)

Language of the case: Italian

Referring court

Tribunale di Cuneo

Criminal proceedings against

Ivo Taricco,

Ezio Filippi,

Isabella Leonetti,

Nicola Spagnolo,

Davide Salvoni,

Flavio Spaccavento,

Goranco Anakiev

Questions referred

(a) In so far as it provides for the limitation period to be extended by only a quarter following interruption and, therefore, allows crimes to become time barred, resulting in impunity, even though criminal proceedings were brought in good time, has the amendment to the last subparagraph of Article 160 of the Italian Criminal Code made by Law No 251 of 2005 led to infringement of the provision protecting competition in Article 101 TFEU?

(b) Has the Italian State, in amending by Law No 251 of 2005 the last subparagraph of Article 160 of the Italian Criminal Code, in so far as this provides for the limitation period to be extended by only a quarter following interruption, which means therefore that there are no penal consequences for crimes committed by unscrupulous economic operators, unlawfully introduced a form of aid prohibited by Article 107 TFEU?

(c) Has the Italian State, in amending by Law No 251 of 2005 the last subparagraph of Article 160 of the Italian Criminal Code, in so far as this provides for the limitation period to be extended by only a quarter following interruption, thus conferring impunity on those who exploit the Community directive, unlawfully added a further exemption to those exhaustively listed by Article 158 of Council Directive 2006/112/EC of 28 November 2006? ([1])

(d) In so far as it provides for the limitation period to be extended by only a quarter following interruption and, therefore, fails to penalise conduct that deprives the State of the resources necessary in order to meet its obligations to the European Union also, has the amendment to the last subparagraph of Article 160 of the Italian Criminal Code made by Law No 251 of 2005 led to breach of the principle of sound public finances laid down by Article 119 TFEU?

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

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 21 March 2014 — Malvino Cervati, Società Malvi Sas di Cervati Malvino v Agenzia delle Dogane, Agenzia delle Dogane — Ufficio delle Dogane di Livorno

(Case C-131/14)

(2014/C 194/13)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellants: Malvino Cervati, Società Malvi Sas di Cervati Malvino

Respondents: Agenzia delle Dogane, Agenzia delle Dogane — Ufficio delle Dogane di Livorno

Question referred

On a proper construction of Regulations No 1047/2001 ([1]) and No 2988/95, ([2]) is conduct such as that engaged in by Community operator A (Malvi sas) prohibited, and does it constitute an abuse of law and conduct designed to evade tax, where Community operator A (Malvi sas) — a company which does not hold an import licence or which has exhausted its own quota share — purchases certain consignments of goods from another Community operator B (Tonini Roberto & C sas), which in turn has purchased them from a third-country supplier (Bananaservice srl), the goods being transferred as foreign stocks to another Community operator C (L'Olivo Maria) — a company which holds a licence under the quota because it meets the requisite criteria — which, without transferring its own licence, releases the goods for free circulation in the European Union in order to transfer them, after customs clearance and in return for appropriate remuneration, lower than the specific duty for imports outside the quota, to operator B (Tonini Roberto & C sas), which finally sells them to operator A (Malvi sas)?

([1]) Commission Regulation (EC) No 1047/2001 of 30 May 2001 introducing a system of import licences and certificates of origin and establishing the method for managing tariff quotas for garlic imported from third countries (OJ 2001 L 145, p. 35).

([2]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Request for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 24 March 2014 — Mineralquelle Zurzach AG v Hauptzollamt Singen

(Case C-139/14)

(2014/C 194/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Mineralquelle Zurzach AG

Defendant: Hauptzollamt Singen

Questions referred

1. Is a non-alcoholic beverage that consists mainly of water but also has 12 % fruit juices and contains, in addition to sugar, a vitamin mixture which clearly exceeds the vitamin content, in relation to the proportion of juice, of natural fruit juices, to be classified under subheading 2202 10 00 of the Combined Nomenclature?

2. If Question 1 is answered in the negative:

   Is such a beverage a fruit juice, diluted with water, under code number 2202 90 10 11 TARIC?

3. If the first two questions are answered in the negative:

   Is such a product to be classified as goods under code number 2202 90 10 10 TARIC?

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 28 March 2014 — Loutfi Management Propriété Intellectuelle SARL v AMJ Meatproducts NV, Halalsupply NV

(Case C-147/14)

(2014/C 194/15)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: Loutfi Management Propriété Intellectuelle SARL

Respondents: AMJ Meatproducts NV, Halalsupply NV

Question referred

In view of, inter alia, Articles 21 and 22 of the Charter of Fundamental Rights of the European Union, ([1]) must Article 9(1)(b) of Council Regulation (EC) No 207/2009 ([2]) of 26 February 2009 on the Community trade mark be interpreted as meaning that, in the assessment of the likelihood of confusion between a Community trade mark in which an Arabic word is dominant and a sign in which a different, but visually similar, Arabic word is dominant, the difference in pronunciation and meaning between those words may, or even must, be examined and taken into account by the competent courts of the Member States, even though Arabic is not an official language of the European Union or of the Member States?

([1]) OJ 2000 C 364, p. 1.
([2]) OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 1 April 2014 — AEEG v Antonella Bertazzi and Others

(Case C-152/14)

(2014/C 194/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità per l'energia elettrica e il gas (AEEG)

Respondents: Antonella Bertazzi, Annalise Colombo, Maria Valeria Contin, Angela Filippina Marasco, Guido Guissani, Lucia Lizzi, Fortuna Peranio

Questions referred

1) Is it possible, in principle, to regard as compatible with Clause 4(4) of the Framework Agreement [in the Annex to] Directive 1999/70/EC ([1]) a provision of national law (Article 75(2) of Decree-Law No 112 of 2008), under which — in relation to duties which have remained unchanged and which are completely the same for fixed-term staff as for permanent staff — no account whatsoever is to be taken of length of service accrued with independent public authorities under fixed-term employment contracts where the employment position of the persons concerned has been 'stabilised' on the basis of selection tests which, albeit not wholly comparable with the more rigorous public competitive examination procedure undergone by other staff members, are provided for by statute and accordingly, under the terms of the third paragraph of Article 97 of the Italian Constitution, a legitimate means of verifying the candidate's suitability to perform the duties to be assigned?

2) a) In the event that the above legislation is held to be inconsistent with the principles of Community law as regards the fixed-term employees concerned, is it possible to identify objective reasons for derogating from the principle that those employees should be treated no differently from permanent employees, for considerations relating to social policy purposes, construed in these circumstances as the need to prevent the insertion of 'stabilised' employees in parallel with those already placed on the permanent staff in accordance with the general rule requiring a competitive examination for access to posts with the public administrative authorities (the rule imposed by the third paragraph of Article 97 of the Constitution and subject only to derogation by statute, such as the legislation at issue, under which the sole requirement is success in a simple selection procedure) and is it possible — in the light of the Court's observations in [paragraph] 47 of its order of 7 March 2013 [in Case C-393/11 *AEEG* v *Bertazzi and Others* [2013] ECR] — for [the needs underlying] those objective reasons to be regarded as satisfied, in terms of proportionality, merely by giving workers in precarious employment whose position has been 'stabilised' personal salary compensation which can be absorbed by future pay rises and is not open to reassessment, with an interruption of the normal advancement in salary level and of access to higher grades?

b) On the other hand, if, once suitability for particular duties has been determined, periodic appraisals were undertaken to verify that the duties are being performed correctly, with a view to permitting the employees concerned to progress to higher grades and salary levels with the possibility of moving to a different category on the strength of a competitive examination held later, would that be sufficient to redress the balance between the position of 'stabilised' employees and the position of staff members recruited on the basis of a public competitive examination, without it being necessary for length of service to be set at nought and salaries to be set at the starting level in the case of the former group (in the absence, moreover, of any appreciable advantage in favour of the second group under the AEEG rules governing career advancement, as described above), with the result that, in the case under consideration, there would be no objective reasons, of the requisite objectivity and transparency, for derogating from Directive 1999/70/EC that could be applied to the employment conditions in question in the particular context of relevance here?

3) Is it, in any event, necessary — as appears to be a legitimate inference from paragraphs 47 and 54 of the order of 7 March 2013 — to recognise that the practice of setting the length of service accrued at nought is disproportionate and discriminatory (with the consequence that it would be necessary to refrain from applying the relevant national legislation) — while continuing to recognise the need to protect the positions of successful candidates in the competitive examinations, without prejudice to the fact that it is for the administrative authority to decide, on the basis of prudent assessment, upon the measures to adopt in this regard (in the form of a 'bonus'; or the right of those who have been recruited on the basis of success in a competitive examination to preferential treatment in the selection procedure for access to higher grades; or by other means within the discretion enjoyed by the national authorities for the organisation of the national public administrative authorities)?

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 3 April 2014 — Minister van Buitenlandse Zaken; other parties: K and A

(Case C-153/14)

(2014/C 194/17)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Minister van Buitenlandse Zaken

Other parties: K, A

Questions referred

1. (a) Can the term 'integration measures' — contained in Article 7(2) of … Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, [p. 12]) … — be interpreted as meaning that the competent authorities of the Member States may require a member of a sponsor's family to demonstrate that he or she has knowledge of the official language of the Member State concerned at a level corresponding to level A1 of the Common European Framework of Reference for Languages, as well as a basic knowledge of the society of that Member State, before those authorities authorise that family member's entry and residence?

   (b) Is it relevant to the answer to that question that, also in the context of the proportionality test as described in the European Commission's Green Paper of 15 November 2011 ([1]) on the right to family reunification [of third-country nationals living in the European Union], the national legislation containing the requirement referred to in Question 1(a) provides that, leaving aside the case in which the family member has shown that, due to a mental or physical disability, he/she is permanently unable to take the civic integration examination, it is only in the case where there is a combination of very special individual circumstances which justifies the assumption that the family member will be permanently unable to comply with the integration measures that the request for authorisation of entry and residence cannot be rejected?

2. Does the purpose of Directive 2003/86/EC, and in particular Article 7(2) thereof, given the proportionality test as described in the abovementioned Green Paper, preclude costs of EUR 350 per attempt for the examination which assesses whether the family member complies with the aforementioned integration measures, and costs of EUR 110 as a single payment for the pack to prepare for the examination?

([1]) COM(2011)735 final.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 3 April 2014 — Tamoil Italia v Ministero dell'Ambiente e della Tutela del Territorio e del Mare

(Case C-156/14)

(2014/C 194/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Tamoil Italia SpA

Respondent: Ministero dell'Ambiente e della Tutela del Territorio e del Mare

Question referred

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

([1]) Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 April 2014 — A and Others; other party: Minister van Buitenlandse Zaken

(Case C-158/14)

(2014/C 194/19)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: A, B, C, D

Other party: Minister van Buitenlandse Zaken

Questions referred

1. Having regard to, inter alia, Article 47 of the Charter of Fundamental Rights of the European Union, ([1]) would an action for the annulment of Implementing Regulation No 610/2010, ([2]) in so far as that regulation included the LTTE on the list referred to in Article 2(3) of Regulation No 2580/2001, ([3]) brought before the General Court by the appellants in the present proceedings in their own name on the basis of Article 263 TFEU, undoubtedly have been admissible?

2. (a) Having regard to, inter alia, recital 11 in the preamble to Framework Decision 2002/475/JHA, ([4]) can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist offences within the meaning of that Framework Decision?

(b) If the answer to Question 2(a) is in the affirmative, can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist acts within the meaning of Common Position 2001/931/CFSP ([5]) and of Regulation No 2580/2001?

3 Are the actions which formed the basis of Implementing Regulation No 610/2010, in so far as it included the LTTE on the list referred to in Article 2(3) of Regulation No 2580/2001, actions by armed forces during periods of armed conflict within the meaning of international humanitarian law?

4. Having regard to, inter alia, the answers to Questions 1, 2(a), 2(b) and 3, is Implementing Regulation No 610/2010, in so far as the LTTE was thereby included on the list referred to in Article 2(3) of Regulation No 2580/2001, invalid?

5. If the answer to Question 4 is in the affirmative, does that invalidity then also apply to the earlier and later Council decisions updating the list referred to in Article 2(3) of Regulation No 2580/2001, in so far as those decisions resulted in the inclusion of the LTTE on that list?

([1]) OJ 2000 C 364, p. 1.
([2]) Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1).
([3]) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).
([4]) Council Framework Decision of 13 June 2002 on combating terrorism (OJ 2002 L 164, p. 3).
([5]) Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 14 April 2014 — A v B

(Case C-184/14)

(2014/C 194/20)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Appellant: A

Cross-appellant: B

Question referred

May the decision on a request for child maintenance raised in the context of proceedings concerning the legal separation of spouses, being ancillary to those proceedings, be taken both by the court before which those separation proceedings are pending and by the court before which proceedings concerning parental responsibility are pending, on the basis of the prevention criterion, or must that decision of necessity be taken only by the latter court, as the two distinct criteria set out in points (c) and (d) of [Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations] ([1]) are alternatives (in the sense that they are mutually exclusive)?

([1]) OJ 2009 L 7, p. 1.

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 14 April 2014 — EasyPay AD, Finance Engineering AD v Ministerski savet na Republika Balgaria, Natsionalen osiguritelen institut

(Case C-185/14)

(2014/C 194/21)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicants: EasyPay AD, Finance Engineering AD

Defendants: Ministerski savet na Republika Balgaria, Natsionalen osiguritelen institut

Questions referred

1. Is a postal service such as the postal money transfer service by which sums of money are transferred from the sender, which in this case is the State, to the recipients — persons entitled to social security payments — to be regarded as not being covered by the scope of Directive 97/67, ([1]) as amended by Directives 2002/39 ([2]) and 2008/6, ([3]) such that it is subject to the provisions of Articles 106 and 107 TFEU?

2. If the first question is answered in the affirmative, are Articles 106 and 107 TFEU to be interpreted as meaning that they do not permit a restriction of free competition in the provision of a postal service such as that described if that is justified by compelling considerations relating to the guarantee of a constitutional right of citizens and the social policy of the State and if at the same time the service, by its nature, may be qualified as a service of general economic interest, provided that the compensation received by the service provider is public service compensation which does not exceed the sum laid down in Article 2(1)(a) of European Commission Decision C(2011) 9380 of 20 December 2011?

([1]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1997 L 15, p. 14).

([2]) Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ 2002 L 176, p. 21).

([3]) Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3).

Request for a preliminary ruling from the Landgericht Aachen (Germany) lodged on 18 April 2014 — Horst Hoeck v Hellenic Republic

(Case C-196/14)

(2014/C 194/22)

Language of the case: German

Referring court

Landgericht Aachen

Parties to the main proceedings

Applicant: Horst Hoeck

Defendant: Hellenic Republic

Questions referred

1. Is Article 1 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ([1]) to be interpreted as precluding entirely an action brought against the Hellenic Republic as defendant and instituted before the Landgericht Aachen, by which the applicant seeks interest from the defendant for the period 2011/2012 in respect of bonds (government bonds) — issued by the defendant and purchased by the applicant in July 2011 — which were the subject-matter of the exchange offer made by the defendant at the end of February 2012 to, among others, the applicant, and which the applicant rejected, with the result that the defendant none the less exchanged the bonds/government bonds held by the applicant for new ones?

2. Is Article 1 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters to be interpreted as precluding entirely an action brought against the Hellenic Republic as defendant and instituted before the Landgericht Aachen, by which the applicant, as an alternative avenue of recourse, seeks payment from the defendant amounting to the nominal value of its bonds/government bonds purchased by the applicant, including unpaid interest, by reason of the forced exchange described in Question 1?

3. Are the main proceedings before the Landgericht Aachen [in Case] 12 O 177/13 to be assigned to civil or commercial law, with the result that Articles 2 and 3 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service of judicial and extrajudicial documents in civil or commercial matters are applicable?

4. Alternatively, does the case concern an administrative matter or a matter of State liability, to which the provisions cited in Questions 1, 2 and 3 are not applicable?

([1]) OJ 2007 L 324, p. 79.

GENERAL COURT

Judgment of the General Court of 30 April 2014 — Tisza Erőmű v Commission

(Case T-468/08) ([1])

(State aid — Aid awarded by the Hungarian authorities to certain electricity generators — Power purchase agreements concluded between a public undertaking and certain electricity generators — Decision declaring the State aid incompatible with the common market and ordering its recovery — Obligation to state reasons — Concept of State aid — Advantage — Selective nature — State resources — Imputability to the State — Effect on trade between Member States — Rights of the defence — Legal certainty — Legitimate expectations — Equal treatment — Proportionality — Misuse of powers — Article 10 of the Energy Charter Treaty)

(2014/C 194/23)

Language of the case: English

Parties

Applicant: Tisza Erőmű kft, formerly AES-Tisza Erőmű kft (Tiszaújváros, Hungary) (represented initially by T. Ottervanger and E. Henny, lawyers, and subsequently by T. Ottervanger)

Defendant: European Commission (represented by: L. Flynn, N. Khan and K. Talabér-Ritz, acting as Agents)

Re:

Application for the annulment of Commission Decision 2009/609/EC of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (OJ 2009 L 225, p. 53).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Tisza Erőmű kft to pay the costs, including those incurred in the proceedings for interim measures.*

([1]) OJ C 6, 10.1.2009.

Judgment of the General Court of 30 April 2014 — Dunamenti Erőmű v Commission

(Case T-179/09) ([1])

(State aid — Aid awarded by the Hungarian authorities to certain electricity generators — Power purchase agreements concluded between a public undertaking and certain electricity generators — Decision declaring the State aid incompatible with the common market and ordering its recovery — Concept of State aid — Advantage — New aid — Operating aid — Legitimate expectations — Legal certainty)

(2014/C 194/24)

Language of the case: English

Parties

Applicant: Dunamenti Erőmű Zrt. (Százhalombatta, Hungary) (represented by: initially J. Lever QC, A. Nourry, R. Griffith and S. Spence, Solicitors, and subsequently J. Philippe and F.-H. Boret, lawyers)

Defendant: European Commission (represented by: L. Flynn and K. Talabér-Ritz, Agents)

Re:

Application for, in essence, the annulment of Commission Decision 2009/609/EC of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (OJ 2009 L 225, p. 53) and, in the alternative, the annulment of Articles 2 and 5 of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dunamenti Erőmű Zrt. to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 167, 18.7.2009.

Judgment of the General Court of 30 April 2014 — Euris Consult v Parliament

(Case T-637/11) ([1])

(Public service contracts — Tender procedure — Provision of translation services into Maltese — Rules relating to the procedure for the submission of tenders — Rejection of a tenderer's bid — Failure to comply with the rules on submission designed to ensure the confidentiality of the contents of tenders before opening — Plea of inapplicability — Proportionality — Equal treatment — Rights of the defence — Obligation to state reasons — Article 41 of the Charter of Fundamental Rights of the European Union — Article 98(1) of Regulation (EC, Euratom) No 1605/2002 — Article 143 of Regulation (EC, Euratom) No 2342/2002)

(2014/C 194/25)

Language of the case: English

Parties

Applicant: Euris Consult Ltd (Floriana, Malta) (represented by: F. Moyse, lawyer)

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

Intervener in support of the defendant: European Commission (represented by: R. Lyal and F. Dintilhac, acting as Agents)

Re:

Application for annulment of the decision of the Parliament of 18 October 2011 rejecting the tender submitted by the applicant in the context of the interinstitutional call for tenders MT/2011/EU, concerning translation services into Maltese

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Euris Consult Ltd to pay the costs.*

([1]) OJ C 32, 4.2.2012.

Judgment of the General Court of 30 April 2014 — Hagenmeyer and Hahn v Commission

(Case T-17/12) ([1])

(Consumer protection — Regulation (EC) No 1924/2006 — Health claims made on foods — Refusal to authorise a reduction of disease risk claim — Designation of a risk factor — Lawfulness of the procedure authorising reduction of disease risk claims — Action for annulment — Legal interest in bringing proceedings — Direct and individual concern — Admissibility — Proportionality — Obligation to state reasons)

(2014/C 194/26)

Language of the case: German

Parties

Applicants: Moritz Hagenmeyer (Hamburg, Germany) and Andreas Hahn (Hanover, Germany) (represented by: T. Teufer, lawyer)

Defendant: European Commission (represented by: L. Pignataro-Nolin and S. Grünheid, acting as Agents)

Intervening party in support of the defendant: Council of the Euroepan Union (represented by: I. Šulce, Z. Kupčová and M. Simm, acting as Agents)

Re:

Application for annulment in part of Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk (OJ 2011 L 299, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Moritz Hagenmeyer and Mr Andreas Hahn to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 89, 24.3.2012.

Judgment of the General Court of 30 April 2014 — Beyond Retro v OHIM — S&K Garments (BEYOND VINTAGE)

(Case T-170/12) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark BEYOND VINTAGE — Earlier Community word mark BEYOND RETRO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2014/C 194/27)

Language of the case: English

Parties

Applicant: Beyond Retro Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: S&K Garments, Inc. (New York, New York, United States)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 January 2012 (Joined Cases R 493/2011-4 and R 548/2011-4), relating to opposition proceedings between Beyond Retro Ltd and S&K Garments, Inc.

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 30 January 2012 (Joined Cases R 493/2011-4 and R 548/2011-4) in so far as it concerns the goods covered by the word mark BEYOND VINTAGE in Classes 18 and 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;*

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

3) *Orders Beyond Retro Ltd to pay one third of the costs incurred by the parties before the Court and orders OHIM to pay two thirds of those costs.*

([1]) OJ C 194, 30. 6. 2012.

Judgment of the General Court of 8 May 2014 — Simca Europe v OHIM — PSA Peugeot Citroën (Simca)

(Case T-327/12) ([1])

(Community trade mark — Invalidity proceedings — Community word mark Simca — Bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009)

(2014/C 194/28)

Language of the case: German

Parties

Applicant: Simca Europe Ltd (Birmingham, United Kingdom) (represented by: N. Haberkamm, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: GIE PSA Peugeot Citroën (Paris, France) (represented by: P. Kotsch, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 April 2012 (Case R 645/2011-1), relating to invalidity proceedings between GIE PSA Peugeot Citroën and Simca Europe Ltd.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Simca Europe Ltd to pay the costs.*

([1]) OJ C 287, 22.9.2012.

Judgment of the General Court of 8 May 2014 — Pyrox v OHIM — Köb Holzheizsysteme (PYROX)

(Case T-575/12) ([1])

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

(2014/C 194/29)

Language of the case: German

Parties

Applicant: Pyrox GmbH (Oberhausen, Germany) (represented by: T. Eigen, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Köb Holzheizsysteme GmbH (Wolfurt, Austria)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 October 2012 (Joined Cases R 2187/2011-1 and R 2507/2011-1) concerning opposition proceedings between Köb Holzheizsysteme GmbH and Pyrox GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pyrox GmbH to pay the costs.*

([1]) OJ C 55, 23.2.2013.

Judgment of the General Court of 8 May 2014 — Pedro Group v OHIM — Cortefiel (PEDRO)

(Case T-38/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark PEDRO — Earlier Community figurative mark Pedro del Hierro — Partial refusal to register — Relative grounds for refusal — Genuine use of the earlier mark — Highly distinctive character of the earlier mark — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 194/30)

Language of the case: English

Parties

Applicant: Pedro Group Pte Ltd (Singapore, Singapore) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Cortefiel, SA (Madrid, Spain) (represented initially by H. Mosback, P. López Ronda, G. Macias Bonilla and G. Marín Raigal, and subsequently by P. López Ronda, G. Macias Bonilla and G. Marín Raigal, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 November 2012 (Case R 271/2011-4), relating to opposition proceedings between Cortefiel, SA, and Pedro Group Pte Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pedro Group Pte Ltd to pay the costs.*

([1]) OJ C 101, 6.4.2013.

Order of the General Court of 2 April 2014 — CIVR and Others v Commission

(Case T-303/09) ([1])

(State aid — Framework system of activities carried out by agricultural inter-trade organisations recognised in France in favour of the members of the represented agricultural industries — Financing by compulsory voluntary contributions — Decision classifying the aid scheme as compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 194/31)

Language of the case: French

Parties

Applicants: Conseil interprofessionnel des vins du Roussillon (CIVR) (Perpignan, France); Comité national des interprofessions des vins à appellation d'origine et à indication géographique (CNIV) (Paris, France); and Interprofession nationale porcine (Inaporc) (Paris) (represented by: H. Calvet, O. Billard and Y. Trifounovitch, lawyers)

Defendant: European Commission (represented initially by B. Stromsky and C. Urraca Caviedes, then 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 in respect of State aid No 561/2008 relating to the framework system of activities carried out by agricultural inter-trade organisations recognised in France in favour of the members of the represented agricultural industries.

Operative part of the order

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

2. *The European Commission is ordered to pay the costs.*

([1]) OJ C 244, 10. 10. 2009.

Order of the General Court of 14 April 2014 — Manufacturing Support & Procurement Kala Naft v Council

(Case T-263/12) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Res judicata — Obligation to state reasons — Obligation of individual communication — Rights of the defence — Right to effective judicial protection — Right to property — Proportionality — Competence of the Council — Misuse of powers — Error of law — Definition of support given to nuclear proliferation — Error of assessment — Action manifestly lacking any foundation in law)

(2014/C 194/32)

Language of the case: French

Parties

Applicant: Manufacturing Support & Procurement Kala Naft Co., Tehran (Tehran, Iran) (represented by: F. Esclatine and S. Perrotet, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute-Cordeiro, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: É. Cujo and M. Konstantinidis, acting as Agents)

Re:

Application for the partial annulment of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1).

Operative part of the order

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

2. *In addition to bearing its own costs, Manufacturing Support & Procurement Kala Naft Co., Tehran shall pay the costs incurred by the Council of the European Union.*

3. *The European Commission is ordered to pay its costs.*

([1]) OJ C 258, 25. 8. 2012.

Action brought on 20 December 2013 — K. Chrysostomides & Co. e.a. v Council e.a.

(Case T-680/13)

(2014/C 194/33)

Language of the case: English

Parties

Applicants: Dr. K. Chrysostomides & Co. LLC (Nicosia, Cyprus) and 50 other applicants (represented by: P. Tridimas, Barrister)

Defendants: Council of the European Union, European Commission, European Union represented by the European Commission, Eurogroup represented by Council of the European Union, European Central Bank

Form of order sought

The applicants claim that the Court should:

— Order the defendants to pay the applicants the sums shown in the Schedule annexed to the application plus interest accruing from 26 March 2013 until the judgment of the Court;

— Order the defendants to pay the costs.

In the alternative, by way of subsidiary claim, the applicants request the Court to:

— Find that the European Union and/or the defendant institutions have incurred non-contractual liability;

— Determine the procedure to be followed in order to establish the recoverable loss actually suffered by the applicants;

— Order the defendants to pay the costs.

Pleas in law and main arguments

The applicants (51 in total) are depositors and/or shareholders of the Bank of Cyprus Public Company Ltd and/or Cyprus Popular Bank Public Co. Ltd. They seek compensation pursuant to Articles 268, 340(2) and 340(3) TFEU, governing the extra-contractual liability of the EU, for the loss that they have suffered as a result of the measures taken by the defendant institutions imposing a bail-in scheme on the Republic of Cyprus.

The applicants consider that the defendant institutions adopted a bail-in scheme for the Republic of Cyprus which led directly to the loss of their deposits and shareholdings. In the view of the applicants, the bail-in measures adopted by the Republic of Cyprus were introduced solely in order to implement measures adopted by the defendants and were also approved by the defendant institutions.

The applicants consider that the bail-in scheme violates the right to property, as protected by Article 17(1) of the Charter of Fundamental Rights of the EU and Article 1 of Protocol 1 of the European Convention for the Protection of Fundamental Rights and Freedoms. The applicants also argue that the bail-in scheme infringes the principle of proportionality, the principle of protection of legitimate expectations, and the principle of non-discrimination.

Action brought on 23 January 2014 — USFSPEI v Parliament and Council

(Case T-75/14)

(2014/C 194/34)

Language of the case: French

Parties

Applicant: Union syndicale fédérale des services publics européens et internationaux (Brussels, Belgium) (represented by: J.-N. Louis and D. de Abreu Caldas, lawyers)

Defendants: Council of the European Union and European Parliament

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— accordingly, annul points 27, 32, 46, 64(b), 65(b) and 67(d) of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013;

— order the defendants to pay to USF a symbolic sum of EUR 1 to compensate for the non-material harm suffered and to pay the costs.

Pleas in law and main arguments

The applicant invokes the unlawfulness of points 27, 32, 46, 64(b), 65(b) and 67(d) of Regulation (EU, Euratom) No 1023/2013 ([1]) in so far as they amend, inter alia, Article 5 (creation of the SC function group), Article 6 (elimination of the guarantee of career equivalence), Article 40(2) (restriction of CCP to 12 years), the second paragraph of Article 43 (indication of potential to carry out an administrator's function starting from grade AST 5 instead of AST), Article 44(1) (new conditions for advancement to a higher step), Article 51 (professional incompetence procedure), Article 52 (leave in the interests of the service), Article 77 (pension accrual rate of 1,8 %), and Annex VIII, Article 9(2) (early retirement without penalty) of the Staff Regulations.

In support of its action, it invokes the infringement of the agreement between the OSP and the legislator on the 2004 reform, in particular on the reform of careers, the principles of a linear career structure and equivalence of careers.

It also invokes breach of Article 27 of the Charter of Fundamental Rights and of Article 21 of the European Social Charter, infringement of the principle of acquired rights, the principle of proportionality and the principle of non-discrimination.

(1) Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15).

Action brought on 24 March 2014 — Deza v ECHA

(Case T-189/14)

(2014/C 194/35)

Language of the case: Czech

Parties

Applicant: Deza, a.s. (Valašské Meziříčí, Czech Republic) (represented by: P. Dejl, lawyer)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the European Chemicals Agency of 24 January 2014, in notices AFA-C-0000004274-77-09/F, AFA-C-0000004280-84-09/F, AFA-C-0000004275-75-09/F and AFA-C-0000004151-87-08/F;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 4(2) of Regulation (EC) No 1049/2001 (1) in conjunction with Article 118 of Regulation (EC) 1907/2006 (2) and infringement of the right to protection of legitimate commercial interests and intellectual property.

   — The applicant in this respect submits that the contested decision contravenes Article 4(2) of Regulation No 1049/2001 in conjunction with Article 118 of Regulation No 1907/2006, since disclosure of the relevant information to a third person would lead to infringement of the protection of their commercial interests and to infringement of the protection of intellectual property rights, and that there is no overriding public interest in disclosure of the relevant information and the defendant in its decision did not even state that any public interest would override the need to protect those rights of the applicant.

2. Second plea in law, alleging infringement of the obligations of the European Union stemming from the TRIPS Agreement (3) and related interference with the right to the protection of confidential information.

   — The applicant in this connection submits that the contested decision contravenes the international obligations of the European Union stemming from Article 39(2) of the TRIPS Agreement, according to which the parties to the agreement are required to ensure that natural and legal persons will have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices, so long as such information: (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Third plea in law, alleging infringement of the obligations of the European Union stemming from Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and infringement of Article 17 of the Charter of Fundamental Rights of the European Union and related interference with the right to property and its protection.

   — In this connection it is submitted that the contested decision contravenes Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 1 of the Additional Protocol to that convention and Article 17 of the Charter of Fundamental Rights of the European Union, since it restricts the applicant's right to peaceful enjoyment of property.

4. Fourth plea in law, alleging infringement of Article 4(3) of Regulation No 1049/2001.

   — In the applicant's opinion, the contested decision contravenes Article 4(3) of Regulation No 1049/2001, since the disclosure of the relevant information would seriously threaten the decision-making process of the European Commission and the defendant in deciding on the application for authorisation to use the substance concerned, and there is no overriding public interest in disclosure of the relevant information and the defendant in its decision did not even state that any public interest would override the need to protect those rights of the applicant.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

([2]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

([3]) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994 (OJ 1994 L 336, p. 214)

Action brought on 4 April 2014 — Volkswagen v OHIM (EXTRA)

(Case T-216/14)

(2014/C 194/36)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by U. Sander, 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 First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 February 2014 in Case R 1788/2013-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'EXTRA' for goods and services in Classes 12, 28, 35 and 37 — Community trade mark application No 11 769 155

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 8 April 2014 — Mabrouk v Council

(Case T-218/14)

(2014/C 194/37)

Language of the case: English

Parties

Applicant: Mohamed Marouen Ben Ali Bel Ben Mohamed Mabrouk (Carthage, Tunisia) (represented by: J. Farthouat, J. Mignard, N. Boulay, lawyers, and S. Crosby, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision 2014/49/CFSP of 30 January 2014 amending Decision 20 11/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ L 28, p. 38) and Council implementing Regulation (EU) N° 81/2014 of 30 January 2014 implementing Regulation (EU) N° 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ L 28, p. 2), insofar as they apply to the applicant, these restrictive measures being the freezing of assets in the EU; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that by adopting the contested acts the defendant is assisting a criminal investigation in Tunisia and is thus acting in a judicial capacity in a criminal law context and that the legal bases relied on by the defendant, Article 29 TEU and Article 215(2) TFEU, do not confer on the defendant the competence to act in this manner.

2. Second plea in law, alleging that the contested acts were adopted to assist the judicial authorities in Tunisia and not for the reasons stated in support of the legal bases chosen and that consequently the legal basis have been infringed.

3. Third plea in law, alleging (a) a manifest error of assessment that there is a link between the applicant's assets in the EU and the subject of the judicial investigation in Tunisia, (b) a manifest error of assessment in claiming that the operative parts of the contested acts justify the retention of the Applicant's name on the list of persons whose assets are to be frozen, and (c) a manifest error in the assessment of the factual basis on which the defendant purports to justify the contested acts.

4. Fourth plea in law, alleging infringement of the applicant's defence and fundamental rights, namely: the presumption of innocence, the right to see the evidence upon which the defendant relies against the applicant, the right to be heard, the right to equality of arms, the right to an effective remedy, the principle of proportionality and the right to property.

5. Fifth plea in law, alleging inadequate reasoning.

Action brought on 11 April 2014 — Norma Lebensmittelfilialbetrieb v OHIM — Yorma's (Yorma Eberl)

(Case T-229/14)

(2014/C 194/38)

Language of the case: German

Parties

Applicant: Norma Lebensmittelfilialbetrieb Stiftung & Co. KG (Nuremberg, Germany) (represented by: A. Parr, lawyer)

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

Other party to the proceedings before the Board of Appeal: Yorma's AG (Deggendorf, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 February 2014 in Case R 532/2013-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Yorma's AG

Community trade mark concerned: The word mark 'Yorma Eberl' for goods and services in Classes 3, 5, 21, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40 and 43 — Community trade mark application No 9 940 289

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

Mark or sign cited in opposition: The trade and firm name in commercial use and national and Community word marks NORMA for goods and services in Classes 3, 5, 8, 9, 11, 16, 18, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41 and 42

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

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

— Infringement of Article 8(4) of Regulation No 207/2009

Action brought on 22 April 2014 — EEB v Commission

(Case T-250/14)

(2014/C 194/39)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: C. Stothers, Solicitor, M. Van Kerckhove and C. Simphal, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the implied decision of the European Commission of 13 February 2014 deemed under Article 8(3) of Regulation (EC) No 1049/2001 ([1]) as a negative reply refusing to release complete and unredacted copies of correspondence with two Member States regarding their proposed Transitional National Plans (TNPs), exempting certain combustion plants from new emission limits between 2016 and 2020;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has unlawfully relied on Article 4(2) first indent of Regulation (EC) No 1049/2001 in a case where this is specifically precluded by Article 6(1) of Regulation (EC) No 1367/2006 ([2]).

2. Second plea in law, alleging that the defendant has unlawfully failed to interpret the exceptions of Article 4 of Regulation (EC) No 1049/2001 in a restrictive way as required by Article 6(1) of Regulation (EC) No 1367/2006 and Article 4(4) of the Aarhus Convention.

3. Third plea in law, alleging that the defendant has unlawfully consulted third parties under Article 4(4) of Regulation (EC) No 1049/2001 in a case where it is clear that the document should have been disclosed, and unlawfully relied on this consultation to extend its time to respond.

4. Fourth plea in law, alleging that the defendant has unlawfully failed to consider which parts of a document are covered by any exception and release the remainder under Article 4(6) of Regulation (EC) No 1049/2001.

5. Fifth plea in laws, alleging that by delaying access, the defendant has unlawfully failed to provide early and effective opportunities for the public to participate during the preparation, modification and review of the TNPs when all options are still open as required by Article 9 of Regulation (EC) No 1367/2006.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13)

Action brought on 18 April 2014 — Warenhandelszentrum v OHIM — Baumarkt Max Bahr (NEW MAX)

(Case T-254/14)

(2014/C 194/40)

Language of the case: German

Parties

Applicant: Warenhandelszentrum Ltd. (Neu-Ulm, Germany) (represented by: F. Hirschel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Baumarkt Max Bahr GmbH & Co. KG (Hamburg, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 January 2014 in case R 2035/2012-1 and allow the applicant's trade mark applied for;

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

Pleas in law and main arguments

Applicant for a Community trade mark: Applicant

Community trade mark concerned: Figurative mark, containing the word elements 'NEW MAX', for goods and services in Classes 3, 5 and 37 — Community trade mark application No 10 106 474

Proprietor of the mark or sign cited in the opposition proceedings: Baumarkt Max Bahr GmbH & Co. KG

Mark or sign cited in opposition: Figurative mark, containing the word element 'MAX', for services in Class 35

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and complete rejection of the trade mark applied for

Pleas in law: There is no likelihood of confusion between the marks at issue

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Action brought on 24 April 2014 — Novomatic v OHIM — Berentzen Mally Marketing plus Services (BLACK JACK TM)

(Case T-257/14)

(2014/C 194/41)

Language in which the application was lodged: German

Parties

Applicant: Novomatic AG (Gumpoldskirchen, Austria) (represented by: W. Mosing, lawyer)

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

Other party to the proceedings before the Board of Appeal: Berentzen Mally Marketing plus Services GmbH (Meerbusch, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 February 2014 in Case R 329/2012-4 with the consequence that OHIM will have to reject the opposition in its entirety due to lack of similarity of the goods and/or signs and lack of a likelihood of confusion and allow Community trade mark application No 9 456 278 to proceed to registration in accordance with the application;

— Order OHIM and — in the case of written intervention — the opposing party to bear their own costs and to pay the costs incurred by the applicant in the appeal proceedings before the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark including the word elements 'BLACK JACK TM' for goods and services in Classes 9, 28 and 41 — Community trade mark application No 9 456 278

Proprietor of the mark or sign cited in the opposition proceedings: Berentzen Mally Marketing plus Services GmbH

Mark or sign cited in opposition: the word and figurative mark 'BLACK TRACK' for goods in Classes 18, 25 and 28

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the Opposition Division's decision was annulled and the trade mark application was rejected in part

Pleas in law: Infringement of Articles 8(1)(b) and 75 of Regulation No 207/2009

Action brought on 22 April 2014 — Hansen v OHIM (WIN365)

(Case T-264/14)

(2014/C 194/42)

Language of the case: German

Parties

Applicant: Robert Hansen (Munich, Germany) (represented by M. Pütz-Poulalion, 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 Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 February 2014 in Case R 908/2013-4;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark WIN365 for goods and services in Classes 9, 35, 36, 38 and 41 — Community trade mark application No 11 513 851

Decision of the Examiner: Registration partially refused

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 23 April 2014 — Zehnder Group International v OHIM — Stiebel Eltron (comfotherm)

(Case T-267/14)

(2014/C 194/43)

Language in which the application was lodged: German

Parties

Applicant: Zehnder Group International AG (Gränichen, Switzerland) (represented by: J. Krenzel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Stiebel Eltron GmbH & Co. KG (Holzminden, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of 21 February 2014 in Case R 1318/2013-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'comfotherm' for goods in Classes 9 and 11 — Community trade mark No 8 859 472

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Stiebel Eltron GmbH & Co. KG

Grounds for the application for a declaration of invalidity: the word mark 'KOMFOTHERM' for goods in Class 11

Decision of the Cancellation Division: the application for a declaration of invalidity was granted

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: the contested decision does not stand up to scrutiny as regards the finding in respect of the similarity of the goods

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Action brought on 30 April 2014 — Mabrouk v Council

(Case T-277/14)

(2014/C 194/44)

Language of the case: English

Parties

Applicant: Mohamed Marouen Ben Ali Bel Ben Mohamed Mabrouk (Carthage, Tunisia) (represented by: J. Farthouat, J. Mignard, N. Boulay, lawyers, and S. Crosby, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Declare that the defendant has infringed Article 265 TFUE by failing to act upon the request of the applicant of 17 January 2014, of which it acknowledged receipt, to disclose the evidence upon which it relies to freeze the assets of the applicant in the European Union; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law.

The applicant alleges that the defendant is under a legal duty to disclose to the applicant the evidence upon which it relies to freeze the applicant's assets, and that the defendant was formally called upon to disclose this evidence and was thus fully called upon to act. It has not acted either by disclosing the evidence or by refusing to do so, and it has thus infringed Article 265 TFEU.

Action brought on 29 April 2014 — Portnov v Council

(Case T-290/14)

(2014/C 194/45)

Language of the case: French

Parties

Applicant: Andriy Portnov (Kiev, Ukraine) (represented by: M. Cessieux, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare Mr Andriy Portnov's action admissible;

— annul Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and in so far as it concerns the applicant;

— annul Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and in so far as it concerns the applicant;

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

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of the rights of the defence and the right to an effective remedy guaranteed by the fundamental principles of European law, set out in Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Second plea in law, alleging failure to state sufficient reasons for the contested acts.

3. Third plea in law, alleging a failure to comply with the criterion concerning penalties defined in Article 1 of Decision No 2014/119/CFSP and in paragraph 4 of the recital in the preamble to Regulation (EU) No 208/2014.

4. Fourth plea in law, alleging an error of fact, in so far as Mr Portnov, at the date of adoption of the contested acts, was not subject to criminal investigation in Ukraine for acts such as those referred to against him by the Council.

5. Fifth plea in law, alleging infringement of the fundamental right to respect for property, a fundamental principle of Community law protected by Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of Additional Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Action brought on 5 May 2014 — Seca Benelux and Others v Parliament

(Case T-311/14)

(2014/C 194/46)

Language of the case: French

Parties

Applicants: Seca Benelux SPRL (Brussels, Belgium); Groupe Seca SA (Valenciennes, France); and Seca Ingénierie SAS (Valenciennes) (represented by: E. van Nuffel d'Heynsbroeck, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— annul the decision of the Parliament of 21 February 2014 not to retain the bid it submitted for the award of the contract for technical management of the buildings of the European Parliament in Strasbourg (Call for tenders No INLO.AO-2013-003-STR-UGIMS-03) and to grant the contract to another tenderer;

— before making its ruling, order the Parliament to produce the following documents:

  — the list of the main similar services supplied by the other tenderer over the previous three years, stating their amount, date and recipient, public or private;

  — the document(s) showing the academic and professional qualifications of the personnel put forward by the tenderer in order to carry out the contract and including the information required on pages 11 to 27 of the technical specifications and in the minutes of the required visit of the premises and answers to the tenderers' questions;

— the documents(s) showing that the Parliament in fact checked whether the academic and professional qualifications of the personnel put forward by the tenderer for the contract which it had received were indeed compatible with the contract documentation, in particular on pages 11 to 27 of the technical specifications and in the minutes of the required visit of the premises and answers to the tenderers' questions;

— order the Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a failure to verify the selection criteria in breach of the rules of Article 110(1) of Regulation No 966/2012 ([1]) and Article 148 of Delegated Regulation No 1268/2012 ([2]), of the procurement documents and the principle of sound administration.

2. Second plea in law, alleging a manifest error in the assessment of the tenderers' technical ability, in breach of Article 110 (1) of Regulation No 966/2012, Articles 146(2) and 148 of Delegated Regulation No 1268/2012, the rules set out in the procurement documents, and the principles of sound administration and equal treatment of tenderers.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Action brought on 28 April 2014 — Federcoopesca and Others v Commission

(Case T-312/14)

(2014/C 194/47)

Language of the case: Italian

Parties

Applicants: Federazione Nazionale delle Cooperative della Pesca (Federcoopesca) (Rome, Italy); Associazione Lega Pesca (Rome); and AGCI AGR IT AL (Rome) (represented by: L. Caroli and S. Ventura, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2013) 8635 final of 6 December 2013 introducing an action plan to rectify shortcomings in the Italian fisheries control system ('the contested decision') and, specifically, paragraphs 13, 15, 16 and 17 of the action plan appended thereto;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision is intended to rectify the shortcomings observed in the Italian authorities' implementation of the rules of the common fisheries policy ('CFP').

The applicants rely on four pleas in law.

1. First plea in law: failure to provide a statement of reasons or failure to provide an adequate statement of reasons.

— It is submitted in this connection that the contested decision was adopted in order to deal with certain irregularities detected in connection with the implementation of certain CFP rules. However, that decision does not provide any indication as to the nature of those irregularities, thus making it impossible to identify the logical process which led to its adoption. Such invalidity is all the more serious since the measures introduced by the contested decision tend to derogate from previous EU legislation.

2. Second plea in law: infringement of the Treaties and of the rules relating to their implementation.

   — It is submitted in this connection that the contested decision is vitiated by an infringement of the Treaties and of Article 102(4) of Regulation No 1224/2009, and by a lack of competence. It is not designed to strengthen the controls system, but introduces new obligations; not only are those obligations not laid down in the primary legislation, they are even contrary to that legislation.

3. Third plea in law: breach of the principles of non-discrimination, reasonableness and proportionality.

   — It is submitted in this connection that the contested decision is in breach of the principle of non-discrimination on grounds of nationality, in so far as it establishes new, weightier obligations for Italian fishermen. Next, the measures set out therein clearly have no reasonable correlation to the objective pursued and are inherently unreasonable and disproportionate, since it is not possible in practice to identify how the obligations imposed on the fishermen help to achieve the objective of the contested decision.

4. Fourth plea in law: unlawfulness of the serious infringements system and, in particular, infringement of Article 92 of Regulation No 1224/2009 and breach of the principle that penalties should be gradated and proportionate.

   — It is submitted in this connection that, contrary to Regulation No 1224/2009, which establishes a gradated penalty system, the contested decision requires the automatic suspension of fishing permits in the event of a serious infringement and the definitive withdrawal of such permits in the event of repeated infringements. The contested decision therefore replaces the provisions of the regulation with a different and much more punitive system of automatic and irrevocable penalties. Furthermore, the penalty system imposed by the action plan appears to be in serious breach of the principle that penalties should be gradated, the principle that such penalties should be proportionate to the seriousness of the infringement and the principle that penalties should be applied to the offender alone, since the person holding the permit is penalised regardless of the identity of the person who has actually committed the offence.

Order of the General Court of 9 April 2014 — Al-Aqsa v Council

(Case T-276/08) ([1])

(2014/C 194/48)

Language of the case: Dutch

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

([1]) OJ C 236, 13.9.2008.

Order of the General Court of 9 April 2014 — Al-Aqsa v Council

(Case T-503/11) ([1])

(2014/C 194/49)

Language of the case: Dutch

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

([1]) OJ C 347, 26.11.2011.

Order of the General Court of 7 May 2014 — Adler Mode v OHIM — Cluett, Peabody (Fairfield)

(Case T-139/12) ([1])

(2014/C 194/50)

Language of the case: English

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

([1]) OJ C 165, 9.6.2012.

Order of the General Court of 30 April 2014 — Visa Europe v Commission

(Case T-447/12) ([1])

(2014/C 194/51)

Language of the case: English

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

([1]) OJ C 379, 8.12.2012.

Order of the General Court of 28 April 2014 — Deweerdt and Others v Court of Auditors

(Case T-132/13) ([1])

(2014/C 194/52)

Language of the case: French

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

([1]) OJ C 123, 27.4.2013.

Order of the General Court of 28 April 2014 — Omega v OHIM — Omega Engineering (Ω OMEGA)

(Case T-175/13) ([1])

(2014/C 194/53)

Language of the case: French

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

([1]) OJ C 147, 25.5.2013.

Order of the General Court of 11 April 2014 — Serco Belgium and Others v Commission

(Case T-644/13) ([1])

(2014/C 194/54)

Language of the case: English

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

([1]) OJ C 24, 25.1.2014.

Order of the General Court of 5 May 2014 — Volkswagen v OHIM (StartUp)

(Case T-156/14) ([1])

(2014/C 194/55)

Language of the case: German

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

([1]) OJ C 135, 5.5.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 14 May 2014 — Alexandrou v Commission

(Case F-140/12) ([1])

(Civil Service — Open competition EPSO/AD/231/12 — Access to documents — Refusal of the confirmatory request for access to the multiple-choice questions put in the admission tests)

(2014/C 194/56)

Language of the case: French

Parties

Applicant: Christodoulos Alexandrou (Luxembourg, Luxembourg) (represented by: R. Duta, lawyer)

Defendant: European Commimssion (represented by: B. Eggers and G. Gattinara, acting as Agents)

Re:

Application for annulment of the refusal of the confirmatory request for access, made by the applicant to the Commission, to some questions put to him in the pre-selection procedure of open competitions EPSO/AD/230 231/12.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Alexandrou to bear his own costs and to pay those incurred by the European Commission.*

([1]) OJ C 26, 26.1.2013, p. 76.

Judgment of the Civil Service Tribunal (3rd Chamber) of 14 May 2014 — Delcroix v EEAS

(Case F-11/13) ([1])

(Civil Service — Official — EEAS — Head of delegation in a third country — Transfer to the seat of the EEAS — Early termination of functions as head of delegation)

(2014/C 194/57)

Language of the case: French

Parties

Applicant: Nicola Delcroix (Brussels, Belgium) (represented by: initially D. Abreu Caldas, A. Coolen, É. Marchal and S. Orlandi, lawyers, then D. Abreu Caldas, J.-N. Louis and S. Orlandi, lawyers)

Defendant: European External Action Service (represented by: initially, R. Metsola and S. Marquardt, Agents, then S. Marquardt, Agent)

Re:

Application to annul the decision to transfer the applicant to a post at the seat of the EEAS and to terminate his posting at the EU delegation in Djibouti.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision, communicated by letter of 8 March 2012, to transfer Mr Delcroix to the seat of the European External Action Service and to thereby terminate early his posting as head of the European Union delegation in the Republic of Djibouti;*

2. *Orders the European External Action Service to bear its own costs and to pay the costs incurred by Mr Delcroix.*

([1]) OJ C 123, 27/04/2013, p. 29.

Judgment of the Civil Service Tribunal (3rd Chamber) of 14 May 2014 — Cocco v Commission

(Case F-17/13) ([1])

(Civil service — Contract staff — Recruitment — Call for expressions of interest EPSO/CAST/02/2010)

(2014/C 194/58)

Language of the case: French

Parties

Applicant: Patricia Cocco (Hunting, France) (represented by: A. Salerno and B. Cortese, lawyers)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, Agents)

Re:

Application to annul the Commission decision rejecting the request to recruit the applicant submitted by OIL.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 25 April 2012, refusing to employ Ms Cocco as a member of the contract staff in function group III;*

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

3. *Orders the European Commission to bear its own costs and to pay the costs incurred by Ms Cocco.*

([1]) OJ C 123, 27/04/2013, p. 30.

Judgment of the Civil Service Tribunal (3rd Chamber) of 14 May 2014 — Alexandrou v Commission

(Case F-34/13) ([1])

(Civil service — Open competition — Competition notice EPSO/AD/231/12 — Non-admission to the assessment tests — Access to documents)

(2014/C 194/59)

Language of the case: French

Parties

Applicant: Christodoulos Alexandrou (Luxembourg, Luxembourg) (represented by: R. Duta, lawyer)

Defendant: European Commission (represented by: B. Eggers and G. Gattinara, Agents)

Re:

Application to annul the decision of the selection board for Competition EPSO/AD/231/12 not to admit the applicant to the assessment tests of that competition.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Alexandrou to bear his own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 207, 20/07/2013, p. 58.

Order of the Civil Service Tribunal (Third Chamber) of 8 May 2014 — A v Commission

(Case F-50/13) ([1])

(Civil Service — Social security — Accident or occupational disease — Article 73 of the Staff Regulations — Permanent partial invalidity — Application for compensation — Manifest inadmissibility)

(2014/C 194/60)

Language of the case: French

Parties

Applicant: A (represented by: B. Cambier and A. Paternostre, lawyers)

Defendant: European Commission (represented by: V. Joris, acting as Agent, and C. Mélotte, lawyer)

Re:

Application for annulment of the Commission's decision ruling on the application for additional compensation, made by the applicant on the basis of Article 90(1) of the Staff Regulations, in order to obtain full reparation for the material and non-material losses which he suffered following his occupational disease and the numerous irregularities which occurred in the examination of his application based on Article 73 of the Staff Regulations.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Each party shall bear its own costs.*

([1]) OJ C 207, 20.7.2013, p. 63.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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