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(2015/C 026/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 26 November 2014 — European Parliament (C-103/12), European Commission (C-165/12) v Council of the European Union

(Joined Cases C-103/12 and C-165/12) ([1])

(Actions for annulment — Decision 2012/19/EU — Legal basis — Article 43(2) and (3) TFEU — Bilateral agreement authorising utilisation of the surplus of allowable catch — Choice of the third country that the European Union authorises to utilise living resources — Exclusive economic zone — Policy decision — Fixing fishing opportunities)

(2015/C 026/02)

Language of the case: French

Parties

Applicants: European Parliament (represented by: L.G. Knudsen, I. Liukkonen and I. Díez Parra, acting as Agents) (C-103/12), European Commission (represented by: A. Bouquet and E. Paasivirta, acting as Agents) (C-165/12)

Defendant: Council of the European Union (represented by: A. Westerhof Löfflerová and A. de Gregorio Merino, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, E. Ruffer and D. Hadroušek, acting as Agents), Kingdom of Spain (represented by: N. Díaz Abad, acting as Agent), French Republic (represented by: G. de Bergues, D. Colas and N. Rouam, acting as Agents), Republic of Poland (represented by: B. Majczyna and M. Szpunar, acting as Agents)

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2012/19/EU of 16 December 2011 on the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana;*

2. *Maintains the effects of Decision 2012/19/EU until the entry into force, within a reasonable period of time after the date of the present judgment, of a new decision based on the appropriate legal basis, namely Article 43(2) TFEU, in conjunction with Article 218(6)(a)(v) TFEU;*

3. *Orders the Council of the European Union to pay the costs;*

4. *Orders the Czech Republic, the Kingdom of Spain, the French Republic and the Republic of Poland to bear their own costs.*

([1]) OJ C 157, 2.6.2012.

Judgment of the Court (Third Chamber) of 26 November 2014 (requests for a preliminary ruling from the Tribunale di Napoli, Corte costituzionale — Italy) — Raffaella Mascolo (C-22/13), Alba Forni (C-61/13), Immacolata Racca (C-62/13) v Ministero dell'Istruzione, dell'Università e della Ricerca, Fortuna Russo v Comune di Napoli (C-63/13), Carla Napolitano, Salvatore Perrella, Gaetano Romano, Donatella Cittadino, Gemma Zangari v Ministero dell'Istruzione, dell'Università e della Ricerca (C-418/13)

(Joined Cases C-22/13, C-61/13 to C-63/13 and C-418/13) ([1])

(References for a preliminary ruling — Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Successive fixed-term employment contracts — Education — Public sector — Temporary replacements in respect of posts that are vacant and unfilled, pending the completion of competitive selection procedures — Clause 5(1) — Measures to prevent the misuse of fixed-term contracts — Concept of 'objective reasons' justifying such contracts — Penalties — Prohibition of conversion into an employment relationship of indefinite duration — No right to compensation for damage)

(2015/C 026/03)

Language of the case: Italian

Referring courts

Tribunale di Napoli, Corte costituzionale

Parties to the main proceedings

Applicants: Raffaella Mascolo (C-22/13), Alba Forni (C-61/13), Immacolata Racca (C-62/13), Fortuna Russo (C-63/13), Carla Napolitano, Salvatore Perrella, Gaetano Romano, Donatella Cittadino, Gemma Zangari (C-418/13)

Defendants: Ministero dell'Istruzione, dell'Università e della Ricerca (C-22/13, C-61/13, C-62/13), Comune di Napoli (C-63/13), Ministero dell'Istruzione, dell'Università e della Ricerca (C-418/13)

Interveners: Federazione Gilda-Unams, Federazione Lavoratori della Conoscenza (FLC CGIL), Confederazione Generale Italiana del Lavoro (CGIL), C-22/13, C-61/13 to C-62/13

Operative part of the judgment

Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, authorises the renewal of fixed-term employment contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility, for those teachers and staff, of obtaining compensation for any damage suffered on account of such a renewal. It appears, subject to the checks to be carried out by the referring courts, that such legislation, first, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of those contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose, and second, does not contain any other measure intended to prevent and punish the misuse of successive fixed-term employment contracts.

([1]) OJ C 86, 23.3.2013.
OJ C 141, 18.5.2013.
OJ C 313, 26.10.2013.

Judgment of the Court (Fourth Chamber) of 26 November 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Green Network SpA v Autorità per l'energia elettrica e il gas

(Case C-66/13) ([1])

(Reference for a preliminary ruling — National support scheme for the consumption of electricity produced from renewable energy sources — Obligation of electricity producers and importers to feed into the national grid a certain quantity of electricity produced from renewable energy sources or, failing that, to purchase 'green certificates' from the competent authority — Evidence of such feeding into the grid requiring certificates to be submitted demonstrating the green origin of electricity produced or imported — Acceptance of certificates issued in a third State subject to the conclusion of a bilateral agreement between that third State and the Member State concerned or an agreement between the national grid manager and an equivalent authority of that third State — Directive 2001/77/EC — External competence of the Community — Cooperation in good faith)

(2015/C 026/04)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Green Network SpA

Defendant: Autorità per l'energia elettrica e il gas

Intervener: Gestore dei Servizi Energetici SpA — GSE

Operative part of the judgment

1. *On a proper construction of the EC Treaty, having regard to the provisions of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, the European Community enjoys exclusive external competence precluding a provision of national law, such as that at issue in the main proceedings, which provides for the grant of exemption from the obligation to purchase green certificates owing to the introduction, onto the national consumer market, of electricity imported from a third State, by means of the prior conclusion, between the Member State and third State concerned, of an agreement under which the electricity thus imported is guaranteed as having been produced from renewable energy sources, according to arrangements identical to those set out in Article 5 of that directive;*

2. *When a provision such as that referred to in paragraph 1 of the operative part of this judgment has been disapplied by a national court because it is incompatible with EU law, it is contrary to EU law for that court to apply, by way of substitution, an earlier provision of national law in substance similar to that disapplied, which provides for the grant of exemption from the obligation to purchase green certificates owing to the introduction, onto the national consumer market, of electricity imported from a third State, by means of the prior conclusion, between the national grid manager and an equivalent local authority of that third State, of an agreement determining the verification arrangements necessary for the purpose of certifying that the electricity thus imported is electricity produced from renewable energy sources.*

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Fourth Chamber) of 20 November 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Novo Nordisk Pharma GmbH v S.

(Case C-310/13) ([1])

(Reference for a preliminary ruling — Directive 85/374/EEC — Consumer protection — Liability for defective products — Material scope of the directive — Special liability system existing on the date of notification of that directive — Permissibility of a national liability system enabling information on the adverse effects of pharmaceutical products to be obtained)

(2015/C 026/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Novo Nordisk Pharma GmbH

Defendant: S.

Operative part of the judgment

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999, must be interpreted as not precluding national legislation — such as that at issue in the main proceedings, establishing a special liability system for the purposes of Article 13 of that directive — under which, in consequence of an amendment to that legislation made after the directive had been notified to the Member State concerned, the consumer has the right to require the manufacturer of the medicinal product to provide him with information on the adverse effects of that product.

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Ninth Chamber) of 20 November 2014 — European Commission v Poland

(Case C-356/13) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Inadequate definition of waters which are polluted or are vulnerable to pollution — Inadequate classification of vulnerable zones — Action programmes — Deficient measures)

(2015/C 026/06)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, in having inadequately defined the waters which are vulnerable to pollution by nitrates from agricultural sources, in having inadequately classified vulnerable zones and in having adopted action programmes, as provided for under Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, which include measures which are incompatible with the directive, the Republic of Poland has failed to fulfil its obligations under Article 3 of Directive 91/676, read in conjunction with Annex I thereto, and under Article 5 of that directive, read in conjunction with Annexes II A(2) and III(1)(1) thereto.*

2. *Dismisses the appeal;*

3. *Orders the Republic of Poland to pay the costs.*

(1) OJ C 344, 23.11.2013.

Judgment of the Court (Second Chamber) of 19 November 2014 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — The Queen, on the application of: ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs

(Case C-404/13) (1)

(Reference for a preliminary ruling — Environment — Air quality — Directive 2008/50/EC — Limit values for nitrogen dioxide — Obligation to apply for postponement of the deadline by submitting an air quality plan — Penalties)

(2015/C 026/07)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: The Queen, on the application of: ClientEarth

Defendant: The Secretary of State for the Environment, Food and Rural Affairs

Operative part of the judgment

1. *Article 22(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe must be interpreted as meaning that, in order to be able to postpone by a maximum of five years the deadline specified by the directive for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI thereto, a Member State is required to make an application for postponement and to establish an air quality plan when it is objectively apparent, having regard to existing data, and notwithstanding the implementation by that Member State of appropriate pollution abatement measures, that conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline. Directive 2008/50 does not contain any exception to the obligation flowing from Article 22(1);*

2. *Where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up, does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive;*

3. *Where a Member State has failed to comply with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive, it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter.*

(1) OJ C 274, 21.9.2013.

Judgment of the Court (Eighth Chamber) of 20 November 2014 — Intra-Presse v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Golden Balls Ltd

(Joined Cases C-581/13 P and C 582/13 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Article 8(5) — Word mark GOLDEN BALLS — Opposition by the proprietor of the earlier Community word mark BALLON D'OR — Relevant public — Similarity of the signs — Likelihood of confusion)

(2015/C 026/08)

Language of the case: English

Parties

Appellant: Intra-Presse (represented by: P. Péters, advocaat, and T. de Haan, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent), Golden Balls Ltd (represented by: M. Edenborough QC)

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the General Court of the European Union in Golden Balls v OHIM — Intra-Presse (GOLDEN BALLS) (T-448/11, EU:T:2013:456) and in Golden Balls v OHIM — Intra-Presse (GOLDEN BALLS) (T-437/11, EU:T:2013:441) to the extent that they dismissed the two applications for annulment submitted by Intra-Presse SAS;*

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

3. *Annuls point 2 of the operative part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 June 2011 (Case R 1432/2010-1) and point 2 of the operative part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 26 May 2011 (Case R 1310/2010-1);*

4. *Orders Intra-Presse SAS, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Golden Balls Ltd to bear their own costs at first instance and on appeal.*

([1]) OJ C 24, 25.1.2014.

Judgment of the Court (Eighth Chamber) of 20 November 2014 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Rohm Semiconductor GmbH v Hauptzollamt Krefeld

(Case C-666/13) ([1])

(Reference for a preliminary ruling — Customs union — Tariff classification — Common Customs Tariff — Combined Nomenclature — Headings 8541 and 8543 — Modules for short-range data transmission and reception — Subheadings 8543 89 95 and 8543 90 80 — Definition of parts of electrical machinery and apparatus)

(2015/C 026/09)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Rohm Semiconductor GmbH

Defendant: Hauptzollamt Krefeld

Operative part of the judgment

1. *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 1832/2002 of 1 August 2002 must be interpreted as meaning that modules, each consisting of the interconnection of a light emitting diode, a photo-diode and a number of other semiconductor devices, and which may be used as infrared transmitters/receivers where their electricity supply derives from the devices in which they are incorporated, come under CN heading 8543 of that nomenclature;*

2. *The Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1832/2002 must be interpreted as meaning that modules such as those at issue in the main proceedings incorporated in devices for the mechanical or electrical functioning of which they are not necessary, do not constitute parts for the purposes of subheading 8543 90 80 of that nomenclature, but do come under subheading 8543 89 95 of that nomenclature, relating to other electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85 of that nomenclature.*

([1]) OJ C 85, 22.3.2014.

Judgment of the Court (Eighth Chamber) of 20 November 2014 (request for a preliminary ruling from the Cour de cassation — France) — Direction générale des douanes et droits indirects, Chef de l'Agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières, Direction régionale des douanes et droits indirects de Lyon v Utopia SARL

(Case C-40/14) ([1])

(Reference for a preliminary ruling — Customs union and Common Customs Tariff — Importation free of customs duties — Animals specially prepared for laboratory use — Public establishment or an authorised private establishment — Importer whose customers are such establishments — Packing materials or packing containers — Cages used for transportation of animals)

(2015/C 026/10)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellants: Direction générale des douanes et droits indirects, Chef de l'Agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières, Direction régionale des douanes et droits indirects de Lyon

Respondent: Utopia SARL

Operative part of the judgment

1. *Article 60 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as meaning that, where animals specially prepared for laboratory use, which an importer brings into the European Union, are intended for a public establishment or an authorised private establishment which is principally engaged in education or scientific research, that importer, although it is not itself such an establishment, may be entitled to the relief from import duties provided for by that article for goods of this type.*

2. *General rule 5(b) of the Combined Nomenclature contained 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 1789/2003 of 11 September 2003, must be interpreted as meaning that cages used for transportation of live animals intended for laboratory research should not be categorised as packing materials or packing containers which are to be classified with the goods to which they relate.*

([1]) OJ C 102, 7.4.2014.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 4 November 2014 — SC Total Waste Recycling SRL v Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

(Case C-487/14)

(2015/C 026/11)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: SC Total Waste Recycling SRL

Defendant: Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

Questions referred

1) Should the shipment of waste 'in a way which is not specified materially in the notification or movement documents', within the meaning of Article 2(35)(d) of Regulation (EC) No 1013/2006 ([1]), be understood to refer to the modes of transport stipulated in Annexes IA and IB to Regulation (EC) No 1013/2006 (road, train/rail, sea, air, inland waterway)?

2) In the event of any essential change being made to the details and/or conditions of the consented shipment, within the meaning of Article 17(1) of Regulation (EC) No 1013/2006, does failure to notify the authority justify a finding that waste has been shipped 'in a way which is not specified materially in the notification or movement documents', within the meaning of Article 2(35)(d) of Regulation (EC) No 1013/2006, and hence shipped illegally?

3) Should it be regarded as an essential change to the details and/or conditions of the consented consignment, within the meaning of Article 17(1) of Regulation (EC) No 1013/2006, if the waste consignment enters the notified country of transit at another, different border crossing point than that stated in the consent or the notification document?

4) If a waste shipment is to be regarded as illegal because it enters the country of transit at a place which differs from that stated in the consent or the notification document, is it possible to regard the fine which has been imposed for that reason as proportionate if the amount is the same as the amount of the fine prescribed for a breach of the requirement to obtain consent and to give prior notification in writing?

([1]) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

Request for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 4 November 2014 — SC Max Boegl România SRL and Others v RA Aeroportul Oradea and Others

(Case C-488/14)

(2015/C 026/12)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicants: SC Max Boegl România SRL, SC UTI Grup SA, Astaldi SpA, SC Construcții Napoca SA

Defendants: RA Aeroportul Oradea, SC Porr Construct SRL, Teerag-Asdag Aktiengesellschaft, SC Col-Air Trading SRL, AZVI SA, Trameco SA, Iamsat Muntenia SA

Question referred

Must Article 1(1), (2) and (3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ([1]) and Article 1(1), (2) and (3) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ([2]) , as amended by Directive 2007/66/EC ([3]) of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts be interpreted as precluding legislation which makes access to review procedures of decisions of contracting authorities subject to an obligation to deposit beforehand a 'good conduct guarantee' such as that governed by Articles 271a and 271b of Government Emergency Ordinance No 34/2006?

([1]) OJ 1989 L 395, p. 33.
([2]) OJ 1992 L 76, p. 14.
([3]) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31).

Reference for a preliminary ruling from High Court of Justice, Family Division (England and Wales) (United Kingdom) made on 4 November 2014 — A v B

(Case C-489/14)

(2015/C 026/13)

Language of the case: English

Referring court

High Court of Justice, Family Division (England and Wales)

Parties to the main proceedings

Applicant: A

Defendant: B

Questions referred

1. For the purposes of Article 19(1) and (3) ([1]), what does 'established' mean, in circumstances where:-

   a) the applicant, in the proceedings in the court first seised ('the first proceedings'), takes virtually no steps in the first proceedings beyond the first court appointment, and in particular does not issue a Petition (*Assignation*) within the time limit for the expiry of the Request (*Requête*), with the result that the first proceedings expire undetermined by effluxion of time and in accordance with the local (French) law of the first proceedings, namely 30 months after the first directions appointment;

   b) the first proceedings expire as above very shortly (3 days) after the proceedings in the court second seised ('the second proceedings') are issued in England, with the result that there is no judgment in France nor any danger of irreconcilable judgments between the first proceedings and the second proceedings; and

   c) by virtue of the United Kingdom's time zone the applicant in the first proceedings would, following the lapse of the first proceedings, always be able to issue divorce proceedings in France before the applicant could issue divorce proceedings in England?

2. In particular, does 'established' import that the applicant in the first proceedings must take steps to progress the first proceedings with due diligence and expedition to a resolution of the dispute (whether by the Court or by agreement), or is the applicant in the first proceedings, having once secured jurisdiction under Articles 3 and 19(1), free to take no substantive steps at all towards resolution of the first proceedings as above and free thereby simply to secure a stop of the second proceedings and a stalemate in the dispute as a whole?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, p. 1

Request for a preliminary ruling from the Juzgado de lo Mercantil No 3 de Madrid (Spain) lodged on 5 November 2014 — Rossa dels Vents Assessoria, S.L. v U Hostels Albergues Juveniles, S.L.

(Case C-491/14)

(2015/C 026/14)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 3 de Madrid

Parties to the main proceedings

Applicant: Rossa dels Vents Assessoria, S.L.

Defendant: U Hostels Albergues Juveniles, S.L.

Question referred

Must Article 5(1) of Directive 2008/95/EC ([1]) of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that the exclusive right of the proprietor of a trade mark to prevent all third parties from using, in the course of trade, signs identical with or similar to its trade mark extends to a third-party proprietor of a later trade mark, without the need for that latter mark to have been declared invalid beforehand?

([1]) OJ 2008 L 299, p. 25.

Request for a preliminary ruling from the Tribunale Regionale di Giustizia Amministrativa di Trento (Italy) lodged on 6 November 2014 — Antonio Tita and Others v Ministero della Giustizia and Others

(Case C-495/14)

(2015/C 026/15)

Language of the case: Italian

Referring court

Tribunale Regionale di Giustizia Amministrativa di Trento

Parties to the main proceedings

Applicants: Antonio Tita, Alessandra Carlin, Piero Constantini

Defendant: Ministero della Giustizia, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei Ministri, Segretario Generale del Tribunale Regionale di Giustizia Amministrativa di Trento (TRGA)

Question referred

Do the principles fixed by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 ([1]) and by Council Directives 89/665/EEC ([2]) and 92/13/EEC ([3]) , with regard to improving the effectiveness of review procedures concerning the award of public contracts, preclude a provision of national law, such as that on the lump sum payable in respect of court fees laid down in Articles 9, 13(6)bis and (6)bis1 and 14(3)ter of Decree of the President of the Republic No 115 of 30 May 2002 (as progressively amended by subsequent legislative interventions), and in Article 1(27) of Law No 228 of 24 December 2012, which laid down high amounts for the lump sum payable for access to administrative proceedings relating to public procurement procedures.

([1]) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31).

([2]) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

([3]) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14).

Request for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 10 November 2014 — VAD BVBA, Johannes Josephus Maria van Aert v Belgische Staat

(Case C-499/14)

(2015/C 026/16)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants in cassation: VAD BVBA, Johannes Josephus Maria van Aert

Respondent in the appeal in cassation: Belgische Staat

Question referred

Are goods put up in sets for retail sale that are presented to customs authorities in separate packages because this is justified, but from which it is clear that they belong together and are intended to be offered as a single unit on the retail market, also to be regarded as goods put up in sets for retail sale, within the meaning of Rule 3(b) of the General Rules for the interpretation of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 ([1]) of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1214/2007 ([2]) of 20 September 2007, in the case where those goods are packed together after the declaration with a view to being offered for sale on the retail market?

([1]) OJ 1987 L 256, p. 1.
([2]) OJ 2007 L 286, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 November 2014 — Buzzi Unicem SpA and Others v Comitato nazionale per la gestione della Direttiva 2003//87/EC and Others

(Case C-502/14)

(2015/C 026/17)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Buzzi Unicem SpA, Colacem SpA, Cogne Acciai Speciali SpA, Olon SpA, Laterlite SpA

Defendants: Comitato nazionale per la gestione della Direttiva 2003//87/EC, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo economico

Questions referred

1. Is European Commission Decision 2013/448/EU of 5 September 2013 invalid in so far as it failed to take into account, in the calculation of the allowances to be allocated free of charge, the percentage of emissions associated with waste gas combustion — or steel processing gas — or of emissions associated with the heat produced by cogeneration, thereby infringing Article 290 TFEU and Article 10a(1),(4) and (5) of Directive 2003/87/EC ([1]) , going beyond the limits of the powers conferred by that directive and at variance with its objectives (to encourage more energy-efficient techniques and to protect the needs of economic development and employment)?

2. Is European Commission Decision 2013/448/EU of 5 September 2013 invalid, in the light of the Community principles of effectiveness and proportionality underlying Article 5 TEU, owing to undue failure to respect the applicant companies' legitimate expectation of remaining in possession of the number of the allowances allocated to them on a preliminary basis and to which they are entitled on the basis of Directive 2003/87, thereby depriving those companies of the economic benefit associated with that number of allowances?

3. Is European Commission Decision 2013/448/EU of 5 September 2013 invalid in so far as it failed to take into account, in the calculation of the allowances to be allocated free of charge, emissions from plants that fell within the scope of the directive only with effect from 2013, in that such plants were included in the Emission Trading Scheme under Directive 2009/29/EC?

4. Is European Commission Decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, given that the decision infringes the second paragraph of Article 296 TFEU and Article 41 of the [Charter of Fundamental Rights of the European Union] owing to its failure to provide an adequate statement of reasons?

5. Is European Commission decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, on the ground that it infringes the procedural rules under Articles 10a(1) and 23(3) of Directive 2003/87/EC?

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Request for a preliminary ruling from the Tribunal Superior de Justicia del País Vasco (Spain) lodged on 13 November 2014 — Administrador de Infraestructuras Ferroviarias (ADIF) v Luis Aira Pascual and Others

(Case C-509/14)

(2015/C 026/18)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Administrador de Infraestructuras Ferroviarias (ADIF)

Defendant: Luis Aira Pascual, Algeposa Terminales Ferroviarios, S.L. and FOGASA

Question referred

Does Article 1[(1)](b) of Council Directive 2001/23/EC (1) of 12 March 2001, in conjunction with Article 4(1) thereof, preclude an interpretation of the Spanish legislation intended to give effect to the Directive, to the effect that a public-sector undertaking, responsible for a service central to its own activities and requiring important material resources, that has been providing that service by means of a public contract, requiring the contractor to use those resources which it owns, is not subject to the obligation to take over the rights and obligations relating to employment relationships when it decides not to extend the contract but to assume direct responsibility for its performance, using its own staff and thereby excluding the staff employed by the contractor, so that the service continues to be provided without any change other than that arising as a result of the replacement of the workers performing the activities and the fact that they are employed by a different employer?

(1) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses OJ 2001 L 82, p. 16.

Appeal brought on 14 November 2014 by Éditions Odile Jacob SAS against the judgment of the General Court (Second Chamber) delivered on 5 September 2014 in Case T-471/11 Odile Jacob v Commission

(Case C-514/14 P)

(2015/C 026/19)

Language of the case: French

Parties

Appellant: Éditions Odile Jacob SAS (represented by: J.-F. Bellis, O. Fréget and L. Eskenazi, avocats)

Other parties to the proceedings: European Commission, Lagardère SCA, Wendel

Form of order sought

The appellant claims that the Court should:

— declare that the present appeal is admissible and well founded;

— set aside the judgment of the General Court of 5 September 2014 in Case T-471/11 *Editions Odile Jacob SAS* v *European Commission* and itself adjudicate the dispute;

— grant the forms of order sought by Éditions Odile Jacob at first instance and accordingly annul Decision SG-Greffe (2011) D/C(2011)3503 of 13 May 2011, adopted in Case COMP/M.2978 Lagardère/Natexis/VUP following the judgment of the General Court of 13 September 2010 in Case T-452/04 *Éditions Odile Jacob* v *Commission*, by which the Commission once again approved Wendel as purchaser of the assets transferred in accordance with the commitments attached to the Commission's decision of 7 January 2004 authorising the concentration Lagardère/Natexis/VUP;

— order the European Commission and the interveners to pay the costs of the proceedings at first instance and on appeal, including those relating to the interim proceedings and the rectification proceedings.

Pleas in law and main arguments

The appellant relies on three grounds of appeal.

First, the appellant submits that the General Court erred in law by failing to find that the Commission had infringed Article 266 TFEU and Article 47 of the Charter of Fundamental Rights. As that flaw tainted the lawfulness of the first approval decision, it also vitiated the contested decision, since the latter did not remedy the effects of the agent's lack of independence throughout his mission. Consequently, according to the appellant, the Commission's adoption of the contested decision constitutes a breach of the rules governing the right to a fair hearing and negates the effectiveness of any judicial review of the measures taken by that institution.

Secondly, the appellant submits that the General Court erred in law in finding that the conditional authorisation decision could constitute a legal basis for a new approval decision.

Lastly, the appellant submits that the General Court disregarded the legal criteria for assessing the independence of the transferee of the assets sold in relation to the transferor; that it erred in law; and that it distorted the facts relating to that assessment.

Appeal brought on 17 November 2014 by Schutzgemeinschaft Milch und Milcherzeugnisse e. V. against the order of the General Court (Sixth Chamber) delivered on 3 September 2014 in Case T-112/11 Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission

(Case C-517/14 P)

(2015/C 026/20)

Language of the case: German

Parties

Appellant: Schutzgemeinschaft Milch und Milcherzeugnisse e.V. (represented by: M. Loschelder and V. Schoene, Rechtsanwälte)

Other parties to the proceedings: European Commission, Kingdom of the Netherlands, Nederlandse Zuivelorganisatie

Form of order sought

— Set aside the order under appeal and annul Commission Regulation (EU) No 1121/2010 of 2 December 2010 entering a designation in the register of protected designations of origin and protected geographical indications [Edam Holland (PGI)] ([1]);

— in the alternative, refer the case back to the General Court;

— order the Commission to pay the costs necessarily incurred by the appellant in the direct action and in the appeal.

Pleas in law and main arguments

First ground of appeal: The General Court considers the appellant to have no legal interest in bringing proceedings, since the regulation at issue contains a clarification to the effect that 'Edam' is generic. The relevant wording in the registration regulation is, however, merely tautological. The annulment of the registration regulation would therefore, contrary to the view taken by the General Court, give the members an advantage that would justify a legal interest in bringing proceedings. For that reason, the action is admissible. It is also, for the same reason, well founded, as the clarification was authorised by the Netherlands applicants. The Commission therefore erred in nevertheless failing to provide that clarification.

Second ground of appeal: The appellant stated that its members had, in the past, supplied milk to the Netherlands, which could be, and probably was, processed there into Gouda or Edam. The General Court did not infer from this that there was any legal interest in bringing proceedings. In fact, that submission was factually incorrect. The General Court thus distorted the facts of the case, as the submission is correct. Furthermore, according to the General Court, the appellant had not raised its objection or brought its action on behalf of 'milk producers'. This too is a distortion of the facts, since the objection was made on behalf of the appellant's members, in so far as they process milk (the milk sold into the Netherlands being processed milk) and market milk or cheese.

Third ground of appeal: The General Court considers that the dismissal of the objection does not establish a legal interest in bringing proceedings on the part of the appellant itself. This is because the objection was, in legal terms, not made by the appellant but by the Federal Republic of Germany. This does not correspond to the legal position under basic Regulation No 510/2006 ([2]), nor, contrary to the view taken by the General Court, has that question yet been determined with regard to the basic Regulation. There are differences between basic Regulation No 510/2006 and its predecessor, Regulation (EEC) No 2081/92 ([3]) , which the General Court failed to take into account and which mean that certainly under the basic regulation, objectors such as the appellant assert their own right to object.

Fourth ground of appeal: The General Court rejects the appellant's submission that the EU's blue PGI label gives Netherlands producers a competitive advantage over the appellant's members. This is not correct. The competitive advantage exists, and establishes a legal interest on the part of the appellant's members in bringing proceedings to have the registration regulation annulled.

([1]) OJ 2010 L 317, p. 14.
([2]) Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).
([3]) Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

Appeal brought on 20 November 2014 by the European Commission against the judgment delivered by the General Court (Third Chamber) on 9 September 2014 in Case T-461/12 Hansestadt Lübeck v European Commission

(Case C-524/14 P)

(2015/C 026/21)

Language of the case: German

Parties

Appellant: European Commission (represented by: T. Maxian Rusche and R. Sauer, acting as Agents)

Other parties to the proceedings: Hansestadt Lübeck, previously Flughafen Lübeck GmbH

Form of order sought

— Set aside the judgment under appeal;

— declare the action at first instance inadmissible;

— alternatively: declare the action at first instance devoid of purpose;

— alternatively: declare unfounded that part of the fourth plea in law by which it is alleged that there has been an infringement of Article 107(1) TFEU in relation to the selectivity criterion, and refer the case back to the General Court as regards the other parts of the fourth plea in law and the first, second, third and fifth pleas in law;

— order the applicant in the proceedings at first instance to pay the costs of those proceedings and of the appeal, or, alternatively, in the event that the case is referred back to the General Court, reserve the decision on the costs of the first-instance proceedings and of the appeal for the final judgment.

Pleas in law and main arguments

First plea in law: No individual concern.

In the view of the General Court, the decision at issue is of individual concern to the Hanseatic City of Lübeck in its capacity as legal successor to the public undertaking which operated Lübeck airport until 1 January 2013, since, through the grant of State aid, that public undertaking exercised powers conferred exclusively on it. That conclusion is based on the following facts: the public undertaking proposes the schedule of charges to a regulatory authority of the *Land* which is authorised to approve or reject the schedule of charges (paragraphs 29 to 34 of the judgment under appeal).

In the Commission's view, the General Court established the facts correctly, but erred in law in deeming the public undertaking which operated Lübeck airport until 1 January 2013 to be a granting authority which exercised its own exclusively conferred powers. According to the case-law of the Court of Justice, in examining individual concern to a public or private entity which implements an aid scheme (such as the public undertaking which operated Lübeck airport until 1 January 2013), what is decisive is whether it is the entity itself or the State that is able to determine its management and policies ([1]). The facts established by the General Court show that the State has that power, for two reasons. The schedule of charges requires prior approval by the regulatory authority of the *Land*. The regulatory authority is in turn bound by Federal law on airport charges. Consequently, the mere fact that the airport operator has to propose the schedule of charges does not mean that that operator is in a position to determine its own management and the objectives pursued by the schedule of charges.

In finding that the power to perform a preparatory step in respect of the grant of aid (in this case, proposing the schedule of charges to the regulatory authority) represents the exercise of a power to grant aid, the General Court erred in law, since it interpreted the expression 'individually concerned' too broadly.

Second plea in law: No interest in bringing proceedings.

The General Court considers that the Hanseatic City of Lübeck, in its capacity as legal successor to the public undertaking that operated Lübeck airport until 1 January 2013, continues to have an interest in bringing proceedings even after the sale of Lübeck airport to a private investor. The General Court did not consider it necessary to establish whether the duty to suspend the schedule of charges ended on 1 January 2013 because the schedule of charges no longer represented State aid, given that no further State resources were being applied. Even if that were the case, the applicant at first instance would, in the General Court's view, retain an interest in bringing proceedings because the formal investigation procedure had not yet been completed and the decision at issue was, therefore, still producing legal effects.

The first argument of the General Court fails because, even without a final decision on the completion of the formal investigation procedure, the decision at issue can lose its only legal effect — that is the duty to suspend the aid measure while the investigation is ongoing — if the aid measure comes to an end for reasons unrelated to the formal investigation procedure (in this case, the privatisation of the airport).

The second argument of the General Court is inconsistent with case-law, which requires there to be a vested and present interest. In the present case, the risk of the measure being suspended before 1 January 2013 did not materialise because the airport was privatised. The Hanseatic City of Lübeck failed to prove its interest in pursuing its claim following the privatisation of the airport.

On those grounds, the General Court erred in law in finding that the applicant at first instance had a present interest.

Third plea in law: Incorrect interpretation of the concept of selectivity for the purposes of Article 107(1) TFEU

In order to establish whether the schedule of charges of a public undertaking is selective, it is necessary, according to the General Court, to assess whether it applies on a non-discriminatory basis to all users and potential users of the goods or services provided by that public undertaking (paragraph 53 of the judgment under appeal).

This view is in stark contrast to the case-law of the Court of Justice, according to which a measure is not a general measure of fiscal or economic policy and is thus selective if it applies only to a particular economic sector or to particular undertakings in that economic sector ([2]) . The Court has thus decided that preferential rates for goods and services that are set by public undertakings are selective even if all users and potential users could avail themselves of them ([3]) . In his Opinion in *Deutsche Lufthansa*, Advocate General Mengozzi applied that case-law to a situation that corresponds precisely to the situation at issue here, namely an airport's schedule of fees with discounts for certain major users, and confirmed the selectivity of the measure ([4]).

Fourth plea in law: failure to give adequate reasons and contradictory reasons

The General Court's grounds are erroneous. First, an essential part of the selectivity assessment is omitted, namely determination of the objective pursued by the schedule of charges, since the question as to which undertaking is in a comparable position in law and in fact has to be investigated by reference to that system. Secondly, the Court's reasons are contradictory, since it first applies the case-law on the selectivity of fiscal measures (paragraphs 51 and 53 of the judgment under appeal) and then finds that it is not relevant (paragraph 57 of the judgment under appeal).

Fifth plea in law: erroneous application of a strict standard of judicial review to a decision initiating a procedure.

The General Court refers to the correct legal criterion, but completely overlooks in its reasoning the fact that the present case concerns a decision initiating a formal investigation procedure, which is subject only to light judicial review, particularly with regard to the statement of reasons ([5]) . No explanation is given in the judgment under appeal as to why the schedule of charges was so obviously not selective as to preclude the Commission from initiating a formal investigation procedure.

([1]) Case 282/85 *DEFI* v *Commission* [1986] ECR 2649, paragraph 18.
([2]) Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 99, and Case C-148/04 *Unicredito* [2005] ECR I-11137, paragraph 45.
([3]) See, in particular, Case C-126/01 *GEMO* [2003] ECR I-13769, paragraphs 35 to 39.
([4]) Opinion in Case C-284/12 *Deutsche Lufthansa* [2013] ECR, paragraphs 47 to 55.
([5]) See, most recently, order in Case T-172/14 R *Stahlwerk Bous* v *Commission* [2014] ECR, paragraphs 39 to 78 and the case-law cited.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 21 November 2014 — Ukamaka Mary Jecinta Oruche and Nzubechukwu Emmanuel Oruche v Bundesrepublik Deutschland

(Case C-527/14)

(2015/C 026/22)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicants: Ukamaka Mary Jecinta Oruche and Nzubechukwu Emmanuel Oruche

Defendant: Bundesrepublik Deutschland

Other parties: Oberbürgermeister der Stadt Potsdam, Emeka Emmanuel Mary Oruche

Question referred

Should the first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ([1]) be interpreted as precluding a provision of national law which makes the first entry of a member of the family of a sponsor conditional on the requirement that, prior to entry, the family member can demonstrate the ability to communicate, in a basic way, in the German language?

([1]) OJ 2003 L 251, p. 12.

Appeal brought on 21 November 2014 by the European Commission against the judgment of the General Court (Second Chamber) delivered on 11 September 2014 in Case T-425/11 *Greece* v *Commission*

(Case C-530/14 P)

(2015/C 026/23)

Language of the case: Greek

Parties

Appellant: European Commission (represented by: A. Bouchagiar and P.J. Loewenthal)

Other party to the proceedings: Hellenic Republic

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Second Chamber) of 11 September 2014, notified to the Commission on 12 September 2014, in Case T-425/11 *Greece* v *Commission* (ECLI:EU:T:2014:768);

— refer the case back to the General Court for it to rule again;

— reserve the costs of these proceedings.

Pleas in law and main arguments

The appeal is based on a single ground: the General Court misinterpreted and misapplied Article 107(1) TFEU in ruling that the contested measure did not provide any advantage for the public casinos. The single ground of appeal advanced by the Commission has three parts.

First, in paragraphs 52 to 58 of the judgment under appeal, the General Court infringed Article 107(1) TFEU in ruling that the public casinos did not enjoy an advantage from the payment of a lower tax for each entering customer on the basis of the contested measure, since the amounts paid represented 80 % of the mandatory entry fees which were charged by both the private and public casinos.

Second, in paragraphs 59 to 68 of the judgment under appeal, the General Court infringed Article 107(1) TFEU in ruling that it was not sufficient for the Commission to define the advantage of the contested measures as direct (de jure) tax discrimination, but that the Commission was obliged to base the existence of an advantage on an economic analysis of the effects of the contested measure.

Third, in paragraphs 74 to 80 of the judgment under appeal, the General Court infringed Article 107(1) TFEU in ruling that (i) the practice of free entry could not confirm the advantage of the contested measure since that measure did not provide any advantage and (ii) before that argument could be effective the Commission was bound to provide evidence that in practice the number of free entries granted was excessively high in comparison with the objectives of the Greek legislation which permitted that practice, so as to be incompatible with the conditions of that national legislation.

Appeal brought on 24 November 2014 by Vadzim Ipatau against the judgment of the General Court (First Chamber) delivered on 23 September 2014 in Case T-646/11 Ipatau v Council

(Case C-535/14 P)

(2015/C 026/24)

Language of the case: French

Parties

Appellant: Vadzim Ipatau (represented by: M. Michalauskas, avocat)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 23 September 2014 (Case T-646/11),

— give final judgment in the matter or refer the case back to the General Court for judgment,

— order the Council to pay the costs, including the costs before the General Court.

Pleas in law and main arguments

The appellant relies on four grounds of appeal.

In the first place, the appellant submits that the General Court infringed the right to effective judicial protection by denying the filing of an application for legal aid any suspensory effect on the period prescribed for bringing an action for annulment against the contested measure.

In the second place, the appellant complains that the General Court infringed his rights of defence. The General Court held that the Council was not required to disclose to the appellant the evidence against him, nor required to give him the opportunity to be heard before the adoption of Decision 2012/642/CFSP ([1]) and Implementing Regulation No 1017/2012 ([2]).

In the third place, the General Court erred in law in taking the view that the grounds set out in the contested measures were sufficient.

In the last place, the General Court erred in law in taking the view that the contested measures were not disproportionate.

(1) Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1).
(2) Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7).

Request for a preliminary ruling from the Audiencia Provincial de Castellón (Spain) lodged on 27 November 2014 — Juan Carlos Sánchez Morcillo, María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-539/14)

(2015/C 026/25)

Language of the case: Spanish

Referring court

Audiencia Provincial de Castellón

Parties to the main proceedings

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

Defendant: Banco Bilbao Vizcaya Argentaria, S.A.

Question referred

Must Article 7(1) of Directive 93/13/EEC (1), in conjunction with Articles 47, 34(3) and 7 of the Charter of Fundamental Rights of the European Union (2), be interpreted as precluding a procedural provision of the kind laid down in Article 695 (4) of the Spanish Law on Civil Procedure, applicable to appeals against a decision determining the outcome of an objection to enforcement proceedings in relation to mortgaged or pledged goods, which allows an appeal to be brought only against an order staying the proceedings, disapplying an unfair term or dismissing an opposition based on an unfair term, the immediate consequence of which is that more legal remedies on appeal are available to the seller or supplier seeking enforcement than to the consumer against whom enforcement is sought?

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

Appeal brought on 27 November 2014 by DK Recycling und Roheisen GmbH against the judgment of the General Court (Fifth Chamber) delivered on 26 September 2014 in Case T-630/13 *DK Recycling und Roheisen GmbH* v *European Commission*

(Case C-540/14 P)

(2015/C 026/26)

Language of the case: German

Parties

Appellant: DK Recycling und Roheisen GmbH (represented by: S. Altenschmidt and P.-A. Schütter, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. Set aside the judgment of the General Court of 26 September 2014 in Case T-630/13, in so far as the action is dismissed as to the remainder in point 2 of the operative part;

2. Grant, in its entirety, the first head of claim in the application made at first instance to the effect that Article 1(1) of Commission Decision 2013/448/EU ([1]) of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2013) 5666) is annulled in so far as it rejects the inscription of the installations listed in Annex I, Point A, to that decision with the installation identifiers DE000000000001320 and DE-new-14220-0045 on the list of installations covered by Directive 2003/87/EC which Germany submitted to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances allocated free of charge to these installations;

3. In the alternative, set aside the judgment of the General Court referred to in 1. above and refer the case back to that court;

4. Order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant submits that there has been an infringement of EU law for the purposes of the third option in the second sentence of the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union. It submits that the General Court failed to have regard to the fundamental rights and the principle of proportionality in regarding as compatible with EU law the Commission's rejection of the allocation of emission allowances free of charge on the basis of a Member State's clause in respect of hardship cases. The appellant maintains that the judgment under appeal infringes its rights under Articles 16 and 17 of the Charter of Fundamental Rights of the European Union.

The appellant submits, in respect of the ground of appeal put forward, that the Commission did not, in laying down the rules in respect of the free allocation of emission allowances in Decision 2011/278/EU, make any provision for individual fundamental rights to be adequately protected. It takes the view that the free allocation of emission allowances under Decision 2011/278/EU takes place on the basis of standardised calculation parameters. It submits that that decision does not, however, contain any rules which allow for an additional allocation of emission allowances free of charge in cases in which the allocation made by applying the standardised calculation parameters would lead to an abnormal burden or unreasonable hardship in individual cases.

In the appellant's view, the dismissal of the action infringes the fundamental rights in the Charter and the principle of proportionality. The General Court took into account only the onerous effect which typically occurs as a result of the emissions trading scheme and the allocation regime under Decision 2011/278/EU. The appellant submits that, contrary to the case-law of the Court of Justice, the General Court completely disregarded the necessary protection of its individual fundamental rights.

([1]) OJ 2013 L 240, p. 27.

Appeal brought on 2 December 2014 by Arctic Paper Mochenwangen GmbH against the judgment of the General Court (Fifth Chamber) delivered on 26 September 2014 in Case T-634/13 *Arctic Paper Mochenwangen GmbH* v *European Commission*

(Case C-551/14 P)

(2015/C 026/27)

Language of the case: German

Parties

Appellant: Arctic Paper Mochenwangen GmbH (represented by: S. Kobes, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. Set aside the judgment of the General Court of 26 September 2014 in Case T-634/13, in so far as the action is dismissed;

2. Grant, in its entirety, the claim in the application made at first instance to the effect that Article 1(1) of Commission Decision 2013/448/EU ([1]) of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2013) 5666) is annulled in so far as it rejects the inscription of the installation listed in Annex I, Point A, to that decision with the installation identifier DE000000000000563 on the list of installations covered by Directive 2003/87/EC ([2]) which Germany submitted to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances allocated free of charge to these installations;

3. In the alternative, set aside the judgment of the General Court referred to in 1. above and refer the case back to that court;

4. Order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant submits that there has been an infringement of EU law for the purposes of the third option in the second sentence of the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union. It submits that the General Court failed to have regard to the fundamental rights and the principle of proportionality in regarding as compatible with EU law the Commission's rejection of the allocation of emission allowances free of charge on the basis of a Member State's clause in respect of hardship cases. The appellant maintains that the judgment under appeal infringes its rights under Articles 16 and 17 of the Charter of Fundamental Rights of the European Union.

The appellant submits, in respect of the ground of appeal put forward, that the Commission did not, in laying down the rules in respect of the free allocation of emission allowances in Decision 2011/278/EU ([3]), make any provision for individual fundamental rights to be adequately protected. It takes the view that the free allocation of emission allowances under Decision 2011/278/EU takes place on the basis of standardised calculation parameters. It submits that that decision does not, however, contain any rules which allow for an additional allocation of emission allowances free of charge in cases in which the allocation made by applying the standardised calculation parameters would lead to an abnormal burden or unreasonable hardship in individual cases.

In the appellant's view, the dismissal of the action infringes the fundamental rights in the Charter and the principle of proportionality. The General Court took into account only the onerous effect which typically occurs as a result of the emissions trading scheme and the allocation regime under Decision 2011/278/EU. The appellant submits that, contrary to the case-law of the Court of Justice, the General Court completely disregarded the necessary protection of its individual fundamental rights.

([1]) OJ 2013 L 240, p. 27.

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

([3]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

GENERAL COURT

Judgment of the General Court of 3 December 2014 — Castelnou Energía v Commission

(Case T-57/11) ([1])

(State Aid — Electricity — Compensation of additional production costs — Public service obligation to produce certain volumes of electricity from indigenous coal — Preferential dispatch mechanism — Decision not to raise objections — Decision declaring the aid compatible with the internal market — Action for annulment — Individual concern — Significant effect on a competitive position — Admissibility — Failure to initiate the formal review procedure — Serious difficulties — Service of general economic interest — Security of electricity supply — Article 11(4) of Directive 2003/54/EC — Free movement of goods — Protection of the environment — Directive 2003/87/EC)

(2015/C 026/28)

Language of the case: Spanish

Parties

Applicant: Castelnou Energía, SL (Madrid, Spain) (represented initially by: E. Garayar Gutiérrez, subsequently by: C. Fernández Vicién, A. Pereda Miquel and C. del Pozo de la Cuadra, then by: C. Fernández Vicién, L. Pérez de Ayala Becerril and D. Antón Vega, and finally by: C. Fernández Vicién, L. Pérez de Ayala Becerril and C. Vila Gisbert, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier and C. Urraca Caviedes, acting as Agents)

Intervener in support of the applicant: Greenpeace-España (Madrid, Spain) (represented initially by: N. Ersbøll, S. Rating and A. Criscuolo, and subsequently by: N. Ersbøll and S. Rating, lawyers)

Interveners in support of the defendant: Kingdom of Spain (represented initially by: J. Rodríguez Cárcamo, subsequently by: M. Muñoz Pérez and N. Díaz Abad, then by: N. Díaz Abad and S. Centeno Huerta, and finally by: A. Rubio González and M. Sampol Pucurull, abogados del Estado); Hidroeléctrica del Cantábrico, SA (Oviedo, Spain) (represented by: J. Álvarez de Toledo Saavedra and J. Portomeñe López, lawyers); E.ON Generación, SL (Santander, Spain) (represented initially by: E. Sebastián de Erice Malo de Molina and S. Rodríguez Bajón, and subsequently by: S. Rodríguez Bajón, lawyers); Comunidad Autónoma de Castilla y León (represented initially by: K. Desai, Solicitor, S. Cisnal de Ugarte and M. Peristeraki, lawyers, and subsequently by: S. Cisnal de Ugarte); and Federación Nacional de Empresarios de Minas de Carbón (Carbunión) (Madrid, Spain) (represented initially by: K. Desai, Solicitor, S. Cisnal de Ugarte and M. Peristeraki, lawyers, and subsequently by: S. Cisnal de Ugarte and A. Baumann, lawyers)

Re:

Application for annulment of Commission Decision C(2010) 4499 of 29 September 2010, concerning State aid N178/2010 notified by the Kingdom of Spain in the form of a public service compensation linked to a preferential dispatch mechanism for indigenous coal power plants.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Castelnou Energía, SL to bear its own costs and to pay the costs incurred by the European Commission;*

3. *Orders the Kingdom of Spain, Greenpeace-España, Hidroeléctrica del Cantábrico, SA, E.ON Generación, SL, la Comunidad Autónoma de Castilla y León and la Federación Nacional de Empresarios de Minas de Carbón (Carbunión) to bear their own costs.*

([1]) OJ C 80, 12.3.2011.

Judgment of the General Court of 2 December 2014 — Italy v Commission

(Case T-661/11) ([1])

(EAGGF — 'Guarantee' Section — EAGF and EAFRD — Expenditure excluded from financing — Milk products — Assigned revenue — Key controls — Lateness — Flat-rate financial correction — Legal basis — Article 53 of Regulation (EC) No 1605/2002 — Recurrence)

(2015/C 026/29)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Aiello and P. Grasso, avvocati dello Stato)

Defendant: European Commission (represented by: P. Rossi and D. Nardi, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision 2011/689/EC of 14 October 2011 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 270, p. 33), in so far as it imposes on the Italian Republic a flat-rate financial correction of EUR 70 912 382 in respect of irregularities in controls concerning milk quotas, found in the Italian regions of Abruzzo, Lazio, Marche, Puglia, Sardinia, Calabria, Friuli Venezia Guilia and Valle d'Aosta, in the years 2004/2005, 2005/2006 and 2006/2007.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Italian Republic to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 49, 18.2.2012.

Judgment of the General Court of 2 December 2014 — Boehringer Ingelheim Pharma v OHIM — Nepentes Pharma (Momarid)

(Case T-75/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark Momarid — Earlier Community word mark LONARID — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Relevant public — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2015/C 026/30)

Language of the case: English

Parties

Applicant: Boehringer Ingelheim Pharma GmbH & Co. KG (Ingelheim, Germany) (represented initially by: V. von Bomhard and D. Slopek, and subsequently by V. von Bomhard, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Nepentes Pharma sp. z o.o. (Warsaw, Poland) (represented by: C. Bercial Arias, K. Dimidjian-Lecompte and C. Casalonga, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 28 November 2012 (Case R 2292/2011-4), relating to opposition proceedings between Boehringer Ingelheim Pharma GmbH & Co. KG and Nepentes S.A.

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 28 November 2012 (Case R 2292/2011-4) as regards 'chemicals for pharmaceutical use';*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 101, 6.4.2013.

Judgment of the General Court of 3 December 2014 — Max Mara Fashion Group v OHIM — Mackays Stores (M&Co.)

(Case T-272/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark M&Co. — Earlier Community and national figurative marks MAX&Co. — Earlier national word mark MAX&CO. — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 026/31)

Language of the case: English

Parties

Applicant: Max Mara Fashion Group Srl (Turin, Italy) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Mackays Stores Ltd (Renfrew, United Kingdom) (represented by: A. Gould and K. Passmore, Solicitors, J. Baldwin, Barrister, and M. Howe QC)

Re:

Action for the annulment of the decision of the Second Board of Appeal of OHIM of 7 March 2013 (Case R 1199/2012-2), relating to opposition proceedings between Max Mara Fashion Group Srl and Mackays Stores Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Max Mara Fashion Group Srl to pay the costs.*

([1]) OJ C 207, 20.7.2013.

Judgment of the General Court of 4 December 2014 — Sales & Solutions v OHIM — Inceda (WATT and WATT)

(Joined Cases T-494/13 and T-495/13) ([1])

(Community trade mark — Invalidity proceedings — Community figurative trade mark Watt and Community word mark Watt — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2015/C 026/32)

Language of the case: German

Parties

Applicant: Sales & Solutions GmbH (Frankfurt am Main, Germany) (represented by: K. Gründig-Schnelle, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Inceda Holding GmbH (Cologne, Germany) (represented by: J. Wald and D. Thrun, lawyers)

Re:

In Case T-494/13, action brought against the decision of the Fourth Board of Appeal of OHIM of 15 July 2013 (Case R 1192/2012-4), and, in Case T-495/13, action brought against the decision of the Fourth Board of Appeal of OHIM of 15 July 2013 (Case R 1193/2012-4), concerning invalidity proceedings between Inceda Holding GmbH and Sales & Solutions GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Sales & Solutions GmbH to bear its own costs as well as those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and of Inceda Holding GmbH in Joined Cases T-494/13 and T-495/13.*

([1]) OJ C 344, 23.11.2013.

Judgment of the General Court of 4 December 2014 — BSH v OHIM — LG Electronics (compressor technology)

(Case T-595/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark compressor technology — Earlier national word marks KOMPRESSOR — Relative ground for refusal — Partial refusal to register — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 026/33)

Language of the case: German

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: LG Electronics, Inc. (Seoul, South Korea)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 5 September 2013 (Case R 1176/2012-1), concerning opposition proceedings between LG Electronics, Inc. and BSH Bosch und Siemens Hausgeräte GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BSH Bosch und Siemens Hausgeräte GmbH to pay the costs.*

([1]) OJ C 39, 8.2.2014.

Order of the General Court of 10 November 2014 — Ledra Advertising v Commission and ECB

(Case T-289/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/34)

Language of the case: English

Parties

Applicant: Ledra Advertising Ltd (Nicosia, Cyprus) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *Ledra Advertising Ltd shall bear its own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

([1]) OJ C 226, 3.8.2013.

Order of the General Court of 10 November 2014 — CMBG v Commission and ECB

(Case T-290/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/35)

Language of the case: English

Parties

Applicant: CMBG Ltd (Tortola, British Virgin Islands, United Kingdom) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *CMBG Ltd shall bear its own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

([1]) OJ C 226, 3.8.2013.

Order of the General Court of 10 November 2014 — Eleftheriou and Papachirstofi v Commission and ECB

(Case T-291/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/36)

Language of the case: English

Parties

Applicants: Andreas Eleftheriou (Dherynia, Cyprus); Eleni Eleftheriou (Dherynia); and Lilia Papachirstofi (Dherynia) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Andreas Eleftheriou, Ms Eleni Eleftheriou and Ms Lilia Papachristofi shall bear their own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

([1]) OJ C 226, 3.8.2013.

Order of the General Court of 10 November 2014 — Evangelou v Commission and ECB

(Case T-292/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/37)

Language of the case: English

Parties

Applicant: Christos Evangelou (Derynia, Cyprus); and Yvonne Evangelou (Derynia) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Christos Evangelou and Ms Yvonne Evangelou shall bear their own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

([1]) OJ C 226, 3.8.2013.

Order of the General Court of 10 November 2014 — Theophilou v Commission and ECB

(Case T-293/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/38)

Language of the case: English

Parties

Applicants: Christos Theophilou (Nicosia, Cyprus); and Eleni Theophilou (Nicosia, Cyprus) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Christos Theophilou and Ms Eleni Theophilou shall bear their own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

([1]) OJ C 226, 3.8.2013.

Order of the General Court of 10 November 2014 — Fialtor v Commission and ECB

(Case T-294/13) ([1])

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2015/C 026/39)

Language of the case: English

Parties

Applicant: Fialtor Ltd (Berlize City, Berlize) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Commission (represented by: B. Smulders and J.-P. Keppenne, Agents); and European Central Bank (ECB) (represented by: A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, Agents, and by W. Bussian, W. Devroe and D. Arts, lawyers)

Re:

First, application for annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013, and, second, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation.

Operative part of the order

1. *The action is dismissed.*

2. *Fialtor Ltd shall bear its own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).*

(1) OJ C 226, 3.8.2013.

Order of the General Court of 11 November 2014 — LemonAid Beverages v OHIM — Pret a Manger (Europe) (LemonAid)

(Case T-298/13) (1)

(Community trade mark — Application for a declaration of invalidity — Withdrawal of the application — No need to adjudicate)

(2015/C 026/40)

Language of the case: English

Parties

Applicant: LemonAid Beverages GmbH (Hamburg, Germany) (represented by: U. Lüken and J. Natzel, lawyers, and P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Pret a Manger (Europe) Ltd (London, United Kingdom) (represented by: A. Tsoutsanis, lawyer, and S. Croxon, Solicitor)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 March 2013 (Case R 276/2012-2), relating to invalidity proceedings between Pret à Manger (Europe) Ltd and LemonAid Beverages GmbH.

Operative part of the order

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

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

(1) OJ C 215, 27.2.2013.

Order of the General Court of 10 November 2014 — DelSolar (Wujiang) v Commission

(Case T-320/13) ([1])

(Dumping — Imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating from China — Provisional anti-dumping duty — No need to adjudicate)

(2015/C 026/41)

Language of the case: English

Parties

Applicant: DelSolar (Wujiang) Ltd (Wujiang City, China) (represented by: initially L. Catrain González, lawyer, E. Wright and H. Zhu, Barristers, then L. Catrain González and E. Wright)

Defendant: European Commission (represented by: L. Flynn and T. Maxian Rusche, acting as Agents)

Re:

Application for annulment of Commission Regulation (EU) No 513/2013 of 4 June 2013 imposing a provisional anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China and amending Regulation (EU) No 182/2013 making these imports originating in or consigned from the People's Republic of China subject to registration (OJ 2013 L 152, p. 5)

Operative part of the order

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

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

([1]) OJ C 215, 27.7.2013.

Order of the General Court of 21 October 2014 — Gappol Marzena Porczyńska v OHIM — Gap (ITM) (GAPPol)

(Case T-125/14) ([1])

(Community trade mark — Opposition procedure — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2015/C 026/42)

Language of the case: Polish

Parties

Applicant: PP Gappol Marzena Porczyńska (Łódź, Poland) (represented by: J. Gwiazdowska, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Gap (ITM), Inc. (San Francisco, California, United States) (represented by: M. Siciarek, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 December 2014 (Case R 686/2013-1) concerning opposition proceedings between Gap (ITM), Inc. and PP Gappol Marzena Porczyńska.

Operative part of the order

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

2. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) shall bear its own costs and pay those incurred by PP Gappol Marzena Porczyńska and Gap (ITM), Inc.*

(1) OJ C 142, 12.5.2014.

Order of the President of the General Court of 27 November 2014 — SEA v Commission

(Case T-674/14 R)

(Application for interim measures — State aid — Obligation to recover aid granted by the public operator of an airport to a subsidiary management company — Liquidation of the company — Creation of a new management company — Commission decision to initiate a formal State aid investigation procedure in order to assess the existence of any economic continuity between the two companies — Application for suspension of operation of a measure — Manifest inadmissibility of the main application — Inadmissibility — Lack of urgency)

(2015/C 026/43)

Language of the case: Italian

Parties

Applicant: Società per azioni esercizi aeroportuali (SEA) (Segrate, Italy) (represented by: F. Gatti, J.-F. Bellis, F. Di Gianni and A. Scalini, lawyers)

Defendant: European Commission (represented by: S. Noë and G. Conte, acting as Agents)

Re:

Application for interim measures seeking, in essence, the suspension of European Commission Decision C(2014) 4537 final of 9 July 2014 to initiate a formal investigation procedure under Article 108(2) TFEU concerning the establishment of the company Airport Handling [SA.21420 (2014/NN) — Italy — Establishment of Airport Handling].

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 28 November 2014 — Airport Handling v Commission

(Case T-688/14 R)

(Application for interim measures — State aid — Obligation to recover aid granted by the public operator of an airport to a subsidiary company responsible for management services — Subsidiary company put into liquidation — Setting up of a new company responsible for management services — Commission decision to initiate the State aid formal investigation procedure in order to examine whether there is an economic continuity between the two companies — Application for suspension of operation of a measure — Manifest inadmissibility of the main action — Inadmissibility — Lack of urgency)

(2015/C 026/44)

Language of the case: Italian

Parties

Applicant: Airport Handling SpA (Somma Lombardo, Italy) (represented by: R. Cafari Panico and F. Scarpellini, lawyers)

Defendant: European Commission (represented by: S. Noë and G. Conte, acting as Agents)

Re:

Application for interim measures seeking, in essence, suspension of the operation of Commission Decision C (2014) 4537 final of 9 July 2014 to initiate the formal investigation procedure under Article 108(2) TFEU concerning the setting up of the company Airport Handling (SA.21420 (2014/NN) — Italy — Setting up of Airport Handling).

Operative part of the order

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

2. *The Order of 29 September 2014 delivered in Case T-688/14 R is cancelled.*

3. *Costs are reserved.*

Order of the Judge hearing the Application for Interim Measures of 27 October 2014 — Diktyo Amyntikon Viomichanion Net v Commission

(Case T-703/14 R)

(Interim proceedings — Grant agreements — Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Debit note addressed to a contracting party — Application for suspension of operation of a measure — Case not suitable for the adoption of interim relief)

(2015/C 026/45)

Language of the case: Greek

Parties

Applicant: Diktyo Amyntikon Viomichanion Net AEVE (Kaisariani, Greece) (represented by: K. Damis, lawyer)

Defendant: European Commission (represented by: R. Lyal and M. Konstantinidis, acting as Agents)

Re:

Application for the suspension of operation of a debit note addressed to the applicant within the framework of a grant agreement and of any other relevant act.

Operative part of the order

The Court:

1. *Dismisses the application for interim measures;*

2. *Reserves the costs.*

Action brought on 6 November 2014 — Segimerus v OHIM — Ergo Versicherungsgruppe (ELGO)

(Case T-750/14)

(2015/C 026/46)

Language in which the application was lodged: German

Parties

Applicant: Segimerus Ltd (Preston, United Kingdom) (represented by: F. Henkel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ergo Versicherungsgruppe AG (Düsseldorf, Germany)

Details of the proceedings before OHIM

Applicant: Segimerus Ltd

Trade mark at issue: Community word mark 'ELGO' — Community trade mark No 10 292 498

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 22 August 2014 in Case R 473/2014-4

Forms of order sought

The applicant claims that the Court should:

— annul the decision of the Opposition Division and refer the proceedings back to the Opposition Division;

— in the alternative, annul the contested decision and refer the proceedings back to the Board of Appeal;

— order OHIM to pay the costs.

Plea in law

Infringement of Article 75(2) of Regulation No 207/2009.

Action brought on 14 November 2014 — Ice Mountain Ibiza v OHIM — Etyam (ocean beach club ibiza)

(Case T-753/14)

(2015/C 026/47)

Language in which the application was lodged: Spanish

Parties

Applicant: Ice Mountain Ibiza, SL (San Antonio, Spain) (represented by: J.L. Gracia Albero and F. Miazzetto, lawyers)

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

Other party to the proceedings before the Board of Appeal: Etyam, SL (Islas Baleares, Spain)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'ocean beach club ibiza' — Application for registration No 10 610 491

Procedure before OHIM: Partial opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 31 July 2014 in Case R 2293/2013-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs, including all those resulting to date from proceedings before the Opposition Division and the First Board of Appeal of OHIM at earlier stages of the proceedings which have led to the present action.

Pleas in law

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

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

Action brought on 14 November 2014 — Herbert Smith Freehills/Commission

(Case T-755/14)

(2015/C 026/48)

Language of the case: English

Parties

Applicant: Herbert Smith Freehills LLP (London, United Kingdom) (represented by: P. Wytinck, lawyer)

Defendant: European Commission

Form of order sought

The Applicant claims that the Court should:

— annul Decision GESTDEM 2014/2070 of the European Commission, of 24 September 2014, and

— order the European Commission to pay the costs of the Applicant in the present proceedings.

Pleas in law and main arguments

By its action, the Applicant seeks the annulment of Decision GESTDEM 2014/2070, of 24 September 2014, whereby the Commission refused the Applicant's request for access under Regulation No 1049/2001 ([1]) to certain documents related to the adoption of Directive 2014/40/EU of the European Parliament and of the Council, of 3 April 2014, on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ([2]).

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

1. First plea in law, alleging that the Commission infringed Article 4(2) of Regulation (EC) No 1049/2001 in that none of the undisclosed documents identified by the Commission falls within the scope of the exception relating to the protection of court proceedings.

2. Second plea in law, alleging that the Commission infringed Article 4(2) of Regulation (EC) No 1049/2001 in that certain undisclosed documents identified by the Commission do not fall within the scope of the exception relating to the protection of legal advice.

3. Third plea in law, alleging that the Commission infringed Article 4(2) of Regulation (EC) No 1049/2001 in that there is an overriding public interest in the disclosure of the documents identified pursuant to the Applicant's access to documents request.

(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) OJ 2014 L 127, p. 1.

Action brought on 14 November 2014 — European Dynamics Luxembourg and Evropaïki Dinamiki v Commission

(Case T-764/14)

(2015/C 026/49)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg) and Evropaïki Dinamiki — Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: M. Sfiri and I Ambazis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the European Commission decision Ares(2014) 2903214 of 5 September 2014 whereby the Commission rejected the applicants' tender within the framework of the EuropeAid/135040/C/SER/MULTI closed procurement procedure;·

— as appropriate, order the restoration of the status quo ante;

— order the Commission to pay all the applicants' costs.

Pleas in law and main arguments

In support of the action the applicants rely on the following:

In the opinion of the applicants, the contested decision should be annulled, under Article 263 TFEU, on the following grounds:

First, because the experience of the participants was evaluated at the stage of the award procedure, although that experience had already been examined at the pre-selection stage.

Second, because the Commission infringed the obligation to state reasons for the decision by giving insufficient reasons for the ranking of the applicants' technical offer and failing to communicate the full composition of the winning consortium and the essential elements of the financial offer.

Third, because the Commission committed a series of manifest errors of assessment in the evaluation of the applicants' technical offer, infringing at the same time the principle of equal treatment of participants.

Fourth, because the Commission infringed the Financial Regulation and the principle of transparency which that imposes.

Action brought on 21 November 2014 — Italy v Commission

(Case T-770/14)

(2015/C 026/50)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato, and G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the note of 11 September 2014 (reference: Ares (2014) 2 975 571) by which the European Commission notified the Italian Republic of the automatic decommitment, on 31 December 2013, of resources relating to ERDF commitments referred to in the Italy-Malta Cross-border Cooperation Programme 2007-2013; and, ruling on the substance, declare the expenditure and the applications for payment at issue in the present case to be eligible.

Pleas in law and main arguments

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

1. First plea in law: failure to state reasons pursuant to the second paragraph of Article 296 TFEU.

   — The applicant claims in that regard that, in tersely confirming in the contested decision that the error in the title of the amending decision of 31 December 2012 had no effect on the content of the decision itself or on the implementation of the programme, the Commission neglected to take into consideration the relevance of the following circumstances: (i) the spending decisions adopted by the Region had to be checked beforehand by the Court of Auditors; (ii) four months had elapsed between the correction being announced and the correction being implemented, without any explanation being provided; (iii) that fact had the potential to arouse the suspicion that the correction to be made was of greater importance than a correction supposedly relating only to the title of the decision of 31 December 2012; and (iv) the Court of Auditors had confirmed that the course of action taken by the Region, which refrained from adopting the commitments until the correction was officially recognised (28 March 2013), was correct, thus giving it to be understood that the opposite course of action would not have been correct.

2. Second plea in law: failure to observe the principle of partnership in the management of structural funds, the principle of cooperation between Member States and EU institutions, and the principle of respecting the constitutional identity of Member States.

   — The applicant claims in that regard that the Commission failed to cooperate with the Member State in order to enable that State to implement the operational programme as effectively as possible, avoiding disqualifications, and that it neglected to take into consideration (inter alia) the procedural constraints of the internal checks — in particular those carried out by the Court of Auditors — which the State in question was obliged to undergo.

3. Third plea in law: infringement of Article 96(c) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

— The applicant claims in that regard that the situation generated in the circumstances of the case constituted a reason of *force majeure* preventing the filing of an application for payment in connection with the projects affected by the amending decision. The national administrative authorities were thereby wholly prevented from carrying the project management procedure through to the stage of submitting an application for payment because of the following circumstances: (i) the Commission's initial error when notifying that decision; (ii) the promise, immediately following that error, that a swift correction would be made to the title alone; and (iii) the silence which was maintained instead for four months, which suggested that there were other, more important, errors and defects to be corrected.

4. As its fourth and final plea in law, the applicant alleges failure to observe the principle of proportionality.

Action brought on 17 November 2014 — Ica Foods v OHIM — San Lucio (GROK)

(Case T-774/14)

(2015/C 026/51)

Language in which the action was brought: Italian

Parties

Applicant: Ica Foods SpA (Pomezia, Italy) (represented by: A. Nespega, lawyer)

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

Other party to the proceedings before the Board of Appeal: San Lucio Srl (San Gervasio Bresciano, Italy)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Word mark 'GROK' — Community mark No 4 439 956

Procedure before OHIM: Invalidity proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 9 September 2014 in Case R 1815/2013-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision relating to invalidity proceedings No 6374C in respect of the registration of the Community mark GROK No 4439956, for infringement of Articles 62 and 63 of the Community Trade Mark Regulation and/or for infringement of Article 8 of Regulation No 40/94 and/or failure to provide adequate reasons, for those reasons;

— order OHIM to pay the costs of the present proceedings.

Pleas in law

— infringement of Articles 62 and 63 of the Community Trade Mark Regulation for failure on the part of OHIM to notify the applicant of the deadline for submission of observations in the action, thus in breach of the adversarial principle;

— infringement of Article 8 of Regulation No 40/94 and failure to provide adequate reasons as regards the similarity between the goods deriving from San Lucio milk and the goods covered by the registration of ICA's marks;

— infringement of the Article 8 of Regulation No 40/94 and failure to provide adequate reasons as regards the similarity between the mark GROK of San Lucio and the mark CRIK CROK of ICA;

— infringement of the Article 8 of Regulation No 40/94 and failure to provide adequate reasons in respect of the repute of the mark CRIK CROK of ICA.

Action brought on 26 November 2014 — Fon Wireless v OHIM — Henniger (NEOFON — FON ET AL.)

(Case T-777/14)

(2015/C 026/52)

Language in which the application was lodged: English

Parties

Applicant: Fon Wireless Ltd (London, United Kingdom) (represented by: J. Devaureix and L. Montoya Terán, lawyers)

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

Other party to the proceedings before the Board of Appeal: Andreas Henniger (Starnberg, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'Neofon' — Community trade mark application No 10 674 893

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 15 September 2014 in Case R 2519/2013-4

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision and consequently, take necessary steps to ensure the effectiveness of the decision of the Court;

— Order OHIM to pay the costs.

Plea in law

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

Action brought on 26 November 2014 — Ugly v OHIM — Group Lottuss (COYOTE UGLY)

(Case T-778/14)

(2015/C 026/53)

Language in which the application was lodged: English

Parties

Applicant: Ugly, Inc. (New York, United States) (represented by: T. St Quintin, Barrister, K. Gilbert and C. Mackey, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Group Lottuss Corp., SL (Barcelona, Spain)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'COYOTE UGLY' — Community trade mark application No 1 226 198

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 16 September 2014 in Case R 1369/2013-5

Form of order sought

The applicant claims that the Court should:

— Annul the decisions of the Opposition Division and of the Board of Appeal and remit the opposition back to the Opposition Division for reconsideration;

— Order the other party to the proceedings before the Board of Appeal to pay the costs of proceedings.

Plea in law

— Infringement of Articles 8(1), 8(2) and 8(4) of Regulation No 207/2009.

Action brought on 20 November 2014 — TVR Automotive v OHIM — Cardoni (TVR ENGINEERING)

(Case T-781/14)

(2015/C 026/54)

Language in which the application was lodged: English

Parties

Applicant: TVR Automotive Ltd (Whiteley, United Kingdom) (represented by: A. von Mühlendahl, and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal: Fabio Cardoni (Milan, Italy)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: The other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for registration No 11 132 602

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 8 September 2014 in Case R 2532/2013-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and Mr Cardoni, if he should intervene in these proceedings, to pay the costs.

Plea in law

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (2nd Chamber) of 8 December 2014 — Cwik v Commission

(Case F-4/13) ([1])

(Civil Service — Officials — Appraisal — Staff report — Appraisal period 1995/1997 — Enforcement of a judgment of the General Court — Application for annulment of the staff report — No referral to the Joint Committee on Staff Reports — Delay in the drawing up of the staff report — Action for damages)

(2015/C 026/55)

Language of the case: French

Parties

Applicant: Michael Cwik (Tervuren, Belgium) (represented by: N. Lhoëst, lawyer)

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

Re:

Application to annul the decision adopting the applicant's staff report in respect of the period from 1995 to 1997 and an application for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls the European Commission's decision of 12 March 2012 definitively establishing Mr Cwik's new staff report in respect of the appraisal period 1995/1997;*

2. *Orders the European Commission to pay Mr Cwik the sum of EUR 15 000 by way of compensation for the non-material harm suffered;*

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

4. *Declares that the European Commission is to bear its own costs and orders it to pay the costs incurred by Mr Cwik.*

([1]) OJ C 108, 13/4/2013, p. 38.

Judgment of the Civil Service Tribunal (Third Chamber) of 3 December 2014 — DG v ENISA

(Case F-109/13) ([1])

(Civil service — Temporary staff — Termination of contract — No statement of reasons — Failure to comply with the reports procedure — Manifest error of assessment)

(2015/C 026/56)

Language of the case: English

Parties

Applicant: DG (represented by: L. Levi and A. Tymen, lawyers)

Defendant: European Union Agency for Network and Information Security (represented initially by P. Empadinhas, acting as Agent, and by C. Meidanis, lawyer, and subsequently by P. Empadinhas and S. Purser, acting as Agents, and by C. Meidanis, lawyer)

Re:

Application to annul the decision to dismiss the applicant, to order her reinstatement and the payment of the financial benefits that should have been paid to her from the end of her contract, after deduction of any income received during the same period, together with interest calculated at 3 points above the rate fixed by the ECB, and for compensation for the non-material damage allegedly suffered.

Operative part of the judgment

The Tribunal:

1) *Dismisses the action.*

2) *Declares that DG is to bear her own costs and orders her to pay the costs incurred by the European Union Agency for Network and Information Security.*

(1) OJ C 15, 18.1.2014, p. 21.

Judgment of the Civil Service Tribunal (1st Chamber) of 2 December 2014 — Migliore v Commission

(Case F-110/13) (1)

(Promotion — Certification procedure — 2013 procedure — Exclusion of the applicant from the definitive list of officials authorised to follow the training programme — Article 45a of the Staff Regulations)

(2015/C 026/57)

Language of the case: French

Parties

Applicant: Nunzio Migliore (Sterrebeek, Belgium) (represented by: S. Rodrigues, A. Tymen and A. Blot, lawyers)

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

Re:

Application for annulment of the Commission's decision excluding the applicant from the list of candidates authorised to participate in the 'certification' training programme in 2013.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Mr Migliore is to bear his own costs and orders him to pay the costs incurred by the European Commission.*

(1) OJ C 24, 25.1.2014, p. 41.

Order of the Civil Service Tribunal (First Chamber) of 2 December 2014 — Erik Simpson v Council

(Case F-142/11 DEP) ([1])

(Civil service — Procedure — Taxation of costs)

(2015/C 026/58)

Language of the case: English

Parties

Applicant: Erik Simpson (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union (represented by: M. Bauer and A.F. Jensen, acting as Agents)

Re:

Civil service — Application for annulment of the decision not to promote the applicant to grade AD 9 after he had passed Open Competition EPSO/AD/113/07 'Heads of Unit (AD 9) in the field of translation who have Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovak and Slovene as their main language' and an application for compensation.

Operative part of the order

The total amount of costs to be reimbursed by the Council of the European Union to Mr Simpson by way of recoverable costs in Case F-142/11 is fixed in the amount of EUR 8 600, to be increased by any value added tax due on that amount.

([1]) OJ C 65, 3.3.2012, p. 26.

Action brought on 9 October 2014 — ZZ v Commission

(Case F-106/14)

(2015/C 026/59)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the Commission's decision, pursuant to Article 7 of Annex V to the Staff Regulations of Officials, as amended by Regulation No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials, to allocate the applicant, from 1 January 2014, only 2.5 days of additional leave in respect of 'home leave' instead of granting him 'travelling time' of 5 days, to which he was previously entitled.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Commission's decision resulting from the *'Rights'* page of the SYSPER site and confirmed by Commission Decision No R/396/14 of 2 July 2014 rejecting a complaint, to allocate the applicant, from 1 January 2014, 2.5 days of additional leave in respect of 'home leave' instead of 5 days 'travelling time', to which he was entitled previously, on the basis of the first paragraph of Article 7 of Annex V to the Staff Regulations of Officials of the European Union, as amended by Regulation 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;

— Order the European Commission to pay the costs.

Action brought on 10 October 2014 — ZZ v Commission

(Case F-108/14)

(2015/C 026/60)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to credit the applicant's pension rights in the context of the transfer of those rights to the European Union pension scheme pursuant to the new general implementing provisions relating to Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

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

— set aside the decision of 16 January 2014 to credit the pension rights acquired by the applicant prior to his entry into service, in the context of the transfer of those pension rights to the pension scheme of the institutions of the European Union pursuant to the general implementing provisions adopted on 3 March 2011 in relation to Article 11(2) of Annex VIII to the Staff Regulations;

— order the European Commission to pay the costs.

Action brought on 15 October 2014 — ZZ v Commission

(Case F-110/14)

(2015/C 026/61)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision to credit the applicant's pension in the European Union's pension scheme pursuant to the new GIPs relating to Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

— Declare that Article 9 of the general implementing provisions of Article 11(2) of Annex VIII is unlawful and, therefore, inapplicable,

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

— order the European Commission to pay the costs.

Action brought on 17 October 2014 — ZZ and Others v Commission

(Case F-112/14)

(2015/C 026/62)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions of the appointing authority to classify the applicants, in accordance with the new rules on career and promotion applicable after the reform of the Staff Regulations of 1 January 2014, in the type of post 'Senior Administrator in transition', depriving them, in their opinion, of the opportunity of promotion to grade AD 14, and a declaration that Article 30(3) of Annex XIII to the Staff Regulations is unlawful.

Form of order sought

The applicants claim that the Tribunal should:

— annul the decisions classifying the applicants in the type of post 'Senior Administrator in transition';

— declare that Article 30(3) of Annex XIII to the Staff Regulations is unlawful;

— order the European Commission to pay the costs.

Action brought on 23 October 2014 — ZZ v Commission

(Case F-116/14)

(2015/C 026/63)

Language of the case: French

Parties

Applicant: ZZ (represented by: L.Y. Levi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision of the executive director of the European Insurance and Occupational Pensions Authority (EIOPA) which withdrew a previous decision appointing the applicant as a temporary member of staff at grade AD 8 and the claim for damages for the material and non-material damage allegedly suffered.

Form of order sought

— Annul the decision of the executive director of the EIOPA of 24 February 2014 withdrawing a previous decision of 7 November 2013 provisionally appointing the applicant as a temporary member of staff as from 16 September 2013 at grade AD 8 following the recruitment procedure opened by Vacancy Notice 1327TAAD 08;

— annul the decision of 24 July 2014 rejecting the complaint submitted by the applicant on 25 March 2014;

— order the defendant to pay compensation for the material damage consisting of the difference of salary between that received by the applicant at grade AD 6 since 16 September 2013 and the salary at grade AD 8, together with default interest calculated at the rate of two points above the European Central Bank rate;

— in the alternative, order the defendant to pay compensation for the material damage consisting of the salary difference between the salary at grade AD 6 and the salary at grade AD 8 between 16 September 2013 and 24 February 2014, together with default interest calculated at the rate of two points above the European Central Bank rate;

— order the defendant to pay compensation for non-material damage evaluated ex aequo et bono at EUR 20 000;

— order the European Commission to pay the costs.

Action brought on 23 October 2014 — ZZ v Council

(Case F-118/14)

(2015/C 026/64)

Language of the case: French

Parties

Applicant: ZZ (represented by: C. Garcia-Hirschfeld)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of Council decisions on the classification of officials in grades AD 9 to AD 14 occupying posts identified as holding special responsibilities in the type of post 'Head of unit or equivalent' or 'Adviser or equivalent' before 31 December 2015 and not placing the applicant among the officials so classified.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision No°6/14 of the appointing authority of 3 January 2014 and the subsequent decision to assign 34 Council officials to the type of post 'Head of unit or equivalent';

— annul, if necessary, the decision of 23 July 2014 rejecting the complaint;

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

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