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(2015/C 138/01)

Last publication

OJ C 127, 20.4.2015

Past publications

OJ C 118, 13.4.2015

OJ C 107, 30.3.2015

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 5 March 2015 (request for a preliminary ruling from the Østre Landsret — Denmark) — Copydan Båndkopi v Nokia Danmark A/S

(Case C-463/12) ([1])

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Articles 5 (2)(b) and 6 — Reproduction right — Exception — Copying for private use — Reproductions made with the aid of mobile telephone memory cards — Fair compensation — Levy on reproduction media — Equal treatment — Reimbursement of the levy — Minimal prejudice)

(2015/C 138/02)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Copydan Båndkopi

Defendant: Nokia Danmark A/S

Operative part of the judgment

1) *Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society does not preclude national legislation which provides that fair compensation is to be paid, in accordance with the exception to the reproduction right for copies made for private use, in respect of multifunctional media such as mobile telephone memory cards, irrespective of whether the main function of such media is to make such copies, provided that one of the functions of the media, be it merely an ancillary function, enables the operator to use them for that purpose. However, the question whether the function is a main or an ancillary one and the relative importance of the medium's capacity to make copies are liable to affect the amount of fair compensation payable. In so far as the prejudice to the rightholder may be regarded as minimal, the making available of such a function need not give rise to an obligation to pay fair compensation.*

2) *Article 5(2)(b) of Directive 2001/29 does not preclude national legislation which makes the supply of media that may be used for copying for private use, such as mobile telephone memory cards, subject to the levy intended to finance fair compensation payable in accordance with the exception to the reproduction right for copies for private use, but does not make the supply of components whose main purpose is to store copies for private use, such as the internal memories of MP3 players, subject to that levy, provided that those different categories of media and components are not comparable or the different treatment they receive is justified, which is a matter for the national court to determine.*

3) *Article 5(2)(b) of Directive 2001/29 must be interpreted as not precluding national legislation which requires payment of the levy intended to finance fair compensation, in accordance with the exception to the reproduction right for copies for private use, by producers and importers who sell mobile telephone memory cards to business customers and are aware that those cards will be sold on by those customers but do not know whether the final purchasers of the cards will be individuals or business customers, on condition that:*

— *the introduction of such a system is justified by practical difficulties;*

— *the persons responsible for payment are exempt from the levy if they can establish that they have supplied the mobile telephone memory cards to persons other than natural persons for purposes clearly unrelated to copying for private use, it being understood that the exemption cannot be restricted to the supply of business customers registered with the organisation responsible for administering the levy;*

— *the system provides for a right to reimbursement of that levy which is effective and does not make it excessively difficult to repay the levy and only the final purchaser of such a memory card may obtain reimbursement by submitting an appropriate application to that organisation.*

4) *Article 5(2)(b) of Directive 2001/29, read in the light of recital 35 in the preamble to that directive, must be interpreted as permitting the Member States to provide, in certain cases covered by the exception to the reproduction right for copies for private use, for an exemption from the requirement under that exception to pay fair compensation, provided that the prejudice caused to rightholders in such cases is minimal. It is within the discretion of the Member States to set the threshold for such prejudice, it being understood that that threshold must, inter alia, be applied in a manner consistent with the principle of equal treatment.*

5) *Directive 2001/29 is to be interpreted as meaning that, where a Member State has decided, pursuant to Article 5(2) of that directive, to exclude, from the material scope of that provision, any right for rightholders to authorise reproduction of their works for private use, any authorisation given by a rightholder for the use of files containing his works can have no bearing on the fair compensation payable in accordance with the exception to the reproduction right for reproductions made in accordance with Article 5 (2)(b) of that directive with the aid of such files and cannot, of itself, give rise to an obligation on the part of the user of the files concerned to pay remuneration of any kind to the rightholder.*

6) *The implementation of technological measures under Article 6 of Directive 2001/29 for devices used to reproduce protected works, such as DVDs, CDs, MP3 players and computers, can have no effect on the requirement to pay fair compensation in accordance with the exception to the reproduction right in respect of reproductions made for private use by means of such devices. However, the implementation of such measures may have an effect on the actual level of such compensation.*

7) *Directive 2001/29 precludes national legislation which provides for fair compensation, in accordance with the exception to the reproduction right, in respect of reproductions made using unlawful sources, namely from protected works which are made available to the public without the rightholder's consent.*

8) *Directive 2001/29 does not preclude national legislation which provides for fair compensation, in accordance with the exception to the reproduction right, in respect of reproductions of protected works made by a natural person by or with the aid of a device which belongs to a third party.*

([1]) OJ C 399, 22.12.2012.

Judgment of the Court (Fifth Chamber) of 5 March 2015 — European Commission v Versalis SpA, formerly Polimeri Europa SpA, Eni SpA and Versalis SpA, formerly Polimeri Europa SpA, Eni SpA v European Commission

(Joined Cases C-93/13 P and C-123/13 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Chloroprene rubber market — Succession of production entities — Imputability of the unlawful conduct — Fines — Repeated infringement — Unlimited jurisdiction)

(2015/C 138/03)

Language of the case: Italian

Parties

(C-93/13 P)

Appellant: European Commission (represented by: V. Di Bucci, G. Conte and R. Striani, acting as Agents)

Other parties to the proceedings: Versalis SpA, formerly Polimeri Europa SpA, Eni SpA (represented by: M. Siragusa, G. M. Roberti, F. Moretti, I. Perego, F. Cannizzaro, A. Bardanzellu, D. Durante, and V. Laroccia, avvocati)

(C-123/13 P)

Appellants: Versalis SpA, formerly Polimeri Europa SpA, Eni SpA (represented by: M. Siragusa, G.M. Roberti, F. Moretti, I. Perego, F. Cannizzaro, A. Bardanzellu, D. Durante, and V. Laroccia, avvocati)

Other party to the proceedings: European Commission (represented by: V. Di Bucci, G. Conte and R. Striani, acting as Agents)

Operative part of the judgment

The Court:

1) *Rejects the appeals in Cases C-93/13 P and C-123/13 P;*

2) *Orders the European Commission to pay the costs relating to the appeal in Case C-93/13 P;*

3) *Orders Versalis SpA and Eni SpA to pay the costs relating to the appeal in Case C-123/13 P.*

([1]) OJ C 114, 20.4.2013.
OJ C 147, 25.5.2013.

Judgment of the Court (Ninth Chamber) of 26 February 2015 (request for a preliminary ruling from the Tribunalul Specializat Cluj — Romania) — Bogdan Matei, Ioana Ofelia Matei v SC Volksbank România SA

(Case C-143/13) ([1])

(Directive 93/13/EEC — Unfair terms in contracts concluded between a seller or supplier and a consumer — Article 4(2) — Assessment of the unfairness of contractual terms — Exclusion of terms relating to the main subject-matter of the contract or the adequacy of the price and remuneration as long as they are in plain intelligible language — Terms including a 'risk charge' charged by the lender and authorising it, under certain conditions, unilaterally to alter the interest rate)

(2015/C 138/04)

Language of the case: Romanian

Referring court

Tribunalul Specializat Cluj

Parties to the main proceedings

Applicants: Bogdan Matei, Ioana Ofelia Matei

Defendant: SC Volksbank România SA

Operative part of the judgment

Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, 'main subject-matter of the contract' and 'adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other' do not, in principle, cover the types of terms in the credit agreements concluded between a professional and consumers such as those at issue in the main proceedings, which, on one hand, allow, under certain conditions, the lender unilaterally to alter the interest rate and, on the other hand, provide for a 'risk charge' applied by the lender. However, it is for the referring court to verify that classification of those contractual terms having regard to the nature, general scheme and stipulations of the agreements concerned and the legal and factual context of which they form part.

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (First Chamber) of 26 February 2015 (requests for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — VDP Dental Laboratory NV v Staatssecretaris van Financiën (C-144/13), Staatssecretaris van Financiën v X BV (C-154/13), Nobel Biocare Nederland BV (C-160/13)

(Joined Cases C-144/13, C-154/13 and C-160/13) ([1])

(Reference for a preliminary ruling — Value added tax — Deductions — Exemptions — Supplies of dental prostheses)

(2015/C 138/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: VDP Dental Laboratory NV (C-144/13), Staatssecretaris van Financiën (C-154/13, C-160/13)

Defendants: Staatssecretaris van Financiën (C-144/13), X BV (C-154/13), Nobel Biocare Nederland BV (C-160/13)

Operative part of the judgment

1) *Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2007/75/EC of 20 December 2007, must be interpreted as meaning that, where the exemption from value added tax provided for by national law is incompatible with Directive 2006/112, as amended by Directive 2007/75, Article 168 does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax.*

2) *Article 140(a) and (b) and Article 143(a) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that the exemption from value added tax for which they provide applies to the intra-Community acquisition and the final importation of dental prostheses supplied by dentists and dental technicians where the Member State of the supply or importation has not implemented the transitional rules provided for in Article 370 of Directive 2006/112, as amended by Directive 2007/75.*

3) *Article 140(a) and (b) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that the exemption from value added tax provided for in that provision also applies where the intra-Community acquisition of dental prostheses originates from a Member State which has implemented the derogating and transitional arrangements provided for in Article 370 of that directive.*

(1) OJ C 178, 22.6.2013.

Judgment of the Court (Fifth Chamber) of 5 March 2015 (request for a preliminary ruling from the Tribunal do Trabalho de Leiria — Portugal) — Modelo Continente Hipermercados SA v Autoridade para as Condições de Trabalho — Centro Local do Lis (ACT)

(Case C-343/13) (1)

(Reference for a preliminary ruling — Rules on mergers of public limited liability companies — Directive 78/855/EEC — Merger by acquisition — Article 19 — Effects — Transfer of all the assets and liabilities of the company being acquired to the acquiring company — Infringement by the company being acquired prior to its acquisition — Administrative decision confirming infringement post-acquisition — National law — Transfer of the acquired company's liability for administrative offences — Lawfulness)

(2015/C 138/06)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho de Leiria

Parties to the main proceedings

Applicant: Modelo Continente Hipermercados SA

Defendant: Autoridade para as Condições de Trabalho — Centro Local do Lis (ACT)

Operative part of the judgment

Article 19(1) of Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that a 'merger by acquisition' in Article 3(1) of the directive results in the transfer to the acquiring company of the obligation to pay a fine imposed by final decision adopted after the merger by acquisition for infringements of employment law committed by the acquired company prior to that merger.

(1) OJ C 260, 7.9.2013.

Judgment of the Court (Third Chamber) of 26 February 2015 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — B. Martens v Minister van Onderwijs, Cultuur en Wetenschap

(Case C-359/13) (1)

(Reference for a preliminary ruling — Freedom of movement for persons — Articles 20 TFEU and 21 TFEU — National of a Member State — Residence in another Member State — Studies pursued in an overseas country or territory — Maintenance of the grant of funding for higher education — 'Three-out-of-six-years' residence rule — Restriction — Justification)

(2015/C 138/07)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Appellant: B. Martens

Respondent: Minister van Onderwijs, Cultuur en Wetenschap

Operative part of the judgment

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.

(1) OJ C 274, 21.9.2013.

Judgment of the Court (Second Chamber) of 26 February 2015 (request for a preliminary ruling from the Bayerisches Verwaltungsgericht München — Germany) — Andre Lawrence Shepherd v Bundesrepublik Deutschland

(Case C-472/13) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum — Directive 2004/83/EC — Article 9(2)(b), (c), and (e) — Minimum standards for the qualification and status of third-country nationals or stateless persons as refugees — Conditions for obtaining refugee status — Acts of persecution — Criminal penalties for a member of the armed forces of the United States for refusing to serve in Iraq)

(2015/C 138/08)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Andre Lawrence Shepherd

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1) *Article 9(2)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:*

— *it covers all military personnel, including logistical or support personnel;*

— *it concerns the situation in which the military service performed would itself include, in a particular conflict, the commission of war crimes, including situations in which the applicant for refugee status would participate only indirectly in the commission of such crimes if it is reasonably likely that, by the performance of his tasks, he would provide indispensable support to the preparation or execution of those crimes;*

— *it does not exclusively concern situations in which it is established that war crimes have already been committed or are such as to fall within the scope of the International Criminal Court's jurisdiction, but also those in which the applicant for refugee status can establish that it is highly likely that such crimes will be committed;*

— *the factual assessment which it is for the national authorities alone to carry out, under the supervision of the courts, in order to determine the situation of the military service concerned, must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the situation in question makes it credible that the alleged war crimes would be committed;*

— *the possibility that military intervention was engaged upon pursuant to a mandate of the United Nations Security Council or on the basis of a consensus on the part of the international community or that the State or States conducting the operations prosecute war crimes are circumstances which have to be taken into account in the assessment that must be carried out by the national authorities; and*

— *the refusal to perform military service must constitute the only means by which the applicant for refugee status could avoid participating in the alleged war crimes, and, consequently, if he did not avail himself of a procedure for obtaining conscientious objector status, any protection under Article 9(2)(e) of Directive 2004/83 is excluded, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation.*

2) *Article 9(2)(b) and (c) of Directive 2004/83 must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not appear that the measures incurred by a soldier because of his refusal to perform military service, such as the imposition of a prison sentence or discharge from the army, may be considered, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, so disproportionate or discriminatory as to amount to acts of persecution for the purpose of those provisions. It is, however, for the national authorities to ascertain whether that is indeed the case.*

([1]) OJ C 336, 16.11.2013.

Judgment of the Court (Fourth Chamber) of 5 March 2015 — European Commission v French Republic

(Case C-479/13) ([1])

(Failure of a Member State to fulfil obligations — Taxation — VAT — Application of a reduced rate — Supply of digital books or electronic books)

(2015/C 138/09)

Language of the case: French

Parties

Applicant: European Commission (represented by: C. Soulay and F. Dintilhac, acting as Agents)

Defendant: French Republic (represented by: D. Colas and J.-S. Pilczer, acting as Agents)

Intervener in support of the defendant: Kingdom of Belgium (represented by: M. Jacobs and J.-C. Halleux, acting as Agents)

Operative part of the judgment

The Court:

(1) *Declares that, by applying a reduced rate of value added tax to the supply of digital or electronic books, the French Republic has failed to fulfil its obligations under Articles 96 and 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as amended by Council Directive 2010/88/EU of 7 December 2010, read in conjunction with Annexes II and III to that directive and Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC;*

(2) *Orders the French Republic to bear its own costs and to pay those incurred by the European Commission;*

(3) *Orders the Kingdom of Belgium to bear its own costs.*

([1]) OJ C 344, 23.11.2013.

Judgment of the Court (Fourth Chamber) of 5 March 2015 — European Commission v Grand Duchy of Luxembourg

(Case C-502/13) ([1])

(Failure of a Member State to fulfil obligations — Taxation — VAT — Application of a reduced rate — Supply of digital books or electronic books)

(2015/C 138/10)

Language of the case: French

Parties

Applicant: European Commission (represented by: C. Soulay and F. Dintilhac, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: D. Holderer, acting as Agent)

Intervener in support of the applicant: Council of the European Union (represented by: E. Chatziioakeimidou and A. de Gregorio Merino, acting as Agents)

Intervener in support of the defendant: Kingdom of Belgium (represented by: M. Jacobs and J.-C. Halleux, acting as Agents)

Operative part of the judgment

The Court:

(1) *Declares that, by applying a rate of value added tax of 3 % to the supply of digital or electronic books, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 96 to 99, 110 and 114 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as amended by Council Directive 2010/88/EU of 7 December 2010, read in conjunction with Annexes II and III to that directive and Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC;*

(2) *Orders the Grand Duchy of Luxembourg to bear its own costs and to pay those incurred by the European Commission;*

(3) *Orders the Kingdom of Belgium and the Council of the European Union to bear their own costs.*

([1]) OJ C 344, 23.11.2013.

Judgment of the Court (Fourth Chamber) of 5 March 2015 (requests for a preliminary ruling from the Bundesgerichtshof — Germany) — Boston Scientific Medizintechnik GmbH v AOK Sachsen-Anhalt (C-503/13), Betriebskrankenkasse RWE (C-504/13)

(Joined Cases C-503/13 and C-504/13) ([1])

(Reference for a preliminary ruling — Consumer protection — Liability for damage caused by defective products — Directive 85/374/EEC — Articles 1, 6(1) and section (a) of the first paragraph of Article 9 — Pacemakers and implantable cardioverter defibrillators — Risk of product failure — Personal injury — Removal of the allegedly defective product and replacement with another product — Reimbursement of the costs of the operation)

(2015/C 138/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Boston Scientific Medizintechnik GmbH

Defendants: AOK Sachsen-Anhalt (C-503/13), Betriebskrankenkasse RWE (C-504/13)

Operative part of the judgment

1) *Article 6(1) of 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 must be interpreted as meaning that, where it is found that products belonging to the same group or forming part of the same production series, such as pacemakers and implantable cardioverter defibrillators, have a potential defect, such a product may be classified as defective without there being any need to establish that that product has such a defect.*

2) *Article 1 and section (a) of the first paragraph of Article 9 of Directive 85/374 are to be interpreted as meaning that the damage caused by a surgical operation for the replacement of a defective product, such as a pacemaker or an implantable cardioverter defibrillator, constitutes 'damage caused by death or personal injuries' for which the producer is liable, if such an operation is necessary to overcome the defect in the product in question. It is for the national court to verify whether that condition is satisfied in the main proceedings.*

([1]) OJ C 352, 30.11.2013.

Judgment of the Court (Grand Chamber) of 24 February 2015 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — C.G. Sopora v Staatssecretaris van Financiën

(Case C-512/13) ([1])

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45 TFEU — Equal treatment of non-resident workers — Tax advantage consisting in the exemption of reimbursements paid by the employer — Advantage granted on a flat-rate basis — Workers from a Member State other than that of the place of work — Requirement of residence at a certain distance from the border of the Member State of the place of work)

(2015/C 138/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: C.G. Sopora

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

Article 45 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, by which a Member State provides that workers who resided in another Member State prior to taking up employment in its territory are to be granted a tax advantage consisting in the flat-rate exemption of reimbursement of extraterritorial expenses in an amount up to 30 % of the taxable base, on condition that those workers resided at a distance of more than 150 kilometres from its border, unless — and this is a matter for the referring court to ascertain — those limits were set in such a way that that exemption systematically gives rise to a net overcompensation in respect of the extraterritorial expenses actually incurred.

([1]) OJ C 367, 14.12.2013.

Judgment of the Court (Seventh Chamber) of 26 February 2015 (request for a preliminary ruling from the Østre Landsret — Denmark) — Ingeniørforeningen i Danmark, acting on behalf of Poul Landin v Tekniq, acting on behalf of ENCO A/S — VVS

(Case C-515/13) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) and (2)(a) — Article 6(1) — Difference of treatment on grounds of age — National legislation providing for severance allowance to be paid to workers entitled on the date of termination of the employment relationship to a State retirement pension)

(2015/C 138/13)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

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

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

Operative part of the judgment

Article 2(1) and (2)(a) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that they do not preclude national legislation, such as the legislation at issue in the main proceedings, from providing that an employer must, upon termination of the employment relationship of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, pay an amount equivalent to one, two or three months' salary respectively, unless the salaried employee is entitled to receive a State retirement pension upon termination of employment to the extent that that legislation is both objectively and reasonably justified by a legitimate aim relating to employment and labour market policy as well as constituting an appropriate and necessary means of achieving that aim. It is for the national court to satisfy itself that this is the case.

([1]) OJ C 359, 7.12.2013.

Judgment of the Court (Third Chamber) of 4 March 2015 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group Srl, Tws Automation Srl, Ivan Srl

(Case C-534/13) ([1])

(Reference for a preliminary ruling — Article 191(2) TFEU — Directive 2004/35/EC — Environmental liability — National legislation under which no provision is made for the administrative authorities to require owners of polluted land who have not contributed to that pollution to carry out preventive and remedial measures, and the sole obligation imposed concerns the reimbursement of the measures undertaken by those authorities — Whether compatible with the 'polluter pays' principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority)

(2015/C 138/14)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

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

Respondents: Fipa Group Srl, Tws Automation Srl, Ivan Srl

Intervening parties: Comune di Massa, Regione Toscana, Provincia di Massa Carrara, Comune di Carrara, Agenzia regionale per la protezione ambientale della Toscana (ARPAT), Ediltecnica Srl, Versalis SpA, Edison SpA

Operative part of the judgment

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which, in cases where it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures, does not permit the competent authority to require the owner of the land (who is not responsible for the pollution) to adopt preventive and remedial measures, that person being required merely to reimburse the costs relating to the measures undertaken by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.

([1]) OJ C 359, 7.12.2013.

Judgment of the Court (Tenth Chamber) of 4 March 2015 (request for a preliminary ruling from the administratīvā rajona tiesa, Rīgas tiesu nams — Latvia) — 'Oliver Medical' SIA v Valsts ieņēmumu dienests

(Case C-547/13) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 8543, 9018 and 9019 — Laser and ultrasonic appliances and their parts and accessories)

(2015/C 138/15)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa, Rīgas tiesu nams

Parties to the main proceedings

Applicant: 'Oliver Medical' SIA

Defendant: Valsts ieņēmumu dienests

Operative part of the judgment

The Combined Nomenclature set out 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, successively, by Commission Regulation (EC) No 1214/2007 of 20 September 2007, Commission Regulation (EC) No 1031/2008 of 19 September 2008, Commission Regulation (EC) No 948/2009 of 30 September 2009, Commission Regulation (EU) No 861/2010 of 5 October 2010 and Commission Regulation (EU) No 1006/2011 of 27 September 2011 must be interpreted as meaning that, in order to determine whether goods, such as those at issue in the main proceedings, must be classified as medical instruments or appliances, under heading 9018 of the Combined Nomenclature, or as mechano-therapy appliances, under heading 9019 thereof, or rather as electrical apparatus, having an individual function, under heading 8543 thereof, it is appropriate to take account of all the relevant factors in the case, to the extent that they relate to characteristics and objective properties inherent to those goods. Among the relevant factors, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use. Thus, the fact that the product is intended to treat one or more different pathologies and that that treatment must be carried out in an authorised medical centre and under the supervision of a practitioner are indications capable of establishing that that product is intended for medical use. Conversely, the fact that a product mainly brings about aesthetic improvement, that it may be operated outside a medical environment, for example in a beauty parlour, and without the intervention of a practitioner are indications that that product is not intended for medical use. The dimensions, weight and technology used are not decisive factors for the classification of goods, such as those at issue in the main proceedings, under heading 9018 of the Combined Nomenclature.

([1]) OJ C 377, 21.12.2013.

Judgment of the Court (Third Chamber) of 5 March 2015 (request for a preliminary ruling from the Tallinna ringkonnakohus — Estonia) — Tallinna Ettevõtlusamet v Statoil Fuel & Retail Eesti AS

(Case C-553/13) ([1])

(Reference for a preliminary ruling — Indirect taxation — Excise duties — Directive 2008/118/EC — Article 1(2) — Liquid fuel subject to excise duty — Sales tax — Concept of 'specific purpose' — Predetermined allocation — Organisation of public transport within the territory of a city)

(2015/C 138/16)

Language of the case: Estonian

Referring court

Tallinna ringkonnakohus

Parties to the main proceedings

Applicant: Tallinna Ettevõtlusamet

Defendant: Statoil Fuel & Retail Eesti AS

Operative part of the judgment

Article 1(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as not permitting a tax such as that at issue in the main proceedings, in so far as it is levied on retail sales of liquid fuel subject to excise duty, to be regarded as having a specific purpose within the meaning of that provision where that tax is intended to finance the organisation of public transport within the territory of the authority imposing the tax and where that authority is required to undertake and finance such transport irrespective of the existence of that tax, even if the revenue from that tax has been used solely for the purpose of performing that activity. The provision in question must therefore be interpreted as precluding national rules such as those at issue in the main proceedings instituting such a tax on retail sales of liquid fuel subject to excise duty.

([1]) OJ C 15, 18.1.2014.

Judgment of the Court (Grand Chamber) of 24 February 2015 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Dortmund-Unna v Josef Grünewald

(Case C-559/13) ([1])

(Reference for a preliminary ruling — Free movement of capital — Direct taxation — Income tax — Deductibility of support payments made in consideration for a gift by way of anticipated succession — Exclusion of non-residents)

(2015/C 138/17)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Dortmund-Unna

Defendant: Josef Grünewald

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding legislation of a Member State which does not permit a non-resident taxpayer who has received in that Member State commercial income generated by shares in a business which were transferred to him by a relative in the course of a gift by way of anticipated succession to deduct from that income the annuities which he has paid to that relative in consideration for that gift, whereas that legislation allows a resident taxpayer to make such a deduction.

([1]) OJ C 45, 15.2.2014.

Judgment of the Court (Fifth Chamber) of 26 February 2015 — Planet AE Anonimi Etairia Parokhis Simvouleftikon Ipiresion v European Commission

(Case C-564/13 P) ([1])

(Appeals — Article 340, first paragraph, TFEU — Contractual liability of the European Union — Article 272 TFEU — Arbitration clause — Sixth framework programme for research, technological development and demonstration activities — Contracts relating to the Ontogov, FIT and RACWeb projects — Eligible costs and amounts advanced by the Commission — Declaratory action — No vested and current interest in bringing proceedings)

(2015/C 138/18)

Language of the case: Greek

Parties

Appellant: Planet AE Anonimi Etairia Parokhis Simvouleftikon Ipiresion (represented by: V. Khristianos and S. Paliou, dikigori)

Other party to the proceedings: European Commission (represented by: R. Lyal, B. Conte and D. Triantafyllou, acting as Agents, assisted by S. Drakakakis, avocat)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Planet AE Anonimi Etairia Parokhis Simvouleftikon Ipiresion and the European Commission to bear their own costs.*

([1]) OJ C 9, 11.1.2014.

Judgment of the Court (Fifth Chamber) of 5 March 2015 — Europäisch-Iranische Handelsbank AG v Council of the European Union, United Kingdom of Great Britain and Northern Ireland, European Commission

(Case C-585/13 P) ([1])

(Appeal — Restrictive measures taken against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Freezing of funds — Restriction of transfers of funds — Assistance to designated entities in evading or violating restrictive measures)

(2015/C 138/19)

Language of the case: English

Parties

Appellant: Europäisch-Iranische Handelsbank AG (represented by: S. Jeffrey, S. Ashley and A. Irvine, Solicitors, H. Hohmann, Rechtsanwalt, D. Wyatt QC and R. Blakeley, Barrister)

Other parties to the proceedings: Council of the European Union (represented by F. Naert and M. Bishop, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: V. Kaye, acting as Agent, and by R. Palmer, Barrister), European Commission

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Europäisch-Iranische Handelsbank AG to bear its own costs and to pay those incurred by the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland.*

(1) OJ C 15, 18.1.2014.

Judgment of the Court (First Chamber) of 26 February 2015 (request for a preliminary ruling from the Conseil d'État — France) — Ministre de l'Économie et des Finances v Gérard de Ruyter

(Case C-623/13) (1)

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Article 4 — Substantive scope — Levies on income from assets — General social contribution — Social debt repayment contribution — Social levy — Additional contribution to the social levy — Participation in the financing of compulsory social security schemes — Direct and sufficiently relevant link with some branches of social security)

(2015/C 138/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ministre de l'Économie et des Finances

Defendant: Gérard de Ruyter

Operative part of the judgment

Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 and as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, must be interpreted as meaning that levies on income from assets, such as those at issue in the main proceedings, have, when they contribute to the financing of compulsory social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of that regulation and thus fall within the scope of the regulation, even though those levies are imposed on the income from assets of taxable persons, irrespective of the pursuit by them of any professional activity.

(1) OJ C 31, 1.2.2014.

Judgment of the Court (Second Chamber) of 5 March 2015 (request for a preliminary ruling from the Tribunal do Comércio de Lisboa — Portugal) — Estado português v Banco Privado Português SA, in liquidation, Massa Insolvente do Banco Privado Português SA

(Case C-667/13) ([1])

(Reference for a preliminary ruling — State aid — State guarantee underwriting a loan — Decision 2011/346/EU — Questions concerning validity — Admissibility — Article 107(1) TFEU — Statement of reasons — Effect on trade between Member States — Article 107(3)(b) TFEU — Serious disturbance in the economy of a Member State)

(2015/C 138/21)

Language of the case: Portuguese

Referring court

Tribunal do Comércio de Lisboa

Parties to the main proceedings

Applicant: Estado português

Defendants: Banco Privado Português SA, in liquidation, Massa Insolvente do Banco Privado Português SA

Operative part of the judgment

Examination of the questions referred for a preliminary ruling by the Tribunal do Comércio de Lisboa (Portugal) has disclosed nothing capable of affecting the validity of Commission Decision 2011/346/EU of 20 July 2010 on the State aid C 33/09 (ex NN 57/09, CP 191/09) implemented by Portugal in the form of a State guarantee to BPP.

([1]) OJ C 93, 29.3.2014.

Judgment of the Court (Third Chamber) of 26 February 2015 (request for a preliminary ruling from the Conseil d'État — France) — Les Laboratoires Servier SA v Ministre des Affaires sociales et de la Santé, Ministre de l'Économie et des Finances

(Case C-691/13) ([1])

(Reference for a preliminary ruling — Medicinal products for human use — Directive 89/105/EEC — Article 6(2) — Establishment of a list of medicinal products reimbursed by the health insurance funds — Amendment of the conditions of reimbursement of a medicinal product when renewing its inclusion in such a list — Obligation to state reasons)

(2015/C 138/22)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Les Laboratoires Servier SA

Defendant: Ministre des Affaires sociales et de la Santé, Ministre de l'Économie et des Finances

Operative part of the judgment

Article 6(2) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems must be interpreted as meaning that the obligation to state reasons set out in that provision is applicable to a decision which reinstates a product in the list of medicinal products covered by the health insurance system, but which limits the reimbursement of that product to a specific category of patients.

(1) OJ C 85, 22.3.2014.

Judgment of the Court (First Chamber) of 26 February 2015 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Wucher Helicopter GmbH, Euro-Aviation Versicherungs AG v Fridolin Santer

(Case C-6/14) (1)

(References for a preliminary ruling — Regulation (EC) No 785/2004 — Air carriers and aircraft operators — Insurance — Requirements — Definitions of 'passenger' and 'member of the crew' — Helicopter — Carriage of an expert in the blasting of avalanches using explosives — Injury suffered during a work flight — Compensation)

(2015/C 138/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: Wucher Helicopter GmbH, Euro-Aviation Versicherungs AG

Defendant: Fridolin Santer

Operative part of the judgment

1. *Article 3(g) of Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators must be interpreted as meaning that the occupant of a helicopter held by a Community air carrier, who is carried on the basis of a contract between that air carrier and the occupant's employer in order to perform a specific task, such as that at issue in the main proceedings, is a 'passenger' within the meaning of that provision;*

2. *Article 17 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 on the basis of Article 300(2) EC, approved on behalf of the EC by Council Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that a person who comes within the definition of 'passenger' within the meaning of Article 3(g) of Regulation No 785/2004, also comes within the definition of 'passenger' within the meaning of Article 17 of that convention, once that person has been carried on the basis of a 'contract of carriage' within the meaning of Article 3 of that convention.*

(1) OJ C 129, 28.4.2014.

Judgment of the Court (Fourth Chamber) of 26 February 2015 (request for a preliminary ruling from the Cour de cassation — France) — Christie's France SNC v Syndicat national des antiquaires

(Case C-41/14) ([1])

(Reference for a preliminary ruling — Directive 2001/84/EC — Article 1 — Intellectual property — Sale at auction of original works of art — Resale right for the benefit of the author of an original work of art — Person liable for the resale royalty — Buyer or seller — Derogation by agreement)

(2015/C 138/24)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Christie's France SNC

Respondent: Syndicat national des antiquaires

Operative part of the judgment

Article 1(4) of Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art must be interpreted as not precluding the person by whom the resale royalty is payable, designated as such by national law, whether that is the seller or an art market professional involved in the transaction, from agreeing with any other person, including the buyer, that that other person will definitively bear, in whole or in part, the cost of the royalty, provided that a contractual arrangement of that kind does not affect the obligations and liability which the person by whom the royalty is payable has towards the author.

([1]) OJ C 102, 7.4.2014.

Judgment of the Court (Second Chamber) of 26 February 2015 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — ŠKO-ENERGO s.r.o. v Odvolací finanční ředitelství

(Case C-43/14) ([1])

(Reference for a preliminary ruling — Protection of the ozone layer — Scheme for greenhouse gas emission allowance trading within the European Union — Method of allocating allowances — Allocation of allowances free of charge — Application of gift tax to such an allocation)

(2015/C 138/25)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: ŠKO-ENERGO s.r.o.

Defendant: Odvolací finanční ředitelství

Operative part of the judgment

Article 10 of 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 must be interpreted as precluding the imposition of a gift tax such as that at issue in the main proceedings if it does not respect the 10 % ceiling on the allocation of emission allowances for consideration laid down in that article, which is a matter for the referring court to determine.

(1) OJ C 142, 12.5.2014.

Judgment of the Court (Eighth Chamber) of 26 February 2015 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Ministero delle Politiche agricole, alimentari e forestali v Federazione Italiana Consorzi Agrari Soc. coop. arl — Federconsorzi, admitted to a collective insolvency procedure known as 'concordato preventivo', Liquidazione giudiziale dei beni ceduti ai creditori della Federazione Italiana Consorzi Agrari Soc. coop. arl — Federconsorzi

(Case C-104/14) (1)

(Reference for a preliminary ruling — Third paragraph of Article 288 TFEU — Combating late payments in commercial transactions — Directive 2000/35/EC — Articles 2, 3 and 6 — Directive 2011/7/EU — Articles 2, 7 and 12 — Legislation of a Member State capable of modifying, to the detriment of a creditor of the State, the interest on a debt predating those directives)

(2015/C 138/26)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Ministero delle Politiche agricole, alimentari e forestali

Respondents: Federazione Italiana Consorzi Agrari Soc. coop. arl — Federconsorzi, admitted to a collective insolvency procedure known as 'concordato preventivo', Liquidazione giudiziale dei beni ceduti ai creditori della Federazione Italiana Consorzi Agrari Soc. coop. arl — Federconsorzi

Operative part of the judgment

The third paragraph of Article 288 TFEU and Articles 3(3) and 6 of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions and Articles 7 and 12 of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions must be interpreted as not precluding a Member State which has made use of the option under Article 6(3)(b) of Directive 2000/35 from adopting, during the period prescribed for transposition of Directive 2011/7, legislative provisions, such as those at issue in the main proceedings, which are capable of modifying, to the detriment of a creditor of the State, the interest on a debt arising out of the performance of a contract concluded before 8 August 2002.

(1) OJ C 184, 16.6.2014.

Judgment of the Court (Sixth Chamber) of 5 March 2015 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Ralph Prankl

(Case C-175/14) ([1])

(Reference for a preliminary ruling — Taxation — Directive 92/12/EEC — General arrangements for products subject to excise duty — Imposition of duty on smuggled goods — Goods released for consumption in one Member State and transported to another Member State — Determination of the competent Member State — Right of the transit State to impose duty on those goods)

(2015/C 138/27)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Party to the main proceedings

Ralph Prankl

Operative part of the judgment

Article 7(1) and (2) and Article 9(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 92/108/EEC of 14 December 1992, must be interpreted as meaning that, where goods subject to excise duty that have been smuggled into the territory of a Member State are transported, without the accompanying document prescribed in Article 7(4) of that directive, to another Member State, in the territory of which those goods are discovered by the competent authorities, the transit Member States are not permitted also to levy excise duty on the driver of the heavy goods vehicle who transported them for having held those goods for commercial purposes in their territory.

([1]) OJ C 235, 21.7.2014.

Judgment of the Court (Seventh Chamber) of 5 March 2015 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Vario Tek GmbH v Hauptzollamt Düsseldorf

(Case C-178/14) ([1])

(Reference for a preliminary ruling — Customs union and Common Customs Tariff — Combined nomenclature — Tariff classification — Heading 8525 80 — Television cameras, digital cameras and video camera recorders — Subheadings 8525 80 91 and 8525 80 99 — Video cameras integrated into sports goggles — 'Optical zoom' function — Recording of files from external sources)

(2015/C 138/28)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Vario Tek GmbH

Defendant: Hauptzollamt Düsseldorf

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, in the version resulting from Commission Regulation (EU) No 1006/2011 of 27 September 2011, must be interpreted as meaning that the fact that video cameras integrated into sport goggles, such as those at issue in the main proceedings, do not have an 'optical zoom' function, does not prevent their classification under subheadings 8525 80 91 and 8525 80 99 of that nomenclature.*

2) *The Combined Nomenclature in Annex I to Regulation No 2658/87, in the version resulting from Regulation No 1006/2011, must be interpreted as meaning that the fact that video cameras integrated in sports goggles, such as those at issue in the main proceedings, offer the possibility to record and store on an interchangeable storage medium video and audio files from an external source precludes their classification under subheading 8525 80 91 of that nomenclature if that recording may be made independently and without relying on external materials or software.*

([1]) OJ C 223, 14.7.2014.

Judgment of the Court (Fifth Chamber) of 5 March 2015 — Ahmed Abdelaziz Ezz and Others v Council of the European Union, European Commission

(Case C-220/14 P) ([1])

(Appeal — Restrictive measures taken against certain persons in view of the situation in Egypt — Freezing of the funds of persons subject to judicial proceedings for misappropriation of State funds — United Nations Convention against Corruption)

(2015/C 138/29)

Language of the case: English

Parties

Appellants: Ahmed Abdelaziz Ezz, Abla Mohammed Fawzi Ali Ahmed, Khadiga Ahmed Ahmed Kamel Yassin, Shahinaz Abdel Azizabdel Wahab Al Naggar (represented by: J. Lewis QC, B. Kennelly and J. Pobjoy, Barristers, and J. Binns, Solicitor)

Other parties to the proceedings: Council of the European Union (represented by: M. Bishop and I. Gurov, acting as Agents), European Commission (represented by: F. Castillo de la Torre and D. Gauci, acting as Agents)

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Mr Ahmed Abdelaziz Ezz, Ms Abla Mohammed Fawzi Ali Ahmed, Ms Khadiga Ahmed Ahmed Kamel Yassin and Ms Shahinaz Abdel Azizabdel Wahab Al Naggar to bear their own costs and to pay those incurred by the Council of the European Union and the European Commission.*

([1]) OJ C 235, 21.7.2014.

Judgment of the Court (Second Chamber) of 26 February 2015 — H v Court of Justice of the European Union

(Case C-221/14 P) ([1])

(Appeal — Emoluments applicable to members of the Court of Justice of the European Union — Former member of the Civil Service Tribunal — Application for membership of the Joint Sickness Insurance Scheme (JSIS) — Decision — Refusal — Appeal procedures — Lateness — Inadmissibility)

(2015/C 138/30)

Language of the case: French

Parties

Appellant: H (represented by: S. Sagias, dikigoros)

Other party to the proceedings: Court of Justice of the European Union (represented by: A.V. Placco, agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders H to pay the costs.*

([1]) OJ C 235, 21.7.2014.

Judgment of the Court (Third Chamber) of 26 February 2015 — European Commission v Grand Duchy of Luxembourg

(Case C-238/14) ([1])

(Failure of a Member State to fulfil obligations — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Occasional workers in the entertainment arts — Successive fixed-term employment contracts — Clause 5(1) — Measures to prevent the abusive use of successive fixed-term contracts — Concept of 'objective grounds' justifying such contracts)

(2015/C 138/31)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Enegren and D. Martin, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: D. Holderer, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force, with respect to occasional workers in the entertainment arts, derogations from the measures designed to prevent the abusive use of successive fixed-term contracts, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Clause 5 of the Framework Agreement on fixed-term work of 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;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 235, 21.7.2014.

Request for an opinion submitted by the European Parliament pursuant to Article 218(11) TFEU

(Opinion 1/15)

(2015/C 138/32)

Language of the case: all the official languages

Applicant

European Parliament (represented by: F. Drexler, A. Caiola and D. Moore, Agents)

Questions submitted to the Court

— Is the envisaged agreement ([1]) compatible with the provisions of the Treaties (Article 16 TFEU) and the Charter of Fundamental Rights of the European Union (Articles 7, 8 and Article 52(1)) as regards the right of individuals to protection of personal data?

— Do Articles 82(1)(d) and 87(2)(a) TFEU constitute the appropriate legal basis for the act of the Council concluding the envisaged agreement or must that act be based on Article 16 TFEU?

([1]) Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data.

Request for a preliminary ruling from the Rayonen sad Sofia (Municipal Court Sofia) (Bulgaria) lodged on 26 September 2014 — Rumyana Asenova Petrus v Republic of Bulgaria

(Case C-451/14)

(2015/C 138/33)

Language of the case: Bulgarian

Referring court

Rayonen sad Sofia

Parties to the main proceedings

Applicant: Rumyana Asenova Petrus

Defendant: Republic of Bulgaria

By order of 5 February 2015, the Court ruled that it manifestly lacked jurisdiction to answer the question referred by the Rayonen sad Sofia (Bulgaria)

Appeal brought on 14 November 2014 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment delivered on 3 September 2014 in Case T-686/13, Unibail v OHIM

(Case C-512/14 P)

(2015/C 138/34)

Language of the case: French

Parties

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

Other party to the proceedings: Unibail Management

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment under appeal,

— Rule on the dispute pursuant to the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, and

— Order the applicant before the General Court to pay the costs incurred by OHIM.

Pleas in law and main arguments

The appellant raises a single ground of appeal in support of its appeal. OHIM submits that the General Court infringed the first sentence of Article 75 of Council Regulation (EC) No 207/2009 ([1]) of 26 February 2009 on the Community trade mark, read in conjunction with Article 7(1)(b) of the same regulation. The General Court misconstrued not only the scope of the concept of general reasoning, but also its own case-law. Finally, the appellant criticises the General Court for having reversed the burden of proof.

([1]) OJ 2009 L 78, p. 1.

Appeal brought on 14 November 2014 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment of the General Court (Third Chamber) delivered on 3 September 2014 in Case T-687/13 Unibail v OHIM

(Case C-513/14 P)

(2015/C 138/35)

Language of the case: French

Parties

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

Other party to the proceedings: Unibail Management

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment under appeal,

— Rule on the dispute pursuant to the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, and

— Order the applicant before the General Court to pay the costs incurred by OHIM.

Pleas in law and main arguments

The appellant raises a single ground of appeal in support of its appeal. OHIM submits that the General Court infringed the first sentence of Article 75 of Council Regulation (EC) No 207/2009 ([1]) of 26 February 2009 on the Community trade mark, read in conjunction with Article 7(1)(b) of the same regulation. The General Court misconstrued not only the scope of the concept of general reasoning, but also its own case-law. Finally, the appellant criticises the General Court for having reversed the burden of proof.

([1]) OJ 2009 L 78, p. 1.

Action brought on 19 December 2014 — European Parliament v Council of the European Union

(Case C-595/14)

(2015/C 138/36)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Decision 2014/688/EU of 25 September 2014 on subjecting 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) to control measures ([1]);

— maintain the effects of Implementing Decision 2014/688/EU until such time as it is replaced with a new act adopted in the prescribed manner;

— order the defendant to pay all the costs.

Pleas in law and main arguments

In support of its action based on Article 263 TFEU, the European Parliament relies on two pleas in law.

The first plea concerns the Council's use of a legal basis repealed by the entry into force of the Treaty of Lisbon and, alternatively, a secondary legal basis which, in itself, is unlawful in the light of the case-law of the Court of Justice.

The second plea concerns the Council's use of a decision-making procedure for the adoption of Decision 2014/688/EU which is not legally correct. The Parliament was not involved in the procedure which led to adoption of the contested decision. The Parliament infers from this, consequently, infringement of the Treaties and of an essential procedural requirement.

Should the Court annul the contested decision, Parliament considers it would be desirable that the Court exercise its discretion to maintain the effects of the contested decision, in accordance with Article 264(2) TFEU, until such time as it is replaced with a new act adopted in the prescribed manner.

([1]) OJ 2014 L 287, p. 22.

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 13 January 2015 — Odvolací finanční ředitelství v Český Rozhlas

(Case C-11/15)

(2015/C 138/37)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Appellant: Odvolací finanční ředitelství

Respondent: Český Rozhlas

Question referred

Can public sector broadcasting, financed by compulsory statutory charges of the amount set by the law, on the basis of ownership of a radio receiver, possession thereof or entitlement to use it on other legal grounds, be regarded as the 'provision of a service against payment' within the meaning of Article 2(1) of the Sixth Council Directive 77/388/EEC ([1]) on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, which must be exempted from VAT in accordance with Article 13A(1)(q) of that directive, or is it a non-economic activity which is not subject to VAT at all under Article 2 of the Sixth Directive, and to which exemption from VAT in accordance with Article 13A(1)(q) of that directive does not therefore apply?

([1]) OJ 1977 L 145, p. 1.

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 21 January 2015 — Josef Plöckl v Finanzamt Schrobenhausen

(Case C-24/15)

(2015/C 138/38)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Josef Plöckl

Defendant: Finanzamt Schrobenhausen

Question referred

Do Article 22(8), the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of Sixth Council Directive 77/388/EEC ([1]) of 17 May 1977 permit Member States to refuse to grant a tax exemption in respect of an intra-Community supply (in this instance, an intra-Community transfer) where, although the supplier has not taken all the measures that can reasonably be expected of him from the point of view of the formal requirements applicable to the recording of the [VAT] identification number, there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Request for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione siciliana (Italy) lodged on 22 January 2015 — Pippo Pizzo v CRGT srl

(Case C-27/15)

(2015/C 138/39)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione siciliana

Parties to the main proceedings

Applicant: Pippo Pizzo

Defendant: CRGT srl

Questions referred

1) Must Articles 47 and 48 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]) be interpreted as precluding national legislation, like the Italian legislation described above, which allows divided reliance upon the capacities of other entities, on the terms set out above, in respect of services?

2) Do the principles of EU law, and, in particular, those of protection of legitimate expectations, legal certainty and proportionality, preclude a legal rule of a Member State which permits the exclusion from a public tendering procedure of an undertaking which did not understand, because this was not expressly provided in the tender documents, that it was obliged, on pain of exclusion from that procedure, to fulfil the obligation to pay a sum in order to participate in that procedure, even though the existence of that obligation cannot be clearly deduced from the wording of the law in force in the Member State, but can nevertheless be inferred, by means of a twofold legal operation, which involves, first, interpreting extensively certain provisions of that Member State's positive law and, then, incorporating — in accordance with the outcome of that broad interpretation — the mandatory provisions in the tendering documents?

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

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 23 January 2015 — Koninklijke KPN NV and Others v Autoriteit Consument en Markt (ACM)

(Case C-28/15)

(2015/C 138/40)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Koninklijke KPN NV, KPN BV, T-Mobile Netherlands BV, Tele2 Nederland BV, Ziggo BV, Vodafone Libertel BV, UPC Nederland BV and UPC Business BV

Defendant: Autoriteit Consument en Markt (ACM)

Questions referred

1. Must Article 4(1) of the Framework Directive, ([1]) read in conjunction with Articles 8 and 13 of the Access Directive, ([2]) be interpreted as meaning that, in principle, in a dispute concerning the lawfulness of a cost-oriented scale of charges imposed by the national regulatory authority (NRA) in the wholesale call termination market, a national court is permitted to make a ruling which does not accord with the European Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC), ([3]) in which pure BULRIC is recommended as the appropriate price regulation measure for call termination markets, if, in that national court's view, this is required on the basis of the facts in the case brought before it and/or on the basis of considerations of national or supranational law?

2. If the answer to Question 1 is affirmative: to what extent is the national court permitted, in assessing a cost-oriented price regulation measure:

   a. in the light of Article 8(3) of the Framework Directive, to evaluate the NRA's argument that the development of the internal market is promoted by reference to the degree to which the functioning of the internal market is in fact influenced?

   b. to assess, in the light of the policy objectives and regulatory principles laid down in Article 8 of the Framework Directive and Article 13 of the Access Directive, whether the price regulation measure:

      (i) is proportionate;

      (ii) is appropriate;

      (iii) has been applied proportionately and is justified?

   c. to require the NRA to demonstrate adequately that:

      (i) the policy objective, referred to in Article 8(2) of the Framework Directive, that the NRAs should promote competition in the provision of electronic communications networks and electronic communications services is genuinely being attained and that users are genuinely deriving maximum benefit in terms of choice, price and quality;

      (ii) the policy objective, referred to in Article 8(3) of the Framework Directive, that NRAs should contribute to the development of the internal market is genuinely being attained; and

      (iii) the policy objective, referred to in Article 8(4) of the Framework Directive, that the interests of the citizens should be promoted is genuinely being attained?

   d. in the light of Article 16(3) of the Framework Directive, and of Article 8(2) and (4) of the Access Directive, when assessing whether the price regulation measure is appropriate, to take into account the fact that the measure has been imposed on the market on which the regulated undertakings possess significant market power but, in the form chosen (pure BULRIC), has the effect of promoting one of the objectives of the Framework Directive, namely the interests of end users, on another market which has not been earmarked for regulation?

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

([2]) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7).

([3]) OJ 2009 L 124, p. 67.

Appeal brought on 27 January 2015 by Simba Toys GmbH & Co. KG against the judgment of the General Court (Sixth Chamber) delivered on 25 November 2014 in Case T-450/09: Simba Toys GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-30/15 P)

(2015/C 138/41)

Language of the case: English

Parties

Appellant: Simba Toys GmbH & Co. KG (represented by: O. Ruhl, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Seven Towns Limited

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 25 November 2014 in case T-450/09 Simba Toys GmbH & Co. KG v. OHIM- Seven Towns Limited;

— annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trademarks and Designs) of 1 September 2009 (case 1526/2008-2);

— order the Office for Harmonization in the Internal Market (Trademarks and Designs) and Seven Towns Limited to pay the costs of the appeal proceedings before the Court and of the application proceedings at first instance before the General Court.

Pleas in law and main arguments

The appellant raises six grounds of appeal: The first ground of appeal alleges infringement of Article 7(1)(e)(ii) of Regulation No 40/94 ([1]). The second ground of appeal alleges infringement of Article 7(1)(e)(i) of Regulation No 40/94. The third ground of appeal alleges infringement of Article 7(1)(e)(iii) of Regulation No 40/94. The fourth ground of appeal alleges infringement of Article 7(1)(b) of Regulation No 40/94. The fifth ground of appeal alleges infringement of Article 7(1)(c) of Regulation No 40/94. The sixth ground of appeal alleges infringement of Article 76(1) of Regulation No 207/2009 ([2]).

The first ground of appeal is divided into eleven parts: incorrect 'fathom precisely' requirement; incorrect disregard of products already on the market; findings on disclosure of the trademark representation based on distortion of facts and evidence; too narrow interpretation of the criterion 'technical function'; disregard of lack of essential arbitrary features; incorrect public interest considerations; incorrect legal assessment of relevance of lack of alternative shapes; finding of alternative shapes based on distortion of facts and evidence; incorrect legal standards in relation to causation and result of technical function; irrelevance of possibility of cubes without visible lines; incorrect conclusion from alleged non-technicality of one subcategory of goods to non-technicality of all other goods for which a trademark is registered.

The second ground of appeal consists of one part: incorrect disregard that the essential elements are functional.

The third ground of appeal consists of one part: incorrect disregard that the essential elements give substantial value to the product.

The fourth ground of appeal is divided into eleven parts: incorrect legal assessment of burden of proof incorrect analysis of the individual features of the contested trademark; incorrect disregard of technicality of individual features; incorrect reliance only on the norms of the sector concerned; incorrect 'spontaneously' criterion; incorrect conclusion from alleged distinctiveness of one subcategory of goods to distinctiveness to all other goods for which a trademark is registered; incorrect application of 'most likely to be taken' criterion; denial of magic cube as the most likely shape only through distortion of facts and evidence; incorrect assessment of distinctiveness only from the perspective of the customer; incorrect refusal to consider specific products actually marketed; incorrect legal standards for the relevance of products already on the market.

The fifth ground of appeal is divided into eighth parts: incorrect 'unambiguously' requirement; incorrect 'spontaneously' requirement; incorrect interpretation of the 'direct and specific link' criterion; incorrect analysis of descriptiveness only with regard to general wording of goods; incorrect definition of relevant public; incorrect assessment of knowledge of public; incorrect disregard of future developments; incorrect assessment of public interest by incorrect reference to alternative shapes.

The sixth ground of appeal consists of one part: incorrect finding of facts without taking evidence.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark OJ L 11, p. 1
(2) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1

Request for a preliminary ruling from the Commissione Tributaria Provinciale di Cagliari (Italy) lodged on 29 January 2015 — Gicacomo Bolasco di Gianni Bolasco S.a.s. v Comune di Monastir, Equitalia Centro SpA

(Case C-37/15)

(2015/C 138/42)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Cagliari

Parties to the main proceedings

Applicant: Gicacomo Bolasco di Gianni Bolasco S.a.s.

Defendants: Comune di Monastir, Equitalia Centro SpA

Question referred

Does Community law preclude the rules laid down in Article 188 of Legislative Decree No 152/2006 and the Decree of the Minister for the Environment of 17 December 2009, under which the entry into force of the legislation transposing Directive 2008/98/EC (1) into national law is to be deferred pending the adoption of a ministerial decree laying down the related technical rules and specifying the time-limits within which that implementing legislation is to enter into force?

(1) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 2008 on waste and repealing certain Directives (OJ 2003 L 312, p. 3).

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 2 February 2015 — Gerard Dowling, Padraig McManus, Piotr Skoczylas, Scotchstone Capital Fund Limited v Minister for Finance

(Case C-41/15)

(2015/C 138/43)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: Gerard Dowling, Padraig McManus, Piotr Skoczylas, Scotchstone Capital Fund Limited

Defendant: Minister for Finance

Questions referred

1. Does the Second Company Law Directive ([1]) preclude in all circumstances, including the circumstances of this case, the making of a Direction Order pursuant to section 9 of the Credit Institutions (Stabilisation) Act, 2010, on foot of the opinion of the Minister that it is necessary, where such an order has the effect of increasing a company's capital without the consent of the general meeting; allotting new shares without offering them on a pre-emptive basis to existing shareholders, without the consent of the general meeting; lowering the nominal value of the company's shares without the consent of the general meeting and, to that end, altering the company's memorandum and articles of association without the consent of the general meeting?

2. Was the Direction Order made by the High Court pursuant to section 9 of the Credit Institutions (Stabilisation) Act 2010 in relation to Irish Life and Permanent Group Holdings plc and Irish Life and Permanent plc in breach of European Union Law?

([1]) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent
OJ L 26, p. 1

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 6 February 2015 — The Belgian State — SPF Finances v ING International SA, successor to the rights and obligations of ING Dynamic SA

(Case C-48/15)

(2015/C 138/44)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: The Belgian State — SPF Finances

Defendant: ING International SA, successor to the rights and obligations of ING Dynamic SA

Questions referred

1) Must Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital ([1]), and more specifically Articles 2, 4, 10 and 11 thereof read together, be interpreted as precluding provisions of national law, such as Articles 161 and 162 of the Belgian Inheritance Tax Code, amended by the Programme-Law of 22 December 2003, concerning the tax on undertakings for collective investment, in so far as that tax is imposed annually on undertakings for collective investment established as companies with share capital in another Member State and marketing their shares in Belgium, on the total amount of their shares subscribed in Belgium reduced by the amount of repurchases or refunds of those subscriptions, with the consequence that the sums collected in Belgium by such undertakings for collective investment are subject to that tax while they remain at the disposal of those undertakings?

2) Must Articles 49 to 55 and 56 to 66 of the EC Treaty, read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty be interpreted as precluding a Member State from modifying unilaterally the criterion on the basis of which a tax is imposed, as provided for by Article 161 et seq. of the Belgian Inheritance Tax Code, in order to replace a personal criterion for taxation, based on the domicile of the taxpayer and laid down in international tax law, with an alleged criterion of actual connection, which is not laid down in international tax law, account being taken of the fact that in order to establish its fiscal sovereignty the Member State adopts a specific penalty, such as that laid down by Article 162(3) of the Belgian Inheritance Tax Code, as regards foreign operators only?

3) Must Articles 49 and 56 of the EC Treaty, read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty, be interpreted as precluding an imposition of tax, such as that described above, which, inasmuch as it takes no account of the tax already imposed in the Member State of origin of the undertakings for collective investment established in another Member State, represents an additional pecuniary burden likely to impede the marketing of their shares in Belgium?

4) Must Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ([2]) (OJ 1985 L 375, p. 3), read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty, be interpreted as precluding an imposition of tax, as described above, inasmuch as it prejudices the principal aim of the directive of facilitating the marketing of shares of undertakings for collective investment in the European Union?

5) Must Articles 49 and 56 of the EC Treaty be interpreted as precluding administrative charges incurred by the levying of taxation such as that described above on undertakings for collective investment that market their shares in Belgium?

6) Must Articles 49 and 56 of the EC Treaty be interpreted as precluding a provision of national law, such as Article 162(2) of the Belgian Inheritance Tax Code, inasmuch as that provision imposes a specific penalty on undertakings for collective investment established in another Member State that market their shares in Belgium, namely the prohibition, ordered by a court, of making future investments of its shares in Belgium in the event of failure to submit their declarations by 31 March each year or if they fail to pay the tax described above?

([1]) OJ 1969 L 249, p. 25.
([2]) OJ 1985 L 375, p. 3.

Appeal brought on 6 February 2015 by Kurt Hesse against the judgment of the General Court (First Chamber) delivered on 27 November 2014 in Case T-173/11 Kurt Hesse and Lutter & Partner GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-50/15 P)

(2015/C 138/45)

Language of the case: German

Parties

Appellant: Kurt Hesse (represented by: M. Krogmann, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Lutter & Partner GmbH, Dr. Ing. h. c. F. Porsche AG

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 27 November 2014 (Case T-173/11);

— annul the decision of the Fourth Board of Appeal of 11 January 2011 (Case R 0306/2010-4) and reject the opposition against Community trade mark application No 5723 432 of 16 February 2007.

in the alternative

— refer the case back to the General Court of the European Union for judgment.

The appellant also claims that the Court should:

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his appeal, the appellant relies on the following pleas in law:

1. Defective non-consideration of factors for the similarity of the goods pursuant to Article 8(1)(b) of the Community Trade Mark Regulation (CTMR) ([1])

   The appellant contests the finding of the General Court that the Board of Appeal rightly considered that 'mobile navigation apparatus, in particular satellite-based mobile navigation apparatus' and the goods covered by the marks cited in opposition are similar. In assessing the similarity, the General Court failed to take account of key factors such as the category of the goods concerned, their manufacturing, marketing, distribution channels and retail premises. If all relevant factors had been fully taken into account and given proper weighting, the conclusion would have been that there was no similarity of the goods.

2. Distortion of the facts and defective application of the protection based on reputation pursuant to Article 8(5) of the CTMR

   The General Court made an error of law by failing to object to the Board of Appeal's finding that the 'Carrera' mark is known by a significant part of the public. The Board of Appeal based its finding in particular on individual aspects of an expert opinion. The Board of Appeal and the General Court wrongly described key findings of the expert opinion as 'worthless' and completely ignored other key findings. In this way, a considerable distortion of the facts and evidence forms the basis of the decision of the General Court.

3. Defective acceptance of an 'image transfer' pursuant to Article 8(5) of the CTMR

   The General Court was wrong not to object to the Board of Appeal's finding that a risk of 'image transfer' exists in favour of the appellant's 'Carrera' mark applied for. The Board of Appeal took the view that all of the goods covered by the mark applied for could 'be fitted to motor vehicles and used in them'. A 'social usage' results from this, on the basis of which the use of the declared goods and motor vehicles 'coincide'. As a matter of fact, the mere fact that the declared goods can be fitted to motor vehicles and used in them does not at all constitute a 'social usage' and also cannot result in an image transfer. In this respect, the Board of Appeal and the General Court failed to state full reasons for their decision.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark; OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 9 February 2015 — United Video Properties Inc. v Telenet NV

(Case C-57/15)

(2015/C 138/46)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: United Video Properties Inc.

Respondent: Telenet NV

Questions referred

1. Do the terms 'reasonable and proportionate legal costs and other expenses' in Article 14 of the Enforcement Directive ([1]) preclude the Belgian legislation which offers courts the possibility of taking into account certain well-defined features specific to the case and which provides for a system of varying flat rates in respect of costs for the assistance of a lawyer?

2. Do the terms 'reasonable and proportionate legal costs and other expenses' in Article 14 of the Enforcement Directive preclude the case-law which states that the costs of a technical adviser are recoverable only in the event of fault (contractual or extra-contractual)?

([1]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

Request for a preliminary ruling from the Commissione Tributaria Provinciale di Catanzaro (Italy) lodged on 9 February 2015 — Esse Di Emme Costruzioni Srl v Tribunale Amministrativo Regionale della Calabria, Ministero della Giustizia, Ministero dell'Economia e delle Finanze

(Case C-59/15)

(2015/C 138/47)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Catanzaro

Parties to the main proceedings

Applicant: Esse Di Emme Costruzioni Srl

Defendants: Tribunale Amministrativo Regionale della Calabria, Ministero della Giustizia, Ministero dell'Economia e delle Finanze

Question referred

Is it contrary to the principle laid down by Article 47 of the Charter of Fundamental Rights of the European Union, made applicable to the sphere of procurement contracts by Article 1 of Council Directive 89/665/EEC ([1]), that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal, for a provision of national law, such as that set out in Articles 9, 13 and 14 of Decree of the President of the Republic No 115 of 30 May 2002, applicable to the circumstances of the case, to provide, for access to administrative court proceedings relating to procedures for the award of public contracts, for payment of a greater amount of a standard fee than that fixed for access to administrative court proceedings in other spheres?

([1]) 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).

Appeal brought on 11 February 2015 by Saint-Gobain Glass Deutschland GmbH against the judgment of the General Court (Fifth Chamber) delivered on 11 December 2014 in Case T-476/12 *Saint-Gobain Glass Deutschland GmbH* v *European Commission*

(Case C-60/15 P)

(2015/C 138/48)

Language of the case: German

Parties

Appellant: Saint-Gobain Glass Deutschland 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:

— set aside the judgment of the General Court of 11 December 2014 in Case T-476/12;

— uphold the action it brought at first instance seeking annulment of the Commission's decision of 17 January 2013 (GestDem No 3273/2012).

Grounds of appeal and main arguments

The appellant submits that the General Court failed to observe the requirements of Regulation (EC) No 1367/2006 ([1]) concerning the grounds for refusing to grant free access to environmental information. Contrary to Article 6(1) of Regulation (EC) No 1367/2006 the General Court did not interpret the grounds for refusal laid down in Article 4(3) and (5) of Regulation (EC) No 1049/2001 strictly ([2]). In addition, the General Court did not appropriately take into account the public interest put forth in gaining access to environmental information. Nor is the judgment under appeal in conformity with the Aarhus Convention on access to environmental information, which has been ratified by the European Union.

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

([2]) 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).

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in 's-Hertogenbosch, (Netherlands) lodged on 12 February 2015 — Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie

(Case C-63/15)

(2015/C 138/49)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in 's-Hertogenbosch

Parties to the main proceedings

Applicant: Mehrdad Ghezelbash

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

1. What is the scope of Article 27 of Regulation No 604/2013 ([1]), whether or not in conjunction with recital 19 in the preamble to that regulation?

   Does an asylum seeker — in a situation such as that in the present case, in which the foreign national was confronted with the request for assumption of responsibility to deal with the asylum application only after that request had been agreed to, and that foreign national submits evidence, subsequent to the agreement to that request, which could lead to the conclusion that it is the requesting Member State, and not the requested Member State, which is responsible for examining the application for asylum, and the requesting Member State subsequently does not examine those documents or forward them to the requested Member State — have the right, pursuant to that article, to an (effective) legal remedy against the application of the criteria for determining the Member State responsible laid down in Chapter III of Regulation No 604/2013?

2. If under Regulation No 604/2013, or under the operation of Regulation No 343/2003 ([2]), the foreign national is in principle not entitled to invoke the incorrect application of the criteria for determining the Member State responsible when the requested Member State has agreed to a request to take charge, is the defendant correct in its contention that an exception to that assumption may be contemplated only in the case of family situations as referred to in Article 7 of Regulation No 604/2013, or is it conceivable that there may also be other special facts and circumstances on the basis of which the foreign national may be entitled to invoke the incorrect application of the criteria for determining the Member State responsible?

3. If the answer to Question 2 is that, in addition to family situations, there are also other circumstances which could lead to the foreign national being entitled to invoke the incorrect application of the criteria for determining the Member State responsible, can the facts and circumstances described in paragraph 12 of the present decision constitute such special facts and circumstances?

([1]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

([2]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 12 February 2015 — BP Europa SE v Hauptzollamt Hamburg-Stadt

(Case C-64/15)

(2015/C 138/50)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: BP Europa SE

Defendant: Hauptzollamt Hamburg-Stadt

Questions referred

1. Is Article 10(4) of Directive 2008/118/EC ([1]) to be interpreted as meaning that the conditions which it lays down are fulfilled only in the case where the total quantity of goods moving under a duty suspension arrangement has not arrived at their destination, or can that rule, account being taken of Article 10(6) of Directive 2008/118/EC, also be applied to cases in which only a portion of the excise goods moving under a duty suspension arrangement fails to arrive at the destination?

2. Is Article 20(2) of Directive 2008/118/EC to be interpreted as meaning that the movement of excise goods under a duty suspension arrangement does not end until the consignee has fully unloaded the means of transport which has arrived at his premises, with the result that a deficit detected during unloading is deemed to have been detected while the movement was still ongoing?

3. Does Article 10(2), in conjunction with Article 7(2)(a), of Directive 2008/118/EC preclude a national provision under which the competence of the Member State of destination to levy duty (apart from being excluded in the cases provided for in Article 7(4) of Directive 2008/118/EC) is made subject only to the detection of the occurrence of an irregularity and the impossibility of determining the place where that irregularity occurred, or is it also necessary to establish that, by being removed from the duty suspension arrangement, the excise goods have been released for consumption?

4. Is Article 7(2)(a) of Directive 2008/118/EC to be interpreted as meaning that, where an irregularity as provided for in Article 10(2) of Directive 2008/118/EC has been detected, excise goods moved under a duty suspension arrangement which have not arrived at the destination must be assumed to have been released for consumption in all cases in which the proof of total destruction or irretrievable loss of the missing quantity required under Article 7(4) of Directive 2008/118/EC cannot be furnished?

(1) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

Request for a preliminary ruling from the Tribunale di Bari (Italy) lodged on 12 February 2015 — Criminal proceedings against Vito Santoro

(Case C-65/15)

(2015/C 138/51)

Language of the case: Italian

Referring court

Tribunale di Bari

Party to the main proceedings

Vito Santoro

Questions referred

1. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU, as also construed in the judgment of the Court of Justice of the European Union of 16 February 2012 [in Joined Cases C-72/10 and C-77/10], to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU, as also construed in [that] judgment of the Court of Justice […], to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

3. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU, as also construed in [that] judgment of the Court of Justice […], to be interpreted as precluding the imposition of an obligation to transfer, free of charge, the use of tangible and intangible assets represented by the betting management and collection network in the event that the activity has ceased owing to the expiry of the licence or as a result of measures disqualifying the licence-holder or withdrawing the licence?

Action brought on 12 February 2015 — European Commission v Hellenic Republic

(Case C-66/15)

(2015/C 138/52)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Wasmeier and D. Triantafillou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

— declare that the Hellenic Republic, by levying the whole amount of the registration tax payable on the registration of a vehicle which is rented or leased by a customer who is a Greek national from a supplier established in another Member State, without taking into consideration the duration of the rental contract or lease contract and the duration of use of the vehicle concerned in the national territory of Greece, has failed to fulfil its obligations under Articles 56 to 62 TFEU in relation to the freedom to provide services;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Hellenic Republic, by imposing the whole of the registration tax payable on the registration by a supplier established in another Member State of vehicles which are leased or used on a hire-purchase agreement by nationals of Greece, without taking into consideration the duration of the lease (rental) contract and of use in the national territory of Greece, failed to fulfil its obligations under Articles 56-62 TFEU.

The imposition of the whole registration tax is disproportionate and hinders the free movement of services (see the case-law of the Court in *Cura Anglagen*, C-451/99, *Coevering*, C-242/05, *Ilhan*, C-42/08, and *VAV Autovermietung GmbH*, C-91/10).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 16 February 2015 — Nutrivet D.O.O.E.L. v Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

(Case C-69/15)

(2015/C 138/53)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Nutrivet D.O.O.E.L.

Defendant: Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

Questions referred

1) Must a shipment of waste be considered to be effected 'in a way which is not specified materially in the document set out in Annex VII', within the meaning of Article 2(35)(g)(iii) of Regulation (EC) No 1013/2006 ([1]), when the person who arranges the shipment completes the boxes corresponding to the importer/consignee, the recovery facility and the countries/States concerned — in entries 2, 7 and 11 respectively of the document set out in Annex VII to that regulation — in a manner whereby those entries conflict with one another, even though the information relating to those entries is clearly apparent from the international consignment note and other documents available?

2) If the first question is answered in the affirmative, can a fine imposed on that ground, equal in amount to that imposed on a person infringing the obligation to complete the document set out in Annex VII to Regulation (EC) No 1013/2006, be considered proportionate?

3) In order for a shipment of waste to be declared illegal, within the meaning of Article 2(35)(g)(iii) of Regulation (EC) No 1013/2006, must the person completing the document set out in Annex VII to that regulation deliberately mislead the authorities?

4) Is the fact that the information or data not actually specified is significant as regards environmental protection a relevant factor in order to declare that a shipment of waste, effected 'in a way which is not specified materially in the document set out in Annex VII', within the meaning of Article 2(35)(g)(iii) of Regulation (EC) No 1013/2006, is illegal? If the answer is in the affirmative, what information or data of the document set out in Annex VII to that regulation must be considered significant as regards environmental protection?

5) Can a transfer of waste be found to be effected 'in a way which is not specified materially in the document set out in Annex VII', within the meaning of Article 2(35)(g)(iii) of Regulation (EC) No 1013/2006, where the authority does not carry out the procedure laid down in Article 24 of that regulation, does not inform the authorities concerned and does not order the illegally shipped waste to be taken back?

6) How must jurisdiction within the meaning of Article 18(1)(a) of Regulation (EC) No 1013/2006 be understood and examined?

7) How must the expression in paragraph 15 of Part IV of Annex IC to Regulation (EC) No 1013/2006, which states that in order for dealers or brokers to be consignees they must be under the jurisdiction of the country of destination, be interpreted?

([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 Markkinaoikeus (Finland) lodged on 19 February 2015 — Viiniverla Oy v Sosiaali- ja terveysalan lupa- ja valvontavirasto

(Case C-75/15)

(2015/C 138/54)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicant: Viiniverla Oy

Defendant: Sosiaali- ja terveysalan lupa- ja valvontavirasto

Questions referred

1. When assessing where there has been an 'evocation', within the meaning of Article 16(b) of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16) ([1]), should reference be made to an average consumer who is reasonably well informed and reasonably observant and circumspect?

2. When assessing whether to prohibit the use of the name Verlados used to market nationally a spirit drink distilled from apples in order to protect the geographical indication Calvados, what importance should be given to the following facts in the interpretation of the concept of 'evocation' in Article 16(b) of Regulation No 110/2008 and the application of that regulation:

   a) the first part of the name Verlados, Verla, is a village in Finland whose name may be recognised by Finnish consumers;

   b) the first part of the name Verlados, Verla, refers to the producer of Verlados Viiniverla Oy;

c) Verlados is a local product produced in Verla village of which a few hundred litres are sold each year in the winery's own restaurant and a limited amount by order from the State-owned alcohol business referred to in the Law on Alcohol;

d) the words Verlados and Calados have only one syllable in common (dos) out of three, although the last four letters (ados) of the words, that is half of the total number of letter in each word, are identical?

3. If there is deemed to be an 'evocation' within the meaning of Article 16(b) of Regulation No 110/2008, may the use of the name Verlados nevertheless be authorised on one of the grounds mentioned above or on other grounds, such as that Finnish consumers at least are unlikely to imagine that Verlados is produced in France?

([1]) OJ L 39, p. 16

Appeal brought on 19 February 2015 by Court of Justice of the European Union against the order of the General Court (Third Chamber) delivered on 9 January 2015 in Case T-409/14 Marcuccio v European Union and Court of Justice of the European Union

(Case C-77/15 P)

(2015/C 138/55)

Language of the case: Italian

Parties

Appellant: Court of Justice of the European Union (represented by: A.V. Placco, Agent)

Other party to the proceedings: Luigi Marcuccio

Form of order sought

The CJEU claims that the Court of Justice should:

— Set aside the order of the General Court of the European Union (Third Chamber) of 9 January 2015 in Case T-409/14 *Marcuccio* v *European Union and Court of Justice of the European Union*, in so far as is rejects the second, third and fourth heads of claim of its application to the General Court under Article 114 of that court's Rules of Procedure;

— grant those heads of claim and, accordingly:

  — giving a final ruling on the dispute, dismiss Mr Marcuccio's damages claim as inadmissible on the basis that it is directed against the CJEU (as representative of the European Union);

  — as a subsidiary claim, in the event that the Court of Justice considers that the fact that that claim is directed against the CJEU and not against the Commission (as representative of the European Union) is irrelevant to the admissibility of the claim, but that, in ruling on the preliminary issue raised by the CJEU before the General Court, that Court should have ordered that the Commission should be substituted for the CJEU as defendant, refer the case back to the General Court in order for it to give a ruling on Mr Marcuccio's damages claim, in compliance with the points of law decided by the Court of Justice;

— order Mr Marcuccio to pay the costs incurred by the CJEU in the proceedings at first instance and in the appeal proceedings.

Pleas in law and main arguments

In its **first ground of appeal**, concerning infringement of the rules governing the representation of the European Union before its judicial bodies, the CJEU submits that, as there is no express provisions specifically relating to the representation of the European Union before its judicial bodies in actions brought under Article 268 TFEU seeking a declaration of the EU's non-contractual liability, the rules relating to such representation are to be derived from the general principles governing the exercise of the adjudicative function, in particular the principle of sound administration of justice and the principles that justice must be dispensed independently and impartially.

The CJEU divides the first ground of appeal into two parts concerning, on the one hand, failure to comply with the principle of sound administration of justice and, on the other, failure to comply with the principles that justice must be dispensed independently and impartially. In connection with the first part, the CJEU observes that the General Court's conclusion that it is the task of the CJEU to represent the EU in the damages claim referred to above is clearly based on the case-law established by the judgment in *Werhahn Hansamühle and Others* v *Council and Commission* (63/72 to 69/71, EU:C:1973:121 ('the judgment in *Werhahn and Others*'). The approach adopted in that line of case-law is to the effect that, where the Community (now the EU) is required to answer for the acts of one its institutions, it is to be represented before the Courts of the European Union by the institution (or institutions) to which the act giving rise to liability may be attributed. The CJEU maintains that that approach should not have been applied in the present case, since, for various reasons, the outcome of that approach is in fact contrary to the interests of the sound administration of justice, which, as is made expressly clear in the judgment in *Werhahn and Others*, is the raison d'être of that approach. In that context, the CJEU also alleges, as an incidental plea, failure to have due regard for the scope of the first paragraph of Article 317 TFEU and Article 53(1) of Regulation No 966/2012 ([1]), pursuant to which the General Court should have accepted the principle that damages such as those claimed in the present case should be allocated to the section of the EU budget relating to the Commission.

In the second part of the first ground of appeal, the CJEU submits, in reliance on the judgment of the ECHR of 10 July 2008 in *Mihalkov* v *Bulgaria* (Case No 67719/01), that, in finding that the CJEU should represent the EU in Mr Marcuccio's damages claim, the General Court failed to have regard to the requirements that a court must be independent and objectively impartial. Since, on the one hand, the act giving rise to the alleged liability occurred in the course of the exercise of its judicial functions by a bench of judges and, on the other, the bench of judges called upon to rule in the case (i) belongs to the same judicial body (the General Court) to which the body of judges to which liability has been attributed for the act giving rise to liability belongs and (ii) forms an integral part of the defendant in the same case (the CJEU), to which the judges of that bench are professionally connected, the requirements referred to above would be compromised, especially in a case in which, as the General Court maintained, damages such as those claimed in the present case should be borne by the budget relating to the CJEU.

The CJEU goes on to claim, in its **second ground of appeal**, that, as it does not contain a specific rebuttal of the arguments put forward by the CJEU before the General Court, which were based on the scope of a series of judgments of the Court of Justice — including the judgment in *Groupe Gascogne* v *Commission* (C-58/12 P, EU:C:2013:770), *Gascogne Sack* v *Commission* (C-40/12 P, EU:C:2013:768) and *Kendrion* v *Commission* (C-50/12 P, EU:C:2013:771) — the order under appeal is vitiated in so far as it fails to have regard to the obligation to state reasons.

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

Request for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 20 February 2015 — Kapnoviomichania Karelia AE v Minister for Finance

(Case C-81/15)

(2015/C 138/56)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Kapnoviomichania Karelia AE

Defendant: Minister for Finance

Question referred

May Directive 92/12/EEC [1], in the light of the general principles of EU law and, in particular, the principles of effectiveness, legal certainty and proportionality thereof, be interpreted, in a case such as this, as prohibiting the implementation of legal provisions of a Member State, such as Article 108 of the Greek Customs Code, according to which the authorised warehousekeeper of goods moved from the tax warehouse thereof under a duty suspension arrangement, which departed the arrangements in question irregularly through smuggling, may be declared as jointly liable for the payment of administrative fines, on the ground of smuggling, regardless of whether the warehousekeeper had, at the time when the infringement was committed, possession of the goods, on the basis of the rules of private law, and, furthermore, regardless of whether the perpetrators of the infringement involved in that movement had concluded a particular contractual relationship with the authorised warehousekeeper from which they can be seen to have acted as agents of the authorised warehousekeeper?

[1] Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, (OJ 1992 L 76, p. 1).

Appeal brought on 24 February 2015 by H & R ChemPharm GmbH against the judgment delivered on 12 December 2014 in Case T-551/08 H & R ChemPharm GmbH v European Commission

(Case C-95/15 P)

(2015/C 138/57)

Language of the case: German

Parties

Appellant: H & R ChemPharm GmbH (represented by: M. Klusmann and S. Thomas, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Third Chamber) of 12 December 2014 in Case T-551/08 in so far as it affects the appellant;

— in the alternative, reduce appropriately the amount of the fine in the amount of EUR 22 million imposed on the applicant under Article 2 of the contested decision of the defendant of 1 October 2008;

— in the further alternative, refer the case back to the General Court of the European Union for a fresh decision;

— cancel the imposition of Court costs in the amount of EUR 10 000 under Article 90(a) of the Rules of Procedure of the Court;

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

Pleas in law and main arguments

The appeal is against the judgment of the General Court of (Third Chamber) of 12 December 2014 (Reg. No 651533) in Case T-551/08 *H & R ChemPharm GmbH* v *Commission*, by which the Court rejected the application to annul Commission Decision No C(2008) 5476 final of 1 October 2008 (Case COMP/39181 — Candle Waxes), in so far as it concerns the appellant.

The appellant (and applicant at first instance) bases its appeal on the following grounds of appeal:

1. By its first ground of appeal, the appellant alleges, inter alia, an infringement of Article 81 EC [101 TFEU] due to contradictory and insufficient reasoning in the judgment relating to the appellant's business structure and responsibility, on the basis of which the General Court held that the appellant infringed Article 81 EC. The fundamental contradiction consists in the fact that the General Court treated the appellant and the undertaking Tudapetrol, which is not connected with the appellant, as a single entity for the purposes of liability for the infringement, but in the context of the imposition of the fine treated them as two separate undertakings. Since it is not clear from the General Court's reasoning whether the appellant and Tudapetrol make up a single undertaking or whether they are two different undertakings, the appellant alleges in addition an infringement of the obligation to state reasons (Article 296 TFEU) and of its fundamental rights of defence.

2. By its second ground of appeal, the appellant alleges a wrongful assessment of the behaviour of an employee who performed several duties in parallel at different legally distinct undertakings. The appellant disputes the fact that it is made responsible for the behaviour of that employee without the General Court ruling on whether the employee undertook the tasks on behalf of the appellant. The General Court's legal position in that regard infringes Article 81 EC. In addition, the Court infringed the fair hearing principle, since it rejected the appellant's evidence regarding the actual activities of the employee without legally justifiable grounds (infringement of Article 6 ECHR).

3. By its third ground of appeal, the appellant alleges decisive mistakes in the interpretation of Article 23(3) of Regulation No 1/2003 ([1]) with respect to turnover on which the fine is to be based. Those mistakes are due to the fact that the Court included turnover of a third-party undertaking in the calculation of the fine, although it is not disputed that that undertaking did not participate in the infringement and is not economically connected with the appellant. The judgment is also vitiated by a failure to state reasons, on the basis of which third-party turnover was calculated during the setting of the fine despite the lack of economic unity. The General Court's reasoning therefore infringes not only Article 23(3) of Regulation No 1/2003, but also the requirements in the case-law relating to the proper statement of reasons (Article 296 TFEU).

4. By its fourth ground of appeal, it is claimed in the first place that the General Court, during the setting of the fine, took into consideration turnover of undertakings which was achieved only at the end of the period to which the alleged infringements relate, and applied that turnover to the entire time of the alleged participation. That is incompatible with the practice of the General Court in the parallel judgment in *Esso* ([2]). In the *Esso* judgment, that court ruled on the same issue and held that such conduct on the part of the Commission leads to an artificial increase of the turnover on which the calculation of the fine is based. That discrimination constitutes an infringement of Article 23(3) of Regulation No 1/2003. Since the Court did not take a position on the appellant's objections, the judgment under appeal is also vitiated by a failure to state reasons (Article 296 TFEU). The appellant also claims that the Court erred in its calculation of the turnover, which resulted in the turnover being taken into consideration twice, in infringement of Article 23(3) of Regulation No 1/20003.

5. By its fifth ground of appeal, the appellant alleges several errors in law in the calculation of the fine, including in particular disproportionality of the fine imposed on the appellant in relation to other undertakings which also participated in the alleged infringement (infringement of Article 23(3) of Regulation No 1/2003). The appellant claims that the Court failed to take into consideration differences between the wrong committed by the appellant and that committed by other participating undertakings, and that it disproportionately assessed the size of the undertaking.

6. By its sixth ground of appeal, the appellant alleges that the Court erred in law when fixing costs in relation to the imposition of additional Court costs which were allegedly caused by the appellant, without further substantiating that imposition (infringement of Article 90(a) of the Rules of Procedure of the Court and of Article 296 TFEU and Article 6 ECHR). Those costs do not exist, and the appellant was not heard before the decision on costs was made.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

([2]) Case T-540/08, EU:T:2014:630.

Appeal brought on 27 February 2015 by Pilkington Group Ltd, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH, Pilkington Italia SpA against the judgment of the General Court (Second Chamber) delivered on 17 December 2014 in Case T-72/09: Pilkington Group Limited and Others v Commission

(Case C-101/15 P)

(2015/C 138/58)

Language of the case: English

Parties

Appellants: Pilkington Group Ltd, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH, Pilkington Italia SpA (represented by: S. Wisking and K. Fountoukakos-Kyriakakos, solicitors)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside in part the Judgment in Case T-72/09 to the extent to which it dismisses the action brought against Article 2(c) of the Decision;

— reduce the fine imposed on the Appellants in Article 2(c) of the Decision;

— order the Commission to pay the Appellants' costs in these proceedings.

Pleas in law and main arguments

The Appellants submit that the Judgment should be set aside on the following grounds:

First, the General Court erred in law in its interpretation of point 13 of the Commission's 2006 Fining Guidelines ([1]) in considering that the Commission was entitled to take into account, when determining the relevant value of sales, sales made pursuant to contracts that pre-dated the infringement period and that were not re-negotiated during the infringement period. As such sales cannot have been affected by the infringement, it was not legally correct to take them into account when determining the basic amount of the fine.

Second, the General Court erred in law in its interpretation of Article 23(2) of Regulation 1/2003 ([2]) in considering that the final amount of the fine did not exceed the statutory 10 % cap. The appropriate exchange rate to calculate the 10 % cap is not the ECB average exchange rate for the financial year preceding the year of adoption of the Decision, but the ECB exchange rate applicable on the day the Decision was adopted.

Third, the General Court erred in law by misapplying the rules on equal treatment and proportionality and by failing to exercise its unlimited jurisdiction with the intensity required by the case law of the Court of Justice.

([1]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 OJ C 210, p. 2

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (now Articles 101 and 102 TFEU), OJ L 1, p. 1

GENERAL COURT

Judgment of the General Court of 12 March 2015 — Vestel Iberia and Makro autoservicio mayorista v Commission

(Joined Cases T-249/12 and T-269/12) ([1])

(Action for annulment — Customs union — Post-clearance entry in the accounts and remission of import duties — Colour television receivers originating in Turkey — Application for remission of customs duties submitted by two importers — Commission's referral of the national authorities to a decision concerning another importer — Article 871(2) and (6) and Article 905(2) and (6) of Regulation (EEC) No 2454/93 — Lack of direct concern — Inadmissibility)

(2015/C 138/59)

Language of the case: English

Parties

Applicants: Vestel Iberia, SL (Madrid, Spain) (Case T-249/12); and Makro autoservicio mayorista SA (Madrid) (Case T-269/12) (represented by: P. De Baere and P. Muñiz, lawyers)

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

Intervener in support of the applicants: Kingdom of Spain (represented by: A. Rubio González, abogado del Estado)

Re:

Application for the annulment of Commission Decision C(2010) 22 final of 18 January 2010 finding that post-clearance entry in the accounts of import duties is justified and that remission of those duties is not justified in a particular case.

Operative part of the judgment

The Court:

1) *Joins Cases T-249/12 and T-269/12 for the purposes of the present judgment;*

2) *Dismisses the actions as inadmissible;*

3) *Orders Vestel Iberia, SL and Makro autoservicio mayorista SA to pay the costs;*

4) *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 235, 4.8.2012.

Judgment of the General Court of 9 March 2015 — ultra air v OHIM — Donaldson Filtration Deutschland (ultra.air ultrafilter)

(Case T-377/13) ([1])

(Community trade mark — Invalidity proceedings — Community word mark ultra.air ultrafilter — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 — Article 52(1)(a) of Regulation No 207/2009)

(2015/C 138/60)

Language of the case: German

Parties

Applicant: ultra air GmbH (Hilden, Germany) (represented by: C. König, 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, intervener before the General Court: Donaldson Filtration Deutschland GmbH (Haan, Germany) (represented by: N. Siebertz, M. Teworte-Vey and A. Renvert, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 May 2013 (Case R 1100/2011-4) concerning invalidity proceedings between Donaldson Filtration Deutschland GmbH and ultra air GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 May 2013 (Case R 1100/2011-4) in so far as it concerns time control systems;*

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

3. *Orders ultra air GmbH to bear its own costs and to pay the costs incurred by OHIM and by Donaldson Filtration Deutschland GmbH.*

([1]) OJ C 260, 7.9.2013.

Judgment of the General Court of 6 March 2015 — Braun Melsungen v OHIM (SafeSet)

(Case T-513/13) ([1])

(Community trade mark — Application for Community word mark SafeSet — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Obligation to state reasons — First sentence of Article 75 of Regulation No 207/2009 — Examination of the facts by the Office of its own motion — Article 76(1) of Regulation No 207/2009)

(2015/C 138/61)

Language of the case: German

Parties

Applicant: B. Braun Melsungen AG (Melsungen, Germany) (represented by: M.-C. Seiler, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 27 June 2013 (Case R 1598/2012-1), concerning an application for registration of the word mark SafeSet as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders B. Braun Melsungen AG to pay the costs.*

([1]) OJ C 336, 16.11.2013.

Judgment of the General Court of 6 March 2015 — Novomatic v OHIM — Berentzen Mally Marketing plus Services (BLACK JACK TM)

(Case T-257/14) ([1])

(Community trade mark — Opposition Proceedings — Application for Community figurative mark BLACK JACK TM — Earlier Community word and figurative marks BLACK TRACK — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 138/62)

Language of the case: German

Parties

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

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by A. Pohlmann, and subsequently by S. Hanne, acting as Agents)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 February 2014 (Case R 329/2012-4), relating to opposition proceedings between Berentzen Mally Marketing plus Services GmbH and Novomatic AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 February 2014 (Case R 329/2012-4);*

2. *Orders OHIM to pay the costs, including those incurred in the proceedings before the Board of Appeal.*

([1]) OJ C 194, 24.6.2014.

Order of the General Court of 26 February 2015 — Lavazza v OHIM — Commercialunione prima (LAVAZZA A MODO MIO)

(Case T-392/12) ([1])

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

(2015/C 138/63)

Language of the case: Italian

Parties

Applicant: Luigi Lavazza SpA (Turin, Italy) (represented by: A. Vanzetti, M. Ricolfi, G. Sironi and C. Mezzetti, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by F. Mattina, subsequently by F. Mattina and N. Bambara, and finally by N. Bambara and P. Bullock, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Commercialunione Prima Srl (Bresso, Italy) (represented by: G. Celona and B. Dosi, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 June 2012 (Case R 124/2011-1), relating to opposition proceedings between Commercialunione Prima Srl and Luigi Lavazza SpA.

Operative part of the order

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

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

([1]) OJ C 331, 27.10.2012.

Order of the General Court of 3 March 2015 — Gemeente Nijmegen v Commission

(Case T-251/13) ([1])

(Actions for annulment — State aid — Aid granted by a Netherlands municipality in favour of a professional football club — Decision to open the formal examination procedure provided for in Article 108(2) TFEU — Aid measure completely implemented on the date of the decision — Admissibility — Challengeable act)

(2015/C 138/64)

Language of the case: Dutch

Parties

Applicant: Gemeente Nijmegen (Netherlands) (represented by: H. Janssen and S. van der Heul, lawyers)

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

Re:

Action for partial annulment of Commission Decision C(2013) 1152 final of 6 March 2013 concerning the aid granted to Netherlands professional football clubs Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch between 2008 and 2011 (State aid SA.33584 (2013/C) (ex 2011/NN)).

Operative part of the order

1) *The action is dismissed as inadmissible.*

2) *Gemeente Nijmegen is ordered to pay the costs.*

([1]) OJ C 189, 29.6.2013.

Order of the General Court of 26 February 2015 — Métropole Gestion v OHIM — Metropol (METROPOL)

(Case T-431/13) ([1])

(Community trade mark — Word mark METROPOL — Application for a declaration of invalidity — Failure to apply for renewal of the registration of the mark — Cancellation of the mark upon expiry of the registration — No need to adjudicate)

(2015/C 138/65)

Language of the case: French

Parties

Applicant: Métropole Gestion (Paris, France) (represented by: M.-A. Roux Steinkühler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Metropol Investment Financial Company Ltd (Moscow, Russia)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 June 2013 (Cases affaires R 723/2012-2 and R 845/2012-2), relating to invalidity proceedings between Métropole Gestion and Metropol Investment Financial Company Ltd.

Operative part of the order

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

2. *Métropole Gestion and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) shall each bear their own costs.*

([1]) OJ C 344, 23.11.2013.

Order of the General Court of 24 February 2015 — G-Star Raw v OHIM

(Case T-473/13) ([1])

(Community trade mark — Opposition — Withdrawal of the application to register the disputed mark — No need to adjudicate)

(2015/C 138/66)

Language of the case: English

Parties

Applicant: G-Star Raw CV (Amsterdam, the Netherlands) (represented by: J. van Manen, M. van de Braak and L. Fresco, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: PepsiCo, Inc. (New York, United States) (represented by: V. von Bomhard and T. Heitmann, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 June 2013 (Case R 1586/2012-2), relating to opposition proceedings between G-Star Raw CV and PepsiCo, Inc.

Operative part of the order

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

2. *The applicant and the intervener are to bear their own costs and are each ordered to pay half of the costs incurred by the defendant.*

([1]) OJ C 344, 23.11.2013.

Order of the General Court of 5 March 2015 — Intesa Sanpaolo v OHIM (NEXTCARD)

(Case T-233/14) ([1])

(Community trade mark — Application for Community word mark NEXTCARD — Partial refusal of registration by the examiner — Obligation to state reasons — Action manifestly lacking any foundation in law)

(2015/C 138/67)

Language of the case: Italian

Parties

Applicant: Intesa Sanpaolo SpA (Turin, Italy) (represented by: P. Pozzi, G. Ghisletti and F. Braga, lawyers)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 10 February 2014 (Case R 1807/2013-5) concerning an application for registration of the word sign NEXTCARD as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Intesa Sanpaolo SpA shall pay the costs.*

([1]) OJ C 235, 21.7.2014.

Action brought on 23 December 2014 — Søndagsavisen v Commission

(Case T-833/14)

(2015/C 138/68)

Language of the case: Danish

Parties

Applicant: Søndagsavisen A/S (Søborg, Denmark) (represented by: M. Honoré, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of the Commission's decision of 9 July 2014 not to raise objections to the tax exemption for certain advertisements (SA.35683);

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, who is a competitor of the aid recipient, has submitted that the Commission ought to have found that there were doubts as to whether tax exemptions on non-nominative advertising material and subscription newspapers delivered to households constituted aid.

The applicant submits that the Commission accordingly ought to have decided to institute the formal investigation procedure, see Article 108(2) TFEU and Article 4(4) of Regulation No 659/1999 ([1]). In failing to do so, the Commission disregarded the applicant's procedural rights under Article 108, stk. 2, TFEU.

The applicant puts forward the following arguments in support of its argument that there were reasonable doubts:

— the time the Commission took to handle the case was extraordinarily long and in itself shows that there was reasonable doubt — not least since it involved a notified aid scheme under Article 108(3) TFEU;

— the Commission's decision is vitiated by a lack of statement of reasons for the tax exemptions on non-nominative advertising material and subscription newspapers delivered to households; and

— the Commission conducted an incomplete and incorrect examination of the Danish legislation on advertising taxes in determining whether the tax exemptions on non-nominative advertising material and subscription newspapers delivered to households gave rise to State aid.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, s. 1).

Action brought on 23 December 2014 — Forbruger-Kontakt v Commission

(Case T-834/14)

(2015/C 138/69)

Language of the case: Danish

Parties

Applicant: Forbruger-Kontakt A/S (Taastrup, Denmark) (represented by: M. Honoré, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of the Commission's decision of 9 July 2014 not to raise objections to tax exemptions for certain advertising materials (SA.35683);

— Order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law put forward by the applicant are, in essence, identical or similar to those put forward in case T-833/14 *Søndagsavisen* v *Commission*.

Action brought on 4 February 2015 — Sharif University of Technology/Conseil

(Case T-52/15)

(2015/C 138/70)

Language of the case: English

Parties

Applicant: Sharif University of Technology (Tehran, Iran) (represented by: M. Happold, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the Annex to Council Decision 2014/776/CFSP, Annex II to Council Decision 2010/413/CFSP, the Annex to Council Implementing Regulation (EU) N° 1202/2014, and Annex IX to Council Regulation (EU) N° 267/2012 insofar as they concern the applicant;

— award the applicant a compensation to make good the damage to its reputation caused by the Council's actions; and

— order the Council to pay the applicant's costs of the proceedings.

Pleas in law and main arguments

By support of its action, the applicant seeks the annulment of the Annex to Council Decision 2014/776/CFSP ([1]), Annex II to Council Decision 2010/413/CFSP ([2]), the Annex to Council Implementing Regulation (EU) N° 1202/2014 ([3]), and Annex IX to Council Regulation (EU) N° 267/2012 ([4]) insofar as they concern the applicant.

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

First plea in law, alleging that the Council has violated the applicant's rights of the defence and its right to effective judicial protection;

Second plea in law, alleging that the Council has made manifest errors of assessment as regards its adoption of restrictive measures against the applicant;

Third plea in law, arguing that the Council has violated the applicant's right to property and the principle of proportionality; and

Fourth plea in law, alleging that the Council has misused its powers in adopting restrictive measures against the applicant.

([1]) Council Decision 2014/776/CFSP of 7 November 2014 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 325, 19)

([2]) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 39)

([3]) Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ L 325, 3)

([4]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 1)

Action brought on 4 February 2015 — Amitié v EACEA

(Case T-59/15)

(2015/C 138/71)

Language of the case: English

Parties

Applicant: Amitié Srl (Bologna, Italy) (represented by: D. Bogaert, lawyer)

Defendant: Education, Audiovisual and Culture Executive Agency

Form of order sought

The applicant claims that the Court should:

— declare admissible the application brought against EACEA;

— declare that the decision sent by EACEA dated 26 November 2014 is not legally grounded and, as consequence, order the immediate cancellation of all the measures adopted by EACEA against the applicant;

— declare that the debit note No 3241415195 of € 941 310,38 dated 12 December 2014 addressed by the EACEA to the applicant is not due;

— order the EACEA to pay the costs.

Pleas in law and main arguments

Through this application, governed by Articles 256 and 272 TFUE, the applicant requests to the General Court to declare that EACEA's decision of 26 November 2014 stating the measures adopted against AMITIE following the investigation conducted by the European Anti-Fraud Office (OLAF) is not grounded.

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

1. First plea in law, alleging that the measures adopted against the applicant by EACEA are unjustified.

   — Non fulfilment of the conditions posted for the application of the measures: infringement of the provisions of Regulation No 2988/1995 ([1]) as well as of the principle of proportionality.

   — Infringement of the contractual provisions and wrongful application of the Regulations No 966/2012 ([2]) and No 1268/2012 ([3]). None of the measures (contained in EACEA decision dated 26 November, 2014), implemented against the applicant is legally grounded. On a subsidiary way, the recovery of all the amounts granted to the applicant would constitute an abuse of right and an unjust enrichment to the benefit of EACEA.

2. Second plea in law, alleging lack of validity of OLAF investigations and conclusions (infringement of the contractual provisions and applicable Regulations).

   — The investigations made by OLAF did not comply with the Regulation No 883/2013 ([4]) and/or with the general principles applicable to the matter.

   — As EACEA decision is based on OLAF conclusions further to its investigations, the absence of legality affecting OLAF investigations and report necessarily affects EACEA's decision.

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

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

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

([4]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

Action brought on 6 February 2015 — Talanton v Commission

(Case T-65/15)

(2015/C 138/72)

Language of the case: Greek

Parties

Applicant: Talanton AE — Simvouleftiki — Ekpaideftiki Etairia Dianomon, Parochis Ipiresion Marketigk kai Dioikisis Epicheiriseon (Talanton SA Business Consulting and Marketing Services) (Palaio Faliro, Greece) (represented by: K Damis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— instruct an expert report, in order that there should be examined the reported finding in the audit report of the external auditor, which was wrongly accepted by the European Commission, that there is a 'lack of alternative evidence to confirm the requested personnel costs'. That factor is of crucial importance to the outcome of the case, since the personnel costs represent the greater part of the eligible costs and incorporate all the indirect costs;·

— declare, first, that the debit note No 3241414916 which was sent to the applicant on 10/12/2014 and in which the Commission requested the return of two hundred and seventy three thousand, five hundred and thirty five euros and 38 cents (EUR 273 535,38) for the agreement for the FP-7216088 POCEMON project on the basis of the erroneous and inaccurate audit report 11-BA135-006 is in breach of the Commission's contractual obligations, and, second, that the costs which the applicant submitted within the framework of the agreement concerned are eligible costs and consequently the Commission is obliged to issue a credit note for one hundred and twenty nine thousand, seven hundred and sixty four euros and 38 cents (EUR 129 764,38).

Pleas in law and main arguments

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

1. The first plea is based on the arbitration clause:

   — The applicant maintains that from its detailed reasoning in this action it is apparent that there is a causal link between the facts which are reported in the audit report and the conclusions of the external auditor which were groundlessly accepted by the Commission notwithstanding all the reasoned objections (of the applicant) which were not examined. That detailed reasoning rebuts all the positions of the external auditor and consequently the Commission should revise its conclusions and accept the applicant's costs.

2. The second plea is based on the performance of a contract in good faith and the prohibition on the abusive application of contractual terms:

   — first, the applicant maintains that it was not granted the legal right to submit directly to the auditor appointed by the Commission its objections and to clarify the unsupported arguments of the author of the draft audit report. This is particularly important, given that the partiality of the external auditor against the applicant and the errors of the external auditor are at issue.

   — second, the applicant maintains that the external auditor's draft audit report was accepted by the Commission without any examination and rejection by argument of the lawful and detailed claims of the applicant, and of the supplementary material which was submitted. The draft audit report was reproduced in the Audit Report 11-BA135-006/22.1.2013 in the POCEMON project agreement No FP7-216088, which incorrectly reports that there was a lack of alternative evidence in relation to the claimed personnel costs. The assessment of the external auditor is arbitrary and unjustified, given that there was produced as evidence a large quantity of alternative evidence and a large number of sworn statements of all those working on the project, and accordingly the Commission decision at issue which groundlessly accepted the assessment of the external auditor is in error.

Action brought on 12 February 2015 — Scandlines Øresund e.a. v Commission

(Case T-68/15)

(2015/C 138/73)

Language of the case: English

Parties

Applicants: Scandlines Øresund I/S (Helsingør, Denmark), HH Ferries Helsingor ApS (Helsingør, Denmark), HH-Ferries Helsingborg AB (Helsingborg, Sweden) (represented by: M. Johansson, R. Azelius and P. Remnelid, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the contested decision; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present application is brought pursuant to Article 263 of the Treaty on the Functioning of the European Union for annulment of the decision by the European Commission of 15 October 2014 under Article 107(3)(b) Treaty on the Functioning of the European Union (in Cases SA.36558 and SA.38371 — Denmark, and SA.36662 — Sweden, Aid granted to Øresundsbro Konsortiet).

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

1. First plea in law, alleging errors of law and errors of assessment.

   — By the first part of the first plea in law, the applicants submit that the Commission made a manifest error of assessment when concluding that the financing of the Hinterland Facilities did not involve State aid since the measures concerned were neither liable to distort competition nor to affect trade between Member States.

   — By the second part, the applicants submit that the Commission erred in law with regard to the unconditional character of the State guarantees and the legally enforceable right of the Consortium to obtain State guaranteed funding, as well as regarding the Commission's assessment of the number of State guarantees.

   — By the third and fourth parts, the applicants submit that the Commission erred in law by concluding that the Swedish guarantee measures constitute an aid scheme and existing aid.

   — By the fifth part, the applicants submit that the Commission made a manifest error of assessment when concluding that the State guarantees are limited to the financing of the Fixed Link.

   — By the sixth part of the first plea in law, the applicants allege infringement of Article 107(3)(c) TFEU, in that the Commission did not have sufficient grounds to find the aid measures in question compatible with the internal market.

   — Under the sixth part, the Applicants also submit that the Commission erred in law by not assessing the cumulative effect of all the different aid measures directly and indirectly granted to the Consortium.

   — By the seventh part of the first plea in law, the applicants allege incorrect application of the principle of legitimate expectations.

2. Second plea in law, alleging infringement of the obligation to initiate the formal investigation procedure.

— The second plea in law is divided into nineteen parts, through which the applicants submit that the examination carried out by the Commission was insufficient and incomplete, and that the Commission on several points failed to follow its own guidelines and notices. These failures establish the existence of a body of consistent evidence that shows that the Commission was not able, at the date of the adoption of the contested decision, to resolve all the serious difficulties identified in the case at hand. Consequently, the Commission erroneously refused to safeguard the procedural rights that the applicants derive from Article 108(2) TFEU.

3. Third plea in law, alleging infringement of the duty to state reasons.

— By their third and final plea in law, the applicants submit that the contested decision is based on inadequate reasoning. The applicants submit that the Commission failed to ascertain that the statements and reasons in the contested decision were precise enough for the applicants to defend their rights and for the Court to exercise its power of review. The alleged flaws in reasoning concern the Commission's assessment of the Hinterland Facilities, the State guarantees, the Danish tax advantages, the Danish State loans and, lastly, the fact that the Commission's conclusions concerning compatibility with the internal market and legitimate expectations are based on a circular reasoning.

Action brought on 6 February 2015 — *Hippler* v *Commission*

(Case T-72/15)

(2015/C 138/74)

Language of the case: German

Parties

Applicant: Eberhard Hippler (Dorsten, Germany) (represented by M. Richter Rechtsanwältin)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— prohibit the defendant, on pain of a fine to be fixed by the General Court for each infringement, from making the transport maps of 'Bochum', 'Dortmund', 'Düsseldorf/Meerbusch', 'Duisburg' and 'Essen' available to the public without the permission of the applicant, as has been done in the case of:

http://dma.jrc.it/idas/lightrail/Dortmund.pdf

http://dma.jrc.it/idas/lightrail/Bochum.pdf

http://dma.jrc.it/idas/lightrail/Essen.pdf

http://dma.jrc.it/idas/lightrail/Duesseldorf.pdf

http://dma.jrc.it/idas/lightrail/Duisburg.pdf

— order the defendant to pay damages to the applicant in the amount of EUR 10 100;

— order the defendant to reimburse the applicant the pre-trial legal costs in the amount of EUR 2 743,43;

— to pay the costs of the proceedings, including legal fees.

Pleas in law and main arguments

In support of the action, the applicant alleges an infringement of Article 3(1) of Directive 2001/29/EC ([1]) and also an infringement of Paragraphs 15 and 19a in conjunction with Paragraph 97(2) of the German Law on copyright (Urheberrechtsgesetz) ([2]).

The applicant claims that the disputed transport maps are protected by copyright as academic or technical works. The applicant has not at any time consented to any form of use by the defendant and in particular has not granted any rights of use. Nor has the defendant been lawfully granted any rights of use from a third party. By using the maps the defendant has made them available to the public or has communicated the maps to the public.

In addition, the applicant claims that, in order to ascertain the resulting economic loss, a calculation must be made on analogy with that applied to licences. The applicant has a right to payment for an appropriate licence. Both on the German market and as recognised by the German courts, licences are ordinarily and appropriately granted in the amount of EUR 2 200 per map. As a result, the damages amount to EUR 10 100.

In addition, the applicant claims that the defendant has caused it non-economic consequential loss in breach of its exclusive copyright and should therefore be ordered to compensate that loss and prohibited from continuing the acts of use at issue.

Finally, the applicant claims that the applicant's lawyer was justified in sending the defendant a letter before action on the applicants behalf and the defendant must accordingly reimburse the applicant those resulting, necessary lawyer's fees in the amount of EUR 2 743,43.

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167 of 22/06/2001).

([2]) Law on copyright (Urheberrechtsgesetz) of 9 September 1965 (BGBl. I, p. 1273), as last amended by Article 1 of the Law of 5 December 2014 (BGBl. I p. 1974).

Action brought on 20 February 2015 — Aston Martin Lagonda v OHIM (Representation of a grille positioned on the front of a motor vehicle)

(Case T-86/15)

(2015/C 138/75)

Language of the case: English

Parties

Applicant: Aston Martin Lagonda Ltd (Gaydon, United Kingdom) (represented by: D. Farnsworth, Solicitor)

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

Details of the proceedings before OHIM

Trade mark at issue: Community trade mark indicated as 'other' representing a grille positioned on the front of a motor vehicle — Application for registration No 12 218 418

Contested decision: Decision of the Second Board of Appeal of OHIM of 18 December 2014 in Case R 1795/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it upheld the conclusion of the examiner that the mark applied for *prima facie* lacked distinctive character for the goods and services in question;

— allow the community trade mark application No. 12 218 418 to proceed to publication; and

— order OHIM to pay the costs.

Plea in law

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

Action brought on 20 February 2015 — Aston Martin Lagonda v OHIM (Representation of a grille positioned on the front of a motor vehicle)

(Case T-87/15)

(2015/C 138/76)

Language of the case: English

Parties

Applicant: Aston Martin Lagonda Ltd (Gaydon, United Kingdom) (represented by: D. Farnsworth, Solicitor)

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

Details of the proceedings before OHIM

Trade mark at issue: Community mark indicated as 'other' representing a grille positioned on the front of a motor vehicle — Application for registration of a Community trade mark No 11 867 215

Contested decision: Decision of the Second Board of Appeal of OHIM of 11 December 2014 in Case R 1797/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it upheld the conclusion of the examiner that the mark applied for *prima facie* lacked distinctive character for the goods and services in question;

— allow the community trade mark application No 11 867 215 to proceed to publication;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 20 February 2015 — Aston Martin Lagonda v OHIM (Representation of a radiator grille)

(Case T-88/15)

(2015/C 138/77)

Language of the case: English

Parties

Applicant: Aston Martin Lagonda Ltd (Gaydon, United Kingdom) (represented by: D. Farnsworth, Solicitor)

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

Details of the proceedings before OHIM

Trade mark at issue: Community mark indicated as 'other' representing a radiator grille — Application for registration No 11 867 173

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 December 2014 in Case R 1798/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it upheld the conclusion of the examiner that the mark applied for *prima facie* lacked distinctive character for the goods and services in question;

— allow the community trade mark application no. 11 867 173 to proceed to publication;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 25 February 2015 — Tubes Radiatori v OHIM — Antrax It (Heating radiators)

(Case T-98/15)

(2015/C 138/78)

Language in which the application was lodged: Italian

Parties

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

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

Other party to the proceedings before the Board of Appeal: Antrax It Srl (Resana, Italy)

Details of the proceedings before OHIM

Proprietor of the design at issue: Applicant

Design at issue: Community design for 'heating radiators' — Community design No 169 370-0002

Contested decision: Decision of the Third Board of Appeal of OHIM of 9 December 2014 in Case R 1643/2014-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and, consequently, find and declare that Community design No 169 370-0002, belonging to Tubes Radiatori Srl, is valid, since it is new and has individual character;

— order OHIM to pay the costs pursuant to Article 87 of the Rules of Procedure of the General Court of the European Union.

Pleas in law

— Infringement of Article 1d of Regulation (EC) No 216/96, the adversarial principle, and the duty to provide a statement of reasons;

— Objection of *res judicata*.

Action brought on 26 February 2015 — Red Bull v OHIM — Optimum Mark (Representation of the colours blue and silver)

(Case T-101/15)

(2015/C 138/79)

Language in which the application was lodged: English

Parties

Applicant: Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)

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

Other party to the proceedings before the Board of Appeal: Optimum Mark (Warsaw, Poland)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Representation of the colours blue and silver — Community trade mark registration No 2 534 774

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 2 December 2014 in Case R 2037/2013-1

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM and the other party to the proceedings before the Board of Appeal of OHIM, should it intervene, to pay the costs.

Pleas in law

— Infringement of Articles 4, 7(1)(a) and 52(1)(a) of Regulation No 207/2009;

— Infringement of the principle of legitimate expectations established by the Court of Justice under Community law.

Action brought on 26 February 2015 — Red Bull v OHIM — Optimum Mark (Representation of the colours blue and silver)

(Case T-102/15)

(2015/C 138/80)

Language in which the application was lodged: English

Parties

Applicant: Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)

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

Other party to the proceedings before the Board of Appeal: Optimum Mark (Warsaw, Poland)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Representation of the colours blue and silver — Community trade mark registration No 9 417 668

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 2 December 2014 in Case R 2036/2013-1

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Order OHIM and the other party to the proceedings before the Board of Appeal of OHIM, should it intervene, to pay the costs.

Pleas in law

— Infringement of Articles 4, 7(1)(a) and 52(1)(a) of Regulation No 207/2009;

— Infringement of the principle of legitimate expectations established by the Court of Justice under Community law.

Action brought on 27 February 2015 — Flabeg Deutschland v Commission

(Case T-103/15)

(2015/C 138/81)

Language of the case: German

Parties

Applicant: Flabeg Deutschland GmbH (Nuremberg, Germany) (represented by: M. Küper and E.-M. Schwind, Rechtsanwälte)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 25 November 2014 in State aid case SA.33995 (2013/C) (ex 2013/NN), file number C (2014) 8786 final, in particular Articles 1, 2, 3(1) and (2), 4 and 5 (determination of the classification as State aid and the incompatibility of the EEG-Act 2012 including its special compensation regime with the common market) and Article 6 in conjunction with Article 7 (order for the immediate partial recovery from the recipients);

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: Conditions of Article 107 TFEU are not met.

   The applicant asserts that the EEG surcharge system and the special compensation regime of the EEG-Act 2012 already lack the classification as State aid within the meaning of Article 107(1) TFEU. In the event that a classification of the special compensation regime of the EEG-Act 2012 as State aid in this sense were to be affirmed, this would find its justification in Article 107(3)(b) and (c) TFEU (promotion of the execution of an important project of common European interest or the development of certain economic activities or areas without adversely affecting trading conditions contrary to the common interest) and would therefore not be contrary to State aid law.

2. Second plea in law: Inapplicability of the *Environmental and Energy State Aid Guidelines* (EEAG) relevant to the adjustment plan

   The applicant asserts that the relevant EEAG with regard to the recovery amount pursuant to Article 3 of the Commission decision at issue, which apply from 1 July 2014, are, in the absence of the classification as State aid of the EEG surcharge system and special compensation regime of the EEG-Act 2012 instruments referred to and in the light of the principle of legality of administrative actions also applicable at EU level, not applicable to those instruments.

Action brought on 27 February 2015 — Bundesverband Glasindustrie and Others v Commission

(Case T-108/15)

(2015/C 138/82)

Language of the case: German

Parties

Applicants: Bundesverband Glasindustrie (Düsseldorf, Germany), Gerresheimer Lohr GmbH (Lohr, Germany), Gerresheimer Tettau GmbH (Tettau, Germany), Noelle + von Campe Glashütte GmbH (Boffzen, Germany), Odenwald Faserplattenwerk GmbH (Amorbach, Germany), O-I Glasspack GmbH & Co. KG (Düsseldorf), Pilkington Deutschland AG (Gelsenkirchen, Germany), Schott AG (Mainz, Germany), SGD Kipfenberg GmbH (Kipfenberg, Germany), Thüringer Behälterglas GmbH Schleusingen (Schleusingen, Germany), Neue Glaswerke Großbreitenbach GmbH & Co. KG (Großbreitenbach, Germany), HNG Global GmbH (Gardelegen, Germany) (represented by: U. Soltész and C. von Köckritz, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Articles 1 and 3(1) of the decision of the European Commission of 25 November 2014, State aid No SA.33995 (2013/C) (ex 2013/NN) — C (2014) 8786 final, relating to the promotion of electricity generation from renewable sources and the payment of the EEG-surcharge for energy-intensive industries, in so far as those provisions provide for the following:

   (i) the promotion of electricity produced from renewable energy sources on the basis of the German Law for the priority of renewable energy sources (Law on Renewable Energy Sources of 25 October 2008 in the updated version of 1 January 2012 — 'the EEG 2012') including its financing mechanism, and

   (ii) support for the reduced EEG-surcharge for energy-intensive users (special compensation regime — BesAR) according to which Paragraphs 40 et seq of the EEG 2012, for 2013 and 2014, amount to unlawful existing State aid within the meaning of Article 107(1) TFEU, in infringement of Article 108(3) TFEU;

— annul Articles 2, 3(2), 6, 7 and 8 of the contested decision in so far as they declare the incompatibility of the BesAR with the internal market and an order for the repayment of State aid is made; and

— order the Commission to pay the costs incurred by the applicants.

Pleas in law and main arguments

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

1. The special compensation regime (BesAR) contains no State aid within the meaning of Article 107(1) TFEU, since there is no favourable treatment. The Commission wrongly assumes that the BesAR grants energy-intensive undertakings an advantage amounting to State aid.

2. The EEG-surcharge system and the BesAR contain no State aid, since there is no burden on the State budget. The regulation affects exclusively private funds. The contested decision is incompatible with the Court's case-law, in particular with the judgment in *PreussenElektra*.

3. The Commission wrongfully concluded in its statement of reasons that the BesAR has a selective character. There is, however, no derogation from the relevant reference system. In any event, the BesAR is justified by the nature and overall structure of the EEG 2012.

4. The Commission erred in law by assessing the eligibility of BesAR exclusively on the basis of the new Guidelines on State Aid for environmental and Energy 2014-2020.

5. Should the Commission come to the conclusion that the BesAR amounts to ineligible State aid, recovery would in any event not be applicable since at issue is 'existing aid'.

6. In addition, recovery is to be excluded on account of the protection of legitimate expectations. In particular, the Commission stated in an earlier decision that the EEG-System did not contain State aid.

7. Furthermore, enforcement of an order for recovery for BesAR would not be possible.

Action brought on 2 March 2015 — Saint-Gobain Isover G+H and Others v Commission

(Case T-109/15)

(2015/C 138/83)

Language of the case: German

Parties

Applicants: Saint-Gobain Isover G+H AG (Ludwigshafen am Rhein, Germany), Saint-Gobain Glass Deutschland GmbH (Stolberg, Germany), Saint-Gobain Oberland AG (Bad Wurzach, Germany) and Saint-Gobain Sekurit Deutschland GmbH & Co. KG (Herzogenrath, Germany) (represented by: S. Altenschmidt and H. Janssen, Rechtsanwälte)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of 25 November 2014 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, C(2014) 8786 final;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law: Infringement of Article 107(1) TFEU

   The applicants submit that the reduction of the EEG-surcharge is not aid, since State resources were neither granted nor renounced. The reduction of the EEG-surcharge is also not made selectively. In addition, it does not distort competition and also does not affect trade in the internal market.

2. Second plea in law: Infringement of Article 108(3) TFEU

   Should — contrary to what the applicants submit — aid exist, the applicants take the view that the defendant was in any event not entitled to require recovery pursuant to Article 108(3) TFEU. This is because the reduction of the EEG-surcharge does not constitute new aid, since the previous rules in respect of it, which were identical in content in fundamental aspects, had already been approved by the defendant in 2002.

3. Third plea in law: Infringement of Article 107(3) TFEU

   The applicants also submit that the decision infringes Article 107(3) TFEU and the principle of the protection of legitimate expectations. In this respect, the defendant should not have assessed the facts examined by it on the basis of its Guidelines on State Aid for Environmental Protection and Energy 2014-2020, which were published only on 28 June 2014. Instead, it should have applied the guidelines published in 2008. Taking the 2008 standard as a basis, the defendant would not have been entitled to reach a conclusion other than that the alleged aid was compatible with the internal market.

4. Fourth plea in law: Infringement of Article 108(1) TFEU

   Lastly, the applicants submit that, by adopting the contested decision in a procedure concerning new aid, the defendant infringed the principle of legal certainty and Article 108(1) TFEU. As the defendant had approved the rules preceding the EEG 2012, it should have taken a decision in a procedure concerning existing aid and not in a procedure concerning new aid.

Action brought on 2 March 2015 — International Management Group v Commission

(Case T-110/15)

(2015/C 138/84)

Language of the case: English

Parties

Applicant: International Management Group (Brussels, Belgium) (represented by: M. Burgstaller, Solicitor, and E. Wright, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision THOR/C4/LL/el/(S)(2015)4287 of the European Anti-Fraud Office (OLAF) of 6 February 2015 refusing to grant access to certain documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents; and

— order the European Commission to pay for the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed in its duty to give reasons when it refused to grant access to the requested documents, relying upon a general presumption of applicability of the protection of the purposes of inspections, investigations and audits.

2. Second plea in law, alleging that there is an overriding public interest in the disclosure of the documents.

3. Third plea in law, alleging that the defendant failed to explain why the protection of privacy and integrity of individuals prevents partial access to the requested documents.

4. Fourth plea in law, alleging that the defendant breached the applicant's right to good administration.

Action brought on 6 March 2015 — Proforec v Commission

(Case T-120/15)

(2015/C 138/85)

Language of the case: Italian

Parties

Applicant: Proforec Srl (Recco, Italy) (represented by: G. Durazzo, M. Mencoboni and G. Pescatore, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested Commission Implementing Regulation (EU) 2015/39 of 13 January 2015 on the grounds put forward in the present action, as set out in full in the application;

— as a result of the annulment, implement all the measures and steps necessary to remove the entry of the protected geographical indication 'Focaccia di Recco col formaggio' from the register of protected designations of origin and protected geographical indications;

— order the Commission to pay the costs of the present proceedings. Should the present action be dismissed, *quod non*, the applicant requests that costs be shared.

Pleas in law and main arguments

According to the applicant, the contested implementing Regulation prevents it, in fact, from continuing to market its own product even though it is the proprietor of trade marks that were registered well before the date on which the application for protection was submitted to the Commission and even though it is common ground and undisputed that it has lawfully marketed its product within the European Union since 2006, that is to say, for more than five years.

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

1. First plea in law, alleging infringement of Article 15 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1)

   — The applicant argues in this respect that, as regards the entry into force of the contested regulation, no provision has been made, or is made, for any transitional period whatsoever to allow for the disposal of stocks and packaging.

2. Second plea in law, alleging that recitals 5, 6 and 7 to the contested regulation are contradictory

   — The applicant argues in this respect that recitals 5 and 6 are at variance with recital 7 and that protection is also tacitly conferred on a designation in respect of which registration was not requested and which is liable to give rise to confusion as regards the geographical indication of the main ingredient.

3. Third plea in law, alleging that the Commission's interpretation of the facts was wrong and a misuse of its power

   — The applicant maintains in this respect that recital 9 refers to the fact that existing products are allegedly jeopardised whilst denying that this is the case. However, such harm is not alleged but real and the claims of the association putting forward the proposal have given rise to anti-competitive conduct that is likely to harm, unlawfully, existing competitors on the market, undermining their acquired rights as a result of the misuse of power on the part of the Commission.

4. Fourth plea in law, alleging that the transitional protection no longer applied

   — The applicant maintains in this respect that the statement of the facts in recital 10 to the contested regulation is incorrect in that the transitional national protection in Italy has expired since no programme of self-regulation concerning the product specification has been adopted.

5. Fifth plea in law, alleging infringement of Article 7(e) of Regulation No 1151/2012

   — The applicant maintains in this respect that the contested regulation, in prohibiting deep-freezing and preservation techniques, legitimises unlawful practices on the part of the association putting forward the proposal that are inconsistent with EU law and with the free movement of goods and services, the Commission distorting in recitals 11 and 12 the actual scope of the specification, which clearly infringes Regulation No 1151/2012.

Order of the General Court of 2 March 2015 — Watch TV v Council

(Case T-639/13) ([1])

(2015/C 138/86)

Language of the case: French

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

([1]) OJ C 45, 15.2.2014.

Order of the General Court of 4 March 2015 — Messi Cuccittini v OHIM — Pires Freitas Campos (LEO)

(Case T-459/14) ([1])

(2015/C 138/87)

Language of the case: Spanish

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

([1]) OJ C 329, 22.9.2014.

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