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Contents

EN

General Court

European Union Civil Service Tribunal

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2015/C 398/01)

Last publication

OJ C 389, 23.11.2015.

Past publications

OJ C 381, 16.11.2015

OJ C 371, 9.11.2015

OJ C 363, 3.11.2015

OJ C 354, 26.10.2015

OJ C 346, 19.10.2015

OJ C 337, 12.10.2015

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 6 October 2015 (request for a preliminary ruling from the Cour d'appel de Mons — Belgium) — Ville de Mons v Base Company SA, formerly KPN Group Belgium SA

(Case C-346/13) [1]

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/20/EC — Article 13 — Fee for rights to install facilities — Scope — Municipal regulations making owners of mobile telephone transmission pylons and masts subject to payment of a tax)

(2015/C 398/02)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Ville de Mons

Defendant: Base Company SA, formerly KPN Group Belgium SA

Operative part of the judgment

Article 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) must be interpreted as not precluding a tax, such as that at issue in the main proceedings, being imposed on the owner of free-standing structures, such as transmission pylons or masts intended to support the antennas required for the functioning of the mobile telecommunication network, and which it was not possible to place on an existing site.

[1] OJ C 252, 31.8.2013.

Judgment of the Court (Fourth Chamber) of 6 October 2015 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Firma Ernst Kollmer Fleischimport und -export v Hauptzollamt Hamburg-Jonas

(Case C-59/14) ([1])

(Reference for a preliminary ruling — Regulation (EC, Euratom) No 2988/95 — Protection of the European Union's financial interests — Article 1(2) and the first subparagraph of Article 3(1) — Recovery of an export refund — Limitation period — Date from which time runs (dies a quo) — Act or omission by the economic operator — Occurrence of the prejudice — Continuous infringement — Single infringement)

(2015/C 398/03)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Firma Ernst Kollmer Fleischimport und -export

Defendant: Hauptzollamt Hamburg-Jonas

Operative part of the judgment

1. *Article 1(2) and the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings where the infringement of a provision of EU law was discovered only after the occurrence of the prejudice, the limitation period begins to run from the time when both the economic operator's act or omission that infringed EU law and the prejudice caused to the budget of the European Union or budgets managed by it have occurred.*

2. *Article 1(2) of Regulation No 2988/95 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a prejudice occurs as soon as the decision made to grant the export refund to the exporter concerned has been made.*

([1]) OJ C 142, 12.5.2014.

Judgment of the Court (Fourth Chamber) of 6 October 2015 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Finanzamt Linz v Bundesfinanzgericht, Außenstelle Linz

(Case C-66/14) ([1])

(Reference for a preliminary ruling — Articles 49 TFEU, 54 TFEU, 107 TFEU and 108(3) TFEU — Freedom of establishment — State aid — Taxation of groups of companies — Acquisition of a holding in a subsidiary — Depreciation of the goodwill — Limitation on holdings in resident companies)

(2015/C 398/04)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Finanzamt Linz

Defendant: Bundesfinanzgericht, Außenstelle Linz

Parties concerned: IFN-Holding AG, IFN Beteiligungs GmbH

Operative part of the judgment

Article 49 TFEU precludes legislation of a Member State, such as that at issue in the main proceedings, which, in the context of the taxation of a group of companies, allows a parent company, in the case of the acquisition of a holding in a resident company which becomes a member of such a group, to depreciate the goodwill up to a maximum of 50 % of the purchase price of the holding, while such depreciation is prohibited in the case of the acquisition of a holding in a non-resident company.

([1]) OJ C 142, 12.5.2014.

Judgment of the Court (Grand Chamber) of 6 October 2015 — Council of the European Union v European Commission

(Case C-73/14) ([1])

(Action for annulment — United Nations Convention on the Law of the Sea — International Tribunal for the Law of the Sea — Illegal, unreported and unregulated fishing — Advisory opinion proceedings — Submission by the European Commission of a written statement on behalf of the European Union — No prior approval of the content of that statement by the Council of the European Union — Article 13(2) TEU, Article 16 TEU and Article 17(1) TEU — Article 218(9) TFEU and Article 335 TFEU — Representation of the European Union — Principles of conferral of powers and institutional balance — Principle of sincere cooperation)

(2015/C 398/05)

Language of the case: English

Parties

Applicant: Council of the European Union (represented by: A. Westerhof Löfflerová, E. Finnegan and R. Liudvinaviciute-Cordeiro, acting as Agents)

Defendant: European Commission (represented by: K. Banks, A. Bouquet, E. Paasivirta and P. Van Nuffel, acting as Agents)

Interveners in support of the applicant: Czech Republic (represented by: M. Smolek, E. Ruffer, J. Vláčil and M. Hedvábná, acting as Agents); Hellenic Republic (represented by: G. Karipsiadis and K. Boskovits, acting as Agents); Kingdom of Spain (represented by: M. Sampol Pucurull, acting as Agent); French Republic (represented by: G. de Bergues, D. Colas, F. Fize, and N. Rouam, acting as Agents); Republic of Lithuania (represented by: D. Kriaučiūnas and G. Taluntytė, acting as Agents); Kingdom of the Netherlands (represented by: M. Bulterman, M. Gijzen and M. de Ree, acting as Agents); Republic of Austria (represented by C. Pesendorfer and G. Eberhard, acting as Agents); Portuguese Republic (represented by L. Inez Fernandes and M.L. Duarte, acting as Agents); Republic of Finland (represented by J. Heliskoski and H. Leppo, acting as Agents); United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and M. Holt, acting as Agents, and by J. Holmes, Barrister)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Czech Republic, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Lithuania, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 93, 29.3.2014.

Judgment of the Court (Grand Chamber) of 6 October 2015 (request for a preliminary ruling from the High Court (Ireland)) — Maximillian Schrems v Data Protection Commissioner

(Case C-362/14) ([1])

(Reference for a preliminary ruling — Personal data — Protection of individuals with regard to the processing of such data — Charter of Fundamental Rights of the European Union — Articles 7, 8 and 47 — Directive 95/46/EC — Articles 25 and 28 — Transfer of personal data to third countries — Decision 2000/520/EC — Transfer of personal data to the United States — Inadequate level of protection — Validity — Complaint by an individual whose data has been transferred from the European Union to the United States — Powers of the national supervisory authorities)

(2015/C 398/06)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Maximillian Schrems

Respondent: Data Protection Commissioner

Operative part of the judgment

1. *Article 25(6) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, read in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a decision adopted pursuant to that provision, such as Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46 on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce, by which the European Commission finds that a third country ensures an adequate level of protection, does not prevent a supervisory authority of a Member State, within the meaning of Article 28 of that directive as amended, from examining the claim of a person concerning the protection of his rights and freedoms in regard to the processing of personal data relating to him which has been transferred from a Member State to that third country when that person contends that the law and practices in force in the third country do not ensure an adequate level of protection.*

2. *Decision 2000/520 is invalid.*

([1]) OJ C 351, 6.10.2014.

Judgment of the Court (Eighth Chamber) of 6 October 2015 (request for a preliminary ruling from the Oberlandesgericht Wien — Austria) — Seattle Genetics Inc. v Österreichisches Patentamt

(Case C-471/14) ([1])

(Reference for a preliminary ruling — Intellectual and industrial property — Proprietary medicinal products — Regulation (EC) No 469/2009 — Article 13(1) — Supplementary protection certificate — Duration — Concept of the 'date of the first authorisation to place the product on the market in the European Union' — Whether account is to be taken of the date of the decision granting authorisation or the date on which notification was given of that decision)

(2015/C 398/07)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Seattle Genetics Inc.

Defendant: Österreichisches Patentamt

Operative part of the judgment

1. *Article 13(1) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that the 'date of the first authorisation to place the product on the market in the [European Union]' is determined by EU law;*

2. *Article 13(1) of Regulation No 469/2009 is to be interpreted as meaning that the 'date of the first authorisation to place the product on the market in the [European Union]' within the meaning of that provision is the date on which notification of the decision granting marketing authorisation was given to the addressee of the decision.*

(1) OJ C 462, 22.12.2014.

Order of the Court (Fourth Chamber) of 3 September 2015 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha — Spain) — Manuel Orrego Arias v Subdelegación del Gobierno en Ciudad Real

(Case C-456/14) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2001/40/EC — Mutual recognition of decisions on the expulsion of third country nationals — Article 3(1)(a) — Concept of 'offence punishable by a penalty involving deprivation of liberty of at least one year' — Decision on the expulsion of a third country national owing to a criminal conviction — Situation which is not covered by Directive 2001/40 — Manifest lack of jurisdiction)

(2015/C 398/08)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: Manuel Orrego Arias

Defendant: Subdelegación del Gobierno en Ciudad Real

Operative part of the order

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the question referred by the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) by decision of 4 September 2014 (Case C-456/14).

(1) OJ C 439, 8.12.2014.

Order of the Court (Third Chamber) of 17 September 2015 — Arnoldo Mondadori Editore SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Grazia Equity GmbH

(Case C-548/14 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Community trade mark — Regulation (EC) No 40/94 — Application for registration of the word mark GRAZIA — Opposition by the proprietor of the international, Community and national word and figurative marks including the word element 'GRAZIA' — Rejection of the opposition — Article 8(1)(b) — Likelihood of confusion — Article 8(5) — Reputation)

(2015/C 398/09)

Language of the case: English

Parties

Appellant: Arnoldo Mondadori Editore SpA (represented by: G. Dragotti, R. Valenti, S. Balice and E. Varese, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: A. Schifko, acting as Agent) and Grazia Equity GmbH (represented by: M. Müller, Rechtsanwalt)

Operative part of the order

1. *The appeal is dismissed.*

2. *Arnoldo Mondadori Editore SpA shall bear its own costs and pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

3. *Grazia Equity GmbH shall bear its own costs.*

([1]) OJ C 73, 2.3.2015.

Order of the Court (9th Chamber) of 3 September 2015 (requests for a preliminary ruling from the Curtea de Apel Cluj (Romania)) — Petru Chiş (C-585/14), Aurel Moldovan (C-587/14) v Administrația Județeană a Finanțelor Publice Cluj and Sergiu Octav Constantinescu (C-588/14) v Administrația Județeană a Finanțelor Publice Sălaj

(Joined Cases C-585/14, C-587/14 and C-588/14) ([1])

(Reference for a preliminary ruling — Internal Taxation — Article 110 TFEU — Tax levied by a Member State on motor vehicles at the time of their first registration or of the first transfer of the right of ownership — Fiscal neutrality as between second hand motor vehicles imported from other Member States and similar motor vehicles available on the domestic market)

(2015/C 398/10)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicants: Petru Chiş (C-585/14), Aurel Moldovan (C-587/14), Sergiu Octav Constantinescu (C-588/14)

Defendants: Administrația Județeană a Finanțelor Publice Cluj (C-585/14, C-587/14), Administrația Județeană a Finanțelor Publice Sălaj (C-588/14)

Operative part of the order

1. *Article 110 TFEU must be interpreted as not precluding a Member State from introducing a tax on motor vehicles, such as that laid down in Law No 9/2012 of 6 January 2012, in relation to the tax on pollutant emissions from motor vehicles (Legea nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule), which is levied on imported second hand vehicles at the time they are first registered in that Member State and on vehicles that are already registered in that Member State, at the time of the first transfer, within that Member State, of ownership.*

2. *Article 110 TFEU must be interpreted as precluding a Member State from exempting from a tax, such as that laid down in Law No 9/2012, vehicles that are already registered, in respect of which a tax previously in force has been paid, when the residual amount of that tax, included in the value of those vehicles, is less than the amount of the new tax. That is necessarily the case when the earlier tax must be reimbursed with interest because of its incompatibility with EU law.*

(1) OJ C 107, 30.3.2015.

Order of the Court (Sixth Chamber) of 8 September 2015 — (request for a preliminary ruling from the Cour de cassation — France) — Criminal proceedings against Cdiscount SA

(Case C-13/15) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 2005/29/EC — Consumer protection — Unfair commercial practices — Price reduction — Marking or display of reference price)

(2015/C 398/11)

Language of the case: French

Referring court

Cour de cassation

Criminal proceedings against

Cdiscount SA

Operative part of the order

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding provisions of national law, such as those at issue in the main proceedings, which lay down a general prohibition of announcements of price reductions which do not show the reference price when the price is marked or displayed, without providing for an assessment case by case allowing it to be determined whether the announcements are unfair, in so far as those provisions pursue objectives relating to consumer protection. It is for the referring court to determine whether that is so in the case in the main proceedings.

(1) OJ C 107, 30.3.2015.

Order of the Court (Eighth Chamber) of 8 September 2015 — DTL Corporación, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-62/15 P) (1)

Appeal — Article 181 the Rules of Procedure of the Court of Justice — Community trade mark — Application for registration of the word mark Generia — Opposition by the proprietor of the earlier Community figurative mark Generalia generación renovable — Partial refusal to register — Regulation (EC) No 207/2009 — Article 8(1)(b) — Likelihood of confusion — Article 64(1) — Powers of the Board of Appeal — Article 75, second subparagraph — Right to be heard

(2015/C 398/12)

Language of the case: Spanish

Parties

Appellant: DTL Corporación, SL (represented by: A. Zuazo Araluze, abogado)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Operative part of the order

1. *The appeal is dismissed.*

2. *DTL Corporación, SL to bear its own costs.*

(1) OJ C 146, 4.5.2015.

Order of the Court (Tenth Chamber) of 19 June 2015 — Mohammad Makhlouf v Council of the European Union

(Case C-136/15 P) ([1])

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

(2015/C 398/13)

Language of the case: French

Parties

Appellant: Mohammad Makhlouf (represented by: G. Karouni, avocat)

Other party to the proceedings: Council of the European Union (represented by: G. Étienne and M.-M. Joséphidès, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Mohammad Makhlouf shall bear his own costs and pay those incurred by the Council of the European Union.*

([1]) OJ C 311, 21.9.2015.

Appeal brought on 29 December 2014 by AQ against the order of the General Court (Seventh Chamber) of 15 December 2014 in Case T-168/11 AQ v European Parliament

(Case C-615/14 P)

(2015/C 398/14)

Language of the case: Polish

Parties

Appellant: AQ

Other party to the proceedings: European Parliament

By order of 17 September 2015, the Court of Justice (Seventh Chamber) ordered that the case be removed from the Register as being manifestly inadmissible.

Appeal brought on 18 June 2015 by Real Express Srl against the order of the General Court (Ninth Chamber) delivered on 21 April 2015 in Case T-580/13: Real Express Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-309/15 P)

(2015/C 398/15)

Language of the case: English

Parties

Appellant: Real Express Srl (represented by: C. Anitoae, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), MIP Metro Group Intellectual Property GmbH & Co. KG

Form of order sought

The applicant claims that the Court should:

— Set aside the appealed order of the General Court issued on 21 April 2015 in Case T-580/13.

— Exercise its full jurisdiction and, based on the elements available to it, uphold Real Express Srl's action against the Fourth Board of Appeal decision dated 16 September 2013 in Case R 1519/2012-4 or, alternatively, refer the case back to the General Court for reconsideration.

— Order OHIM and the Intervener to pay the costs of the Applicant, both at first instance and on appeal.

Pleas in law and main arguments

1. The General Court, when making its order, considered all of the appellant's arguments admissible except at paragraphs 23 and 25 of the Application where it was argued that the Intervener acted with bad intention in registering an identical REAL Community Trademark for identical classes to the one which the appellants applied to prohibit due to their earlier rights in Romania. The Fourth Board of Appeal was provided with the relevant Court certificates. The General Court overlooked the obligations of the Board of Appeal in conformity with Article 63(2) and 64(1) Regulation No. 207/2009 ([1]).

2. At paragraphs 38 and 39 of the Appealed order the General Court misapplied Rules 15(2)(h)(iii), 17(1)(4) of Commission Regulation (EC) No. 2868/1995 ([2]) and Articles 75 and 78(1)(a)(b) of Regulation 207/2009. At paragraph 41 and 42 of the Appealed order the General Court misapplied 80(1)(2)(3) of Regulation 207/2009, Rule 53 and 53a of Regulation 2868/1995 and overlooked page 4, paragraph 5, of the Communication No. 11/98 of the President of the Office from the Manual Concerning Proceedings Before The Office For Harmonization In The Internal Market (Trade Marks and Designs) Part A General Rules Section 6 Revocation Of Decision And Cancellation Of Entries In The Register And Correction Of Errors. At paragraphs 43, 44 and 45 of the Appealed order the General Court misapplied Articles 63(2) and 64 of Regulation No. 207/2009 and thus failed to recognized that the Board of Appeal infringed the principles of legal certainty and procedural economy and the aim of the opposition proceedings by failing in their obligation to enable conflicts between trademarks before registration and, contrary to the rules, failing to take into consideration facts, circumstance and evidence provided by Real Express Srl which were relevant to the outcome of the opposition proceedings.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark
OJ L 303, p. 1.

Request for a preliminary ruling from the Hessisches Finanzgericht (Germany) lodged on 28 July 2015 — TMD Gesellschaft für transfusionsmedizinische Dienste mbH v Finanzamt Kassel II — Hofgeismar

(Case C-412/15)

(2015/C 398/16)

Language of the case: German

Referring court

Hessisches Finanzgericht

Parties to the main proceedings

Applicant: TMD Gesellschaft für transfusionsmedizinische Dienste mbH

Defendant: Finanzamt Kassel II — Hofgeismar

Questions referred

1. Is Article 132(1)(d) of Directive 2006/112/EC ([1]) to be interpreted as meaning that the supply of human blood also encompasses the supply of blood plasma obtained from human blood?

2. If Question 1 is answered in the affirmative: does this also apply to blood plasma that is not intended to be used directly for therapeutic purposes, but exclusively for manufacturing medicinal products?

3. If Question 2 is answered in the negative: is classification as blood solely dependent on the intended purpose of the blood plasma, or also on the uses to which the blood plasma may theoretically be put?

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

Request for a preliminary ruling from the Finanzgericht Bremen (Germany) lodged on 12 August 2015 — Madaus GmbH v Hauptzollamt Bremen

(Case C-441/15)

(2015/C 398/17)

Language of the case: German

Referring court

Finanzgericht Bremen

Parties to the main proceedings

Applicant: Madaus GmbH

Defendant: Hauptzollamt Bremen

Question referred

Is the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 ([1]) of 23 July 1987 on the tariff and the statistical nomenclature and on the Common Customs Tariff, in the version of Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, to be interpreted as meaning that a raw material with the designation 'DESTAB Calcium Carbonate 90SE Ultra 250', used for the manufacture of calcium tablets in the form of simple tablets, effervescent tablets and chewable tablets, consisting of chemically defined calcium carbonate in powder form and, to improve suitability for use in tablets, modified starch, and with a starch content — determined in accordance with Commission Regulation (EU) No 118/2010 of 9 February 2010 amending Regulation (EC) No 900/2008 laying down the methods of analysis and other technical provisions necessary for the application of the arrangements for imports of certain goods resulting from the processing of agricultural products — of less than 5 %, is to be classified under subheading 3824 9097 990?

([1]) (OJ 1987 L 256, p. 1) Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2012 L 304, p. 1).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 28 August 2015 — Vattenfall Europe Generation AG v Federal Republic of Germany

(Case C-457/15)

(2015/C 398/18)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Vattenfall Europe Generation AG

Defendant: Federal Republic of Germany

Questions referred

1. Does the inclusion of the category 'Activities for the combustion of fuels in installations with a total rated thermal input exceeding 20 MW' in Annex I to Directive 2003/87/EC ([1]) result in the emissions trading obligation of an installation for the generation of electricity thereby starting on the date of the first emissions of greenhouse gases and thus potentially before the date of the first generation of electricity by the installation?

2. If Question 1 is answered in the negative:

   Is Article 19(2) of the Commission Decision of 27 April 2011 (2011/278/EU) ([2]) to be interpreted as meaning that the emissions of greenhouse gases which occur prior to the start of normal operation of an installation included in Annex I to Directive 2003/87/EC already trigger the operator's obligation to report and surrender emission allowances on the date of the first emissions during the construction phase of the installation?

3. If the answer to the second question is in the affirmative:

   Is Article 19(2) of the Commission Decision of 27 April 2011 (2011/278/EU) to be interpreted as precluding the application of the national implementing provision in Paragraph 18(4) of the Zuteilungsverordnung 2020 (2020 Allocation Regulation) to installations for the generation of electricity with regard to the determination of the start of the emissions trading obligation?

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

([2]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 28 August 2015 — E.ON Kraftwerke GmbH v Federal Republic of Germany

(Case C-461/15)

(2015/C 398/19)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: E.ON Kraftwerke GmbH

Defendant: Federal Republic of Germany

Questions referred

1. Which information belongs to the relevant information within the meaning of Article 24(1) of Decision 2011/278/EU? ([1]) Is the restriction to be understood qualitatively or quantitatively; is, in particular, information about any planned or effective changes to the capacity, activity level and operation of an installation which does not directly result in the repeal or adaptation of the allocation decision pursuant to Articles 19 to 21 of Decision 2011/278/EU and does not trigger any obligation to submit under Article 24(2) of Decision 2011/278/EU also included?

2. If Question 1 is answered in the negative: Is Article 24(1) of Decision 2011/278/EU to be interpreted as prohibiting the Member State from requiring the operator to provide information about any planned or effective changes to the capacity, activity level and operation of the installation which does not result in the repeal or adaptation of the allocation decision pursuant to Articles 19 to 21 of Decision 2011/278/EU?

([1]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Landesgericht Wiener Neustadt (Austria) lodged on 2 September 2015 — Admiral Casinos & Entertainment AG v Balmatic Handelsgesellschaft m.b.H and Others

(Case C-464/15)

(2015/C 398/20)

Language of the case: German

Referring court

Landesgericht Wiener Neustadt

Parties to the main proceedings

Applicant: Admiral Casinos & Entertainment AG

Defendants: Balmatic Handelsgesellschaft m.b.H, Robert Schnitzer, Suayip Polat KG, Ülkü Polat, Attila Juhas, Milazim Rexha

Question referred

Is Article 56 TFEU to be interpreted as meaning that, in an assessment of the proportionality of a rule of national law which provides for a monopoly in the market for games of chance, the validity of that rule under EU law depends not only on the objective which it pursues but also on its effects, as definitively and empirically determined?

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 3 September 2015 — Hüttenwerke Krupp Mannesmann GmbH v Hauptzollamt Duisburg

(Case C-465/15)

(2015/C 398/21)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Hüttenwerke Krupp Mannesmann GmbH

Defendant: Hauptzollamt Duisburg

Question referred

Is the third indent of Article 2(4)(b) of Council Directive (EC) No 2003/96 restructuring the Community framework for the taxation of energy products and electricity ([1]) to be interpreted with respect to the blast furnace process for the production of pig iron as meaning that electricity for the propulsion of the turbo blower is to be regarded as electricity which is used principally for the purposes of chemical reduction?

([1]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 7 September 2015 — Lufthansa Cargo AG; other party: Staatssecretaris van Infrastructuur en Milieu

(Case C-470/15)

(2015/C 398/22)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Lufthansa Cargo AG

Other party: Staatssecretaris van Infrastructuur en Milieu

Questions referred

1. Should the first sentence of Article 3(1)(c)(ii) of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand (OJ 2007 L 134) be interpreted as meaning that it provides an effective right for a Community airline from Member State A to unload cargo, which was loaded in a third country, in another Member State B, following a stopover in the US during which that cargo is not unloaded, and that it is to that extent not necessary to rely on bilateral agreements between Member State B and a third country?

2. Can a Community airline derive rights from the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand, in relation to Member States other than the Member State in which that airline has its principal place of establishment?

3. Does Article 5 of Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries (OJ 2004 L 195; corrigendum in OJ 2007 L 204) preclude a requirement being laid down, in the assessment as to whether the criterion of establishment referred to in Article 49 of the Treaty on the Functioning of the European Union and defined in detail in the case-law of the Court of Justice has been satisfied, that, inter alia, a Community airline having its principal place of establishment in Member State A must have part of its fleet, comprising at least two aircraft, stationed in Member State B?

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 21 September 2015 — R v S and T

(Case C-492/15)

(2015/C 398/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Respondent and applicant: R

Applicants and respondents: S and T

Question referred

Does Article 35(1) of Council Regulation (EC) No 2201/2003 ([1]) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIa Regulation) preclude a stay, by the appellate court, of proceedings for non-recognition under Article 21(3) of the regulation or for a declaration of enforceability under Article 28 et seq. of the regulation if an application is lodged in the Member State of enforcement for amendment of the judgment on rights of custody of the State of origin which is to be declared enforceable and the Member State of enforcement has international jurisdiction for that application for amendment?

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

Appeal brought on 25 September 2015 by HIT Groep BV against the judgment of the General Court (Sixth Chamber) delivered on 15 July 2015 in Case T-436/10 *HIT Groep* v *Commission*

(Case C-514/15 P)

(2015/C 398/24)

Language of the case: Dutch

Parties

Appellant: HIT Groep BV (represented by: G. van der Wal and L. Parret, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Declare the ground(s) of appeal put forward by the appellant to be well founded, set aside the judgment under appeal, declare the appellant's action at first instance against the contested decision ([1]) to be well founded and annul the contested decision in so far as it is directed against the appellant, in particular Articles 1(9)(b), 2(9) and 4(22) thereof; in the alternative, set the fine imposed on the appellant in Article 2(9) at zero or reduce it equitably or, at least, set aside the judgment under appeal and refer the case back to the General Court for it to rule afresh in accordance with the judgment to be delivered by the Court of Justice in this case;

— Order the respondent to pay the costs incurred by the appellant at first instance and those incurred on appeal in the present proceedings, including the costs of the appellant's legal assistance.

Pleas in law and main arguments

(a) In paragraphs 174 to 188 and 228 of the judgment under appeal the General Court, wrongly and contrary to law, or on the basis of insufficient or incomprehensible reasoning, and in breach of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ([2]) ('the Charter'), the second subparagraph of Article 23(2) of Regulation No 1/2003, ([3]) Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), Article 49 of the Charter and of general principles of law, in particular the principle of proportionality, ruled that the respondent, for the application of the fine ceiling applicable to the appellant by virtue of the second subparagraph of Article 23(2) of Regulation No 1/2003, could use the appellant's 2003 business year as a basis and that the respondent did not infringe the principle of proportionality in using the 2003 business year as a basis, and dismissed the action of the (present) appellant and ordered the (present) appellant to pay the costs.

(b) The General Court, wrongly and contrary to law and in breach of the second paragraph of Article 296 TFEU, Articles 41(2)(c) and 49(3) of the Charter and of general principles of law, in particular the principle of proportionality, failed to assess the proportionality of the fine imposed on the appellant by the respondent and (at least) the General Court's assessment in that regard was not reasoned or was insufficiently reasoned (comprehensibly), and dismissed the action of the (present) appellant) and ordered the (present) appellant to pay the costs.

Contrary to what the General Court held, it is (in this case) not permitted and contrary to law to derogate from the second subparagraph of Article 23(2) of Regulation No 1/2003. Such a derogation — whereby, instead of the previous business year (2009), the 2003 business year would have to apply for the application of that provision — is incompatible with that provision and its purpose. The second subparagraph of Article 23(2) of Regulation No 1/2003 is aimed at preventing a fine from being imposed in an amount that exceeds the financial capacity of the undertaking on the date on which it is held liable by the Commission for the infringement and on which the Commission imposes a monetary sanction on it. That provision safeguards the principle of proportionality, which is no longer safeguarded if the text of the provision is derogated from.

Derogation from (the text of) that provision is (in this case) also incompatible with Article 7(1) ECHR and Article 49 of the Charter and with the principle of proportionality (principle of legality and of legal certainty).

The judgments of the Court in which derogation from the express text of the second subparagraph of Article 23(2) of Regulation No 1/2003 has been permitted (*Britannia Alloys*, C-76/06 P, EU:C:2007:326 and *1.garantovaná*, C-90/13 P, EU:C:2014:326) date from (long) after the facts for which the fine was imposed on the appellant in the present case. Retroactive application of that case-law is therefore contrary to Article 7(1) ECHR and Article 49 of the Charter.

In the event that derogation from the second subparagraph of Article 23(2) of Regulation No 1/2003 were legally permissible in exceptional cases, it would require a comprehensive statement of reasons, which, contrary to Article 296 TFEU and Article 41(2)(c) of the Charter, is lacking or insufficient in the judgment under appeal.

Safeguarding the principle of proportionality requires that (in any event), where there is a derogation from the second subparagraph of Article 23(2) of Regulation No 1/2003, the European Union Court (then) determines whether the fine is compatible with the intent of that provision and with the principle of proportionality, something which the General Court failed to do in the judgment under appeal (as did the Commission in the contested decision), or at least furnished inadequate reasoning for that purpose.

([1]) Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (case COMP/38344 — Prestressing Steel), amended by Commission Decision C(2010) 6676 final of 30 September 2010 and by Commission Decision C(2011) 2269 final of 4 April 2011.

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

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

Appeal brought on 25 September 2015 by AGC Glass Europe, AGC Automotive Europe, AGC France, AGC Flat Glass Italia Srl, AGC Glass UK Ltd, AGC Glass Germany GmbH against the judgment of the General Court (Third Chamber) delivered on 15 July 2015 in Case T-465/12: AGC Glass Europe and Others v European Commission

(Case C-517/15 P)

(2015/C 398/25)

Language of the case: English

Parties

Appellants: AGC Glass Europe, AGC Automotive Europe, AGC France, AGC Flat Glass Italia Srl, AGC Glass UK Ltd, AGC Glass Germany GmbH (represented by: L. Garzaniti, A. Burckett St Laurent, and F. Hoseinian, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellants claims that the Court should:

— set aside the judgment of the General Court of 15 July 2015 in case T-465/12 AGC Glass Europe SA and Others v European Commission;

— annul the Commission Decision C(2012) 5719 final of 6 August 2012 (Contested Decision) which rejected in part AGC's request for confidential treatment of certain information contained in the decision in Case COMP/39. 125 — Car glass, or alternatively refer the case back to the General Court; and

— order the European Commission to pay the cost of the proceedings.

Pleas in law and main arguments

The Appellants rely on the three following grounds of appeal and main arguments:

1. The General Court erred in holding that the Hearing Officer's competence, under the Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings ([1]), does not encompass an assessment of the principles of legitimate expectations and equal treatment. In addition, the judgment distorts the facts by purporting that the Hearing Officer did assess the arguments raised by the Appellants in relation to the principles of legitimate expectations and equal treatment.

2. The General Court erred in concluding that the Contested Decision did not breach the principles of legitimate expectations and equal treatment. Given that the Appellants were the sole leniency applicants, they have a right not to have their confidential information published, as such publication would enable third parties to identify the source of self-incriminating statements submitted to the Commission in the context of the leniency programme.

3. The judgment is vitiated by a lack of reasoning in relation to the Hearing Officer' s competence as well as in relation to the applicability of the principles of legitimate expectations and equal treatment. The General Court therefore breached its duty under Article 296 TFEU and Articles 36 and 53 of the Statute of the Court of Justice. In particular, the General Court does not address the reasons for which it departed from established case law that the Appellants referred to.

([1]) OJ L 275, p. 29.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 28 September 2015 — Aiudapds — Associazione Italiana delle Unità Dedicate Autonome Private di Day Surgery e dei Centri di Chirurgia Ambulatoriale v Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute

(Case C-520/15)

(2015/C 398/26)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Aiudapds — Associazione Italiana delle Unità Dedicate Autonome Private di Day Surgery e dei Centri di Chirurgia Ambulatoriale

Respondents: Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute

Other parties: Roche SpA, Novartis Farma SpA, and Regione Marche

Question referred

Do the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (2000/C 364/01), in which it is stated that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law and which guarantees the right to a fair trial, Article 54 of that Charter which prohibits abuse of that right, and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, in which it is stated that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, preclude national legislation which, pursuant to Article 10 of Presidential Decree No 1199 of 24 November 1971 and Article 48 of Legislative Decree No 104 of 2 July 2010, enables only one of the parties to extraordinary proceedings brought exclusively before the Consiglio di Stato to have those proceedings transferred at first instance to a Tribunale Amministrativo Regionale without the approval or participation of the appellant or any other party to those proceedings?

Opinion of the Court (Grand Chamber) of 1 September 2015 — Republic of Malta

(Opinion 1/14) ([1])

(2015/C 398/27)

Language of the case: all the official languages

Applicant

Republic of Malta (represented by: A. Buhagiar and P. Grech, acting as Agents)

The Opinion 1/14 is removed from the register of the Court.

([1]) OJ C 315, 15.9.2014.

Order of the President of the Court of 2 September 2015 (request for a preliminary ruling from the Landgericht Aachen — Germany) — Horst Hoeck v Hellenic Republic

(Case C-196/14) ([1])

(2015/C 398/28)

Language of the case: German

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

([1]) OJ C 194, 24.6.2014.

Order of the President of the Third Chamber of the Court of 1 September 2015 — Cemex SAB. de CV, New Sunward Holding BV, Cemex España SA, Cemex Deutschland AG, Cemex UK, Cemex Czech Operations s.r.o., Cemex France Gestion, Cemex Austria AG v European Commission

(Case C-265/14 P) ([1])

(2015/C 398/29)

Language of the case: Spanish

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

([1]) OJ C 253, 4.8.2014.

Order of the President of the Court of 31 July 2015 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Fazenda Pública v Beiragás — Companhia de Gás das Beiras SA

(Case C-423/14) ([1])

(2015/C 398/30)

Language of the case: Portuguese

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

([1]) OJ C 439, 8.12.2014.

Order of the President of the Second Chamber of the Court of 16 July 2015 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — Fadil Cocaj v Bevándorlási és Állampolgársági Hivatal

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

(2015/C 398/31)

Language of the case: Hungarian

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

([1]) OJ C 7, 12.1.2015.

Order of the President of the Court of 2 September 2015 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — Ukamaka Mary Jecinta Oruche, Nzubechukwu Emmanuel Oruche v Bundesrepublik Deutschland, in the presence of: Oberbürgermeister der Stadt Potsdam, Emeka Emmanuel Mary Oruche

(Case C-527/14) ([1])

(2015/C 398/32)

Language of the case: German

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

([1]) OJ C 26, 26.1.2015.

Order of the President of the Court of 8 July 2015 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Alexandra Stück v Swiss International Air Lines AG

(Case C-3/15) ([1])

(2015/C 398/33)

Language of the case: German

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

([1]) OJ C 118, 13.4.2015.

Order of the President of the Court of 27 August 2015 — European Commission v Kingdom of Spain

(Case C-172/15) ([1])

(2015/C 398/34)

Language of the case: Spanish

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

([1]) OJ C 198, 15.6.2015.

Order of the President of the Court of 14 September 2015 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — Korpschef van politie v W.F. de Munk

(Case C-209/15) ([1])

(2015/C 398/35)

Language of the case: Dutch

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

([1]) OJ C 254, 3.8.2015.

GENERAL COURT

Judgment of the General Court of 7 October 2015 — Evropaïki Dynamiki Luxembourg and Others v OHIM

(Case T-299/11) ([1])

(Public service contracts — Tendering procedure — Supplies of external service provision for programme and project management and technical consultancy in the field of information technologies — Ranking of a tenderer in the cascade procedure — Award criteria — Equal opportunities — Transparency — Manifest error of assessment — Obligation to state reasons — Non-contractual liability — Loss of an opportunity)

(2015/C 398/36)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg); Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) and European Dynamics Belgium SA (Brussels, Belgium) (represented initially by N. Korogiannakis and M. Dermitzakis, and subsequently by I. Ampazis, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: N. Bambara and M. Paolacci, acting as Agents, and P. Wytinck and B. Hoorelbeke, lawyers)

Re:

Action, first, for annulment of the decision of OHIM adopted in the context of the open call for tenders AO/021/10, entitled 'External service provision for programme and project management and technical consultancy in the field of information technologies', and notified to the applicants by letter of 28 March 2011, to rank the first applicant's bid third in the 'cascade' mechanism for the purpose of awarding a framework contract; and, second, for damages.

Operative part of the judgment

The Court:

1. *Annuls the decision of OHIM adopted in the context of the open call for tenders AO/021/10, entitled 'External service provision for programme and project management and technical consultancy in the field of information technologies', and notified to European Dynamics Luxembourg SA by letter of 28 March 2011, to rank the latter's bid in third position in the 'cascade' mechanism for the purposes of awarding a framework contract and to rank the bids of Consortium Unisys SLU and Charles Oakes & Co. Sàrl, on the one hand, and of ETIQ Consortium (by everis and Trasys), on the other hand, in first and second positions respectively;*

2. *Orders the European Union to pay compensation for the harm suffered by European Dynamics Luxembourg for the loss of an opportunity to be awarded the framework contract as the contractor ranked first in the cascade;*

3. *Dismisses the claim for compensation as to the remainder;*

4. *Orders the parties to inform the Court, within three months from the date of delivery of the present judgment, of the amount of compensation arrived at by agreement;*

5. *Orders that, in the absence of agreement, the parties shall transmit to the Court, within the same period, a statement of their views with supporting figures;*

6. *Reserves the costs.*

(1) OJ C 232, 6.8.2011.

Judgment of the General Court of 6 October 2015 — Technion and Technion Research v Commission

(Case T-216/12) (1)

(Funding — Sixth framework programme for research, technological development and demonstration activities — Recovery of sums paid by the Commission in connection with a research contract in line with the conclusions of a financial audit — Set-off of claims — Reclassification in part of the action — Application for a declaration that a contractual claim does not exist — Arbitration clause — Eligible costs — Unjust enrichment — Obligation to state reasons)

(2015/C 398/37)

Language of the case: French

Parties

Applicants: Technion — Israel Institute of Technology (Haifa, Israel) and Technion Research & Development Foundation Ltd (Haifa) (represented by: D. Grisay, lawyer)

Defendant: European Commission (represented by: D. Calciu and F. Moro, acting as Agents, assisted initially by L. Defalque and S. Woog, and subsequently by L. Defalque and J. Thiry, lawyers)

Re:

First, application for annulment, on the basis of Article 263 TFEU, of the Commission's set-off decision contained in the letter of 13 March 2012, addressed to Technion — Israel Institute of Technology, and seeking recovery of the sum of EUR 97 118,69, corresponding to the amount of the adjusted sums, plus interest, for contract No 034984 (Mosaica), following the conclusions of the financial audit concerning, inter alia, that contract concluded under the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European research area and to innovation (2002-2006), and, secondly, application for a declaration, on the basis of Article 272 TFEU, that the claim which the Commission claims to have against Technion under the Mosaica contract and which is the subject matter of the disputed set-off does not exist.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Technion — Israel Institute of Technology and Technion Research & Development Foundation Ltd to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 6 October 2015 — Corporación Empresarial de Materiales de Construcción v Commission

(Case T-250/12) ([1])

(Competition — Agreements, decisions and concerted practices — Sodium chlorate market in the EEA — Amending decision reducing the determined duration of participation in the cartel — Calculation of the amount of the fine — Whether time-barred — Article 25 of Regulation No 1/2003)

(2015/C 398/38)

Language of the case: English

Parties

Applicant: Corporación Empresarial de Materiales de Construcción, SA, formerly Uralita, SA (Madrid, Spain) (represented by: K. Struckmann, lawyer, and G. Forwood, Barrister)

Defendant: European Commission (represented initially by N. von Lingen, R. Sauer and J. Bourke, and subsequently by M. Sauer and J. Norris-Usher, acting as Agents)

Re:

Application for annulment of Article 1(2) and of Article 2 of Commission Decision C(2012) 1965 final of 27 March 2012 amending Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium Chlorate).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Corporación Empresarial de Materiales de Construcción, SA, to bear its own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 6 October 2015 — FC Dynamo-Minsk v Council

(Case T-275/12) ([1])

(Common foreign and security policy — Restrictive measures adopted against Belarus — Freezing of funds — Action for annulment — Period allowed for modifying the form of order sought — Partial inadmissibility — Entity owned or controlled by a person or entity subject to the restrictive measures — Obligation to state reasons — Error of assessment)

(2015/C 398/39)

Language of the case: English

Parties

Applicant: Football Club 'Dynamo-Minsk' ZAO (Minsk, Belarus) (represented by: D. O'Keeffe, Solicitor, B. Evtimov, lawyer, and M. Lester, Barrister)

Defendant: Council of the European Union (represented by: F. Naert and E. Finnegan, acting as Agents)

Re:

Application for the annulment of Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2012 L 87, p. 95), of Council Implementing Decision (EU) No 265/2012 of 23 March 2012, implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 87, p. 37), Council Decision 2012/642/CFSP of 15 October 2012, concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1), Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7), Council Decision 2013/534/CFSP of 29 October 2013 amending Decision 2012/642 (OJ 2013 L 288, p. 69), Council Implementing Regulation (EU) No 1054/2013 of 29 October 2013 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2013 L 288, p. 1), Council Decision 2014/750/CFSP of 30 October 2014 amending Council Decision 2012/642 (OJ 2014 L 311, p. 39) and Council Implementing Regulation (EU) No 1159/2014 of 30 October 2014 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2014 L 311, p. 2), in so far as those acts apply to the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus, Council Implementing Regulation (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus, Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Council Decision 2014/750/CFSP of 30 October 2014 amending Decision 2012/642 and Council Implementing Regulation (EU) No 1159/2014 of 30 October 2014 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in so far as they relate to Football Club 'Dynamo-Minsk' ZAO;*

2. *Dismisses the action as inadmissible in so far as it seeks annulment of Council Decision 2013/534/CFSP of 29 October 2013 amending Decision 2012/642 and Council Implementing Regulation (EU) No 1054/2013 of 29 October 2013 implementing Article 8a(1) of Regulation (EC) No 765/2006;*

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

4. *Orders the Council of the European Union to bear its own costs and to pay the costs of Football Club 'Dynamo-Minsk.*

(1) OJ C 250, 18.8.2012.

Judgment of the General Court of 6 October 2015 — Chyzh and Others v Council

(Case T-276/12) (1)

(Common foreign and security policy — Restrictive measures adopted against Belarus — Freezing of funds — Action for annulment — Period allowed for modifying the form of order sought — Partial inadmissibility — Entity owned or controlled by a person or entity subject to the restrictive measures — Obligation to state reasons — Error of assessment)

(2015/C 398/40)

Language of the case: English

Parties

Applicants: Yury Aleksandrovich Chyzh (Minsk, Belarus); Triple TAA (Minsk); NefteKhimTrading STAA (Minsk); Askargoterminal ZAT (Minsk); Bereza Silicate Products Plant AAT (Bereza, Belarus); Variant TAA (Berezovsky, Belarus); Triple-Dekor STAA (Minsk); KvartsMelProm SZAT (Khotislav, Belarus); Altersolutions SZAT (Minsk); Prostoremarket SZAT (Minsk); AquaTriple STAA (Minsk); Rakovsky brovar TAA (Minsk); TriplePharm STAA (Logoysk, Belarus); and Triple-Veles TAA (Molodechno, Belarus) (represented by: D. O'Keeffe, Solicitor, B. Evtimov, lawyer and M. Lester, Barrister)

Defendant: Council of the European Union (represented by: F. Naert and E. Finnegan, acting as Agents)

Re:

Application for the annulment of Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2012 L 87, p. 95), of Council Implementing Decision (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 87, p. 37), Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1), Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7), Council Decision 2013/534/CFSP of 29 October 2013 amending Decision 2012/642 (OJ 2013 L 288, p. 69), Council Implementing Regulation (EU) No 1054/2013 of 29 October 2013 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2013 L 288, p. 1), Council Decision 2014/750/CFSP of 30 October 2014 amending Council Decision 2012/642 (OJ 2014 L 311, p. 39) and Council Implementing Regulation (EU) No 1159/2014 of 30 October 2014 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2014 L 311, p. 2), in so far as those acts apply to the applicants.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus, Council Implementing Regulation (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus and Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in so far as they relate to Mr Yury Aleksandrovich Chyzh, Triple TAA, NefteKhimTrading STAA, Askargoterminal ZAT, Bereza Silicate Products Plant AAT, Variant TAA, Triple-Dekor STAA, KvartsMelProm SZAT, Altersolutions SZAT, Prostoremarket SZAT, AquaTriple STAA, Rakovsky brovar TAA, TriplePharm STAA and Triple-Veles TAA;*

2. *Annuls Council Decision 2013/534/CFSP of 29 October 2013 amending Decision 2012/642 and Council Implementing Regulation (EU) No 1054/2013 of 29 October 2013 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in so far as they relate to NefteKhimTrading, Askargoterminal, Bereza Silicate Products Plant, Triple-Dekor, KvartsMelProm, Altersolutions, Prostoremarket, AquaTriple, Rakovsky brovar and Triple-Veles;*

3. *Annuls Council Decision 2014/750/CFSP of 30 October 2014 amending Decision 2012/642 and Council Implementing Regulation (EU) No 1159/2014 of 30 October 2014 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus in so far as they relate to Mr Chyzh, Triple, Askargoterminal, Bereza Silicate Products Plant, Triple-Dekor, KvartsMelProm, Altersolutions, Prostoremarket, AquaTriple, Variant and Rakovsky brovar;*

4. *Dismisses the action as inadmissible in so far as it seeks annulment of Decision 2013/534 and Implementing Regulation No 1054/2013 in so far as they concern Mr Chyzh, Triple, Variant and TriplePharm;*

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

6. *Orders the Council of the European Union to bear its own costs and to pay the costs of Mr Chyzh, Triple, NefteKhimTrading, Askargoterminal, Bereza Silicate Products Plant, Triple-Dekor, KvartsMelProm, Altersolutions, Prostoremarket, AquaTriple, Variant, Rakovsky brovar, TriplePharm and Triple-Veles.*

(1) OJ C 250, 18.8.2012.

Judgment of the General Court of 13 October 2015 — Intrasoft International v Commission

(Case T-403/12) ([1])

(Public service contracts — Tendering procedure — Technical assistance to the Customs Administration of Serbia to support the modernisation of the customs system — Conflict of interests — Rejection of a tenderer's bid by the Delegation of the European Union to the Republic of Serbia — Implicit rejection of the complaint against the rejection of the bid)

(2015/C 398/41)

Language of the case: English

Parties

Applicant: Intrasoft International SA (Luxembourg, Luxembourg) (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented by: F. Erlbacher and E. Georgieva, acting as Agents)

Re:

Application, first, for annulment of the Commission's letter of 10 August 2012, acting through the Delegation of the European Union to the Republic of Serbia, stating that the tendering procedure EuropeAid/131367/C/SER/RS, entitled 'Technical assistance to the Customs Administration of Serbia to support the modernisation of the customs' (OJ 2011/S 160-262712), could not be awarded to the consortium of which Intrasoft International SA was a part, and secondly, an application for the annulment of the alleged implicit decision rejecting the complaint made by the applicant against the letter of the 10 August 2012.

Operative part of the judgment

The Court:

1. *Annuls the decision rejecting the tender of the consortium of which Intrasoft International SA was part, contained in the letter of 10 August 2012 drafted by the Delegation of the European Union to the Republic of Serbia as the European Commission's subdelegated contracting authority and relating to the tendering procedure EuropeAid/131367/C/SER/RS, entitled 'Technical assistance to the Customs Administration of Serbia to support the modernisation of the customs system';*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission to pay the costs including those relating to the proceedings for interim relief.*

([1]) OJ C 343, 10.11.2012.

Judgment of the General Court of 7 October 2015 — Accorinti and Others v ECB

(Case T-79/13) ([1])

(Non-contractual liability — Economic and monetary policy — ECB — National central banks — Restructuring of Greek public debt — Programme for purchasing securities — Securities exchange agreement for the sole benefit of central banks in the Eurosystem — Private sector involvement — Collective action clauses — Credit enhancement in the form of a buyback programme intended to support the quality of the securities as collateral — Private creditors — Sufficiently serious breach of a rule of law conferring rights on individuals — Legitimate expectations — Equal treatment — Liability for a lawful legislative measure — Unusual and special damage)

(2015/C 398/42)

Language of the case: Italian

Parties

Applicant: Alessandro Accorinti (Nichelino, Italy) and 214 other applicants whose names are listed in the Annex to the judgment (represented by: S. Sutti, R. Spelta and G. Sanna, lawyers)

Defendant: European Central Bank (ECB) (represented by: initially S. Bening and P. Papapaschalis, then P. Senkovic and P. Papapaschalis, and finally P. Senkovic, acting as Agents, and by E. Castellani, B. Kaiser and T. Lübbig, lawyers)

Re:

Action for damages for the harm suffered by the applicants as a result of, in particular, the adoption by the ECB of Decision 2012/153/EU of 5 March 2012 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (OJ 2012 L 77, p. 19) and of other decisions of the European Central Bank taken in the context of the restructuring of Greek debt.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Mr Alessandro Accorinti and the other applicants whose names are listed in the Annex to pay the costs.*

([1]) OJ C 101, 6.4.2013.

Judgment of the General Court of 13 October 2015 — Commission v Cocchi and Falcione

(Case T-103/13 P) ([1])

(Appeal — Cross-appeal — Civil service — Officials — Pensions — Transfer of national pension rights — Proposal to add years of pensionable service — Act not having an adverse effect — Inadmissibility of the action at first instance — Article 11(2) of Annex VIII to the Staff Regulations)

(2015/C 398/43)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Gattinara and D. Martin, agents)

Other party to the proceedings: Giorgio Cocchi (Wezembeek-Oppem, Belgium) and Nicola Falcione (Brussels, Belgium) (represented initially by S. Orlandi, J. N. Louis and D. de Abreu Caldas, subsequently by: S. Orlandi, lawyers)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 December 2012 in *Cocchi and Falcione* v *Commission* (F-122/10), ECR-SC, EU:F:2012:180) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 December 2012 in Cocchi and Falcione v Commission (F-122/10) in so far as it declares admissible and well-founded the action for annulment of the acts (referred to in that judgment as 'decisions') of 12 and 23 February 2010, issued by the European Commission to Mr Nicola Falcione and M. Giorgio Cocchi respectively, as those acts withdrew the proposals made to Mr Cocchi and Mr Falcione, stating the result in additional years of pensionable service that a potential transfer of their pension rights would generate.*

2. *Dismisses the cross-appeal.*

3. *Dismisses the action brought by Messrs Cocchi and Falcione before the Civil Service Tribunal in Case F-122/10 in so far as it seeks annulment of the acts of 12 and 23 February 2010, issued by the European Commission to Mr Nicola Falcione and M. Giorgio Cocchi respectively, as those acts withdrew the proposals made to Mr Cocchi and Mr Falcione, stating the result in additional years of pensionable service that a potential transfer of their pension rights would generate.*

4. *Orders Messrs Cocchi and Falcione to bear their own costs in the present instance and to pay those incurred by the Commission associated with the cross-appeal. The Commission shall bear its own costs associated with the appeal.*

5. *Orders Messrs Cocchi and Falcione and the Commission to bear their own costs associated with the proceedings at first instance.*

([1]) OJ C 129, 4.5.2013.

Judgment of the General Court of 8 October 2015 — Italian Republic v Commission

(Case T-358/13) ([1])

(EAFRD — Clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the EAFRD — Decision declaring a certain amount to be non-reusable in connection with the Basilicata Region Rural Development Plan — Article 30 of Regulation (EC) No 1290/2005 — Obligation to state reasons)

(2015/C 398/44)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri and B. Tidore, acting as Agents, and M. Salvatorelli, avvocato dello Stato)

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

Re:

Action for partial annulment of Commission Implementing Decision 2013/209/EU of 26 April 2013 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) for the 2012 financial year (OJ 2013 L 118, p. 23), in so far as it classifies as a 'non-reusable amount' the amount of EUR 5 006 487,10 relating to the Basilicata Region (Italy) Rural Development Plan.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 252, 31.8.2013.

Judgment of the General Court of 7 October 2015 — Panrico v OHIM — HDN Development (Krispy Kreme DOUGHNUTS)

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

(Community trade mark — Invalidity proceedings — Community figurative mark Krispy Kreme DOUGHNUTS — Earlier national and international word and figurative marks DONUT, DOGHNUTS, donuts and donuts cream — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Likelihood of profit derived unduly from the distinctive character or reputation — Risk of detriment — Article 8(5) of Regulation No 40/94 (now Article 8(5) of Regulation No 207/2009))

(2015/C 398/45)

Language of the case: Spanish

Parties

Applicant: Panrico SA (Esplugues de Llobregat, Spain) (represented by: D. Pellisé Urquiza, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: HDN Development Corp. (Frankfort, Kentucky, United States) (represented by: H. Granado Carpenter and M. Polo Carreño, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 July 2013 (Case R 623/2011-4), relating to invalidity proceedings between Panrico SA and HDN Development Corp.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Panrico SA to pay the costs.*

(1) OJ C 9, 11.1.2014.

Judgment of the General Court of 8 October 2015 — Rosian Express v OHIM (Shape of a games box)

(Case T-547/13) (1)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a games box — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Right to be heard — Article 75 of Regulation No 207/2009)

(2015/C 398/46)

Language of the case: Romanian

Parties

Applicant: Rosian Express SRL (Medias, Romania) (represented by: E. Grecu and A. Tigau, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: V. Melgar and A. Geavela, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 11 July 2013 (case R 797/2013-5), relating to an application for registration of a three-dimensional sign consisting of the shape of a games box as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rosian Express SRL to pay the costs.*

([1]) OJ C 367, 14.12.2013.

Judgment of the General Court of 15 October 2015 — Wolverine International v OHIM — BH Store (cushe)

(Case T-642/13) ([1])

(Community trade mark — Invalidity proceedings — International registration designating the European Community — Figurative mark cushe — Earlier national word mark SHE and figurative mark she — Relative ground for refusal — Genuine use of the earlier mark — Article 57(2) and (3) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2015/C 398/47)

Language of the case: English

Parties

Applicant: Wolverine International, LP (George Town, Cayman Islands, United Kingdom) (represented by: M. Plesser and R. Heine, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: BH Store BV (Curaçao, Curaçao, Autonomous Territory of the Netherlands) (represented by: T. Dolde, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 September 2013 (Case R 1269/2012-4) concerning invalidity proceedings between BH Store BV and Wolverine International, LP.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wolverine International, LP to pay the costs, apart from those incurred by BH Store BV before the Cancellation Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Rejects the claim of BH Store relating to the costs it incurred before the Cancellation Division.*

([1]) OJ C 85, 22.3.2014.

Judgment of the General Court of 7 October 2015 — The Smiley Company v OHIM (Shape of a smiley with heart-shaped eyes)

(Case T-656/13) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a smiley with heart-shaped eyes — Absolute ground for refusal — Lack of distinctive character — Article 7 (1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/48)

Language of the case: English

Parties

Applicant: The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag and C. Albrecht, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 October 2013 (Case R 997/2013-4) concerning an application for registration as a Community trade mark of a three-dimensional sign comprising the shape of a smiley with heart-shaped eyes.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders The Smiley Company SPRL to pay the costs.*

([1]) OJ C 61, 1.3.2014.

Judgment of the General Court of 8 October 2015 — Czech Republic v Commission

(Cases T-659/13 and T-660/13) ([1])

(Transport — Directive 2010/40/EU — Intelligent Transport Systems — Delegated Regulation (EU) No 885/2013 — Provision of information services for safe and secure parking places for trucks and commercial vehicles — Article 3(1), Article 8 and Article 9(1)(a) of Delegated Regulation No 885/2013 — Delegated Regulation (EU) No 886/2013 — Data and procedures for the provision of road safety-related minimum universal traffic information free of charge to users — Article 5(1), Article 9 and Article 10(1)(a) of Delegated Regulation No 886/2013)

(2015/C 398/49)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek and J. Vláčil, acting as Agents)

Defendant: European Commission (represented by: J. Hottiaux, Z. Malůšková and K. Walkerová, acting as Agents)

Re:

In Case T-659/13, application for annulment of Commission Delegated Regulation (EU) No 885/2013 of 15 May 2013 supplementing ITS Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of information services for safe and secure parking places for trucks and commercial vehicles (OJ 2013 L 247, p. 1) and, in the alternative, application for annulment of Article 3(1), Article 8 and Article 9(1)(a) of Delegated Regulation No 885/2013, and, in Case T-660/13, application for annulment of Commission Delegated Regulation (EU) No 886/2013 of 15 May 2013 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users (OJ 2013 L 247, p. 6) and, in the alternative, application for annulment of Article 5(1), Article 9 and Article 10(1)(a) of Delegated Regulation No 886/2013.

Operative part of the judgment

The Court:

1. *Joins Cases T-659/13 and T-660/13 for the purposes of the judgment;*

2. *Dismisses the actions;*

3. *Orders the Czech Republic to pay the costs.*

([1]) OJ C 45, 15.2.2014.

Judgment of the General Court of 7 October 2015 — Bilbaína de Alquitranes and Others v Commission

(Case T-689/13) ([1])

(Environment and protection of human health — Classification of pitch, coal tar, high-temperature, in the categories of acute aquatic toxicity and chronic aquatic toxicity — Regulation (EC) No 1907/2006 and Regulation (EC) No 1272/2008 — Manifest error of assessment — Classification of a substance on the basis of its constituents)

(2015/C 398/50)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: P.-J. Loewenthal and K. Talabér-Ritz, acting as Agents)

Intervener in support of the applicants: GrafTech Iberica, SL (Navarre, Spain) (represented by: C. Mereu, K. Van Maldegem, P. Sellar and M. Grunchard, lawyers)

Intervener in support of the defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and C. Jacquet, acting as Agents)

Re:

Application for the partial annulment of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5), in so far as it classifies pitch, coal tar, high-temp. (EC No 266-028-2) as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Operative part of the judgment

The Court:

1. *Annuls Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures in so far as it classifies pitch, coal tar, high-temp. (EC No 266-028-2) as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance;*

2. *Orders the European Commission to bear its own costs and to pay those of Bilbaína de Alquitranes, SA, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Koppers Netherlands BV, Rütgers basic aromatics GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o.o., Bawtry Carbon International Ltd, Grupo Ferroatlántica, SA, SGL Carbon GmbH (Germany), SGL Carbon GmbH (Austria), SGL Carbon, SGL Carbon, SA, SGL Carbon Polska SA, ThyssenKrupp Steel Europe AG, Tokai erftcarbon GmbH and GrafTech Iberica, SL;*

3. *Orders the European Chemicals Agency (ECHA) to bear its own costs.*

(1) OJ C 85, 22.3.2014.

Judgment of the General Court of 7 October 2015 — Zentralverband des Deutschen Bäckerhandwerks vCommission

(Case T-49/14) (1)

(Protected geographical indication — 'Kołocz śląski' or 'Kołacz śląski' — Cancellation proceedings — Legal base — Regulation (EC) No 510/2006 — Regulation (EU) No 1151/2012 — Grounds for cancellation — Fundamental rights

(2015/C 398/51)

Language of the case: German

Parties

Applicant: Zentralverband des Deutschen Bäckerhandwerks eV (Berlin, Germany) (represented by: I. Jung, M. Teworte-Vey, A. Renvert and J. Saatkamp, lawyers)

Defendant: European Commission (represented by: J. Guillem Carrau and D. Triantafyllou, acting as Agents)

Re:

Action for the annulment of Commission Implementing Decision of 14 November 2013 concerning the rejection of a request to cancel a name entered in the register of protected designations of origin and protected geographical indications provided for in Regulation (EU) No 1151/2012 of the European Parliament and of the Council (Kołocz śląski/kołacz śląski (PGI)) (OJ 2013 L 306, p. 40).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Zentralverband des Deutschen Bäckerhandwerks eV to pay the costs.*

(1) OJ C 112, 14.4.2014.

Judgment of the General Court of 6 October 2015 — Monster Energy v OHIM — Balaguer (icexpresso + energy coffee)

(Case T-61/14) ([1])

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark icexpresso + energy coffee — Earlier Community word marks X-PRESSO MONSTER, HAMMER M X-PRESSO MONSTER ESPRESSO + ENERGY and MIDNIGHT M X-PRESSO MONSTER ESPRESSO + ENERGY — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/52)

Language of the case: English

Parties

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

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 15 November 2013 (Case R 821/2013-2), relating to opposition proceedings between Monster Energy Company and Mr Luis Yus Balaguer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Monster Energy Company to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 129, 28.4.2014.

Judgment of the General Court of 8 October 2015 — Benediktinerabtei St. Bonifaz v OHIM — Andexhser Molkerei Scheitz (Genuß für Leib & Seele KLOSTER Andechs SEIT 1455)

(Case T-78/14) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Genuß für Leib & Seele KLOSTER Andechs SEIT 1455 — Earlier Community figurative mark SEIT 1908 ANDECHSER NATUR and earlier national figurative mark ANDECHSER NATUR — Relative ground of refusal — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/53)

Language of the case: German

Parties

Applicant: Benediktinerabtei St. Bonifaz Körperschaft des öffentlichen Rechts (Munich, Germany) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Poch and S. Hanne, lawyers)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Andexhser Molkerei Scheitz GmbH (Andechs, Germany) (represented by: S. Jackermeier, lawyer).

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 14 November 2013 (Case R 1272/2012-1) relating to opposition proceedings between Andechser Mokerei Scheitz GmbH and Benediktinerabtei St. Bonifaz Körperschaft des öffentlichen Rechts.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Benediktinerabtei St. Bonifaz Körperschaft des öffentlichen Rechts to pay the costs.*

([1]) OJ C 135, 5.5. 2014.

Judgment of the General Court of 8 October 2015 — Secolux v Commission

(Case T-90/14) ([1])

(Public service contracts — Tendering procedure — Safety checks — Rejection of a tenderer's bid — Award of the contract to another tenderer — Non-contractual liability)

(2015/C 398/54)

Language of the case: French

Parties

Applicant: Secolux, Association pour le contrôle de la sécurité de la construction (Capellen, Luxembourg) (represented by: N. Prüm-Carré and E. Billot, lawyers)

Defendant: European Commission (represented by: S. Delaude and S. Lejeune, acting as Agents)

Re:

First, application for annulment of the Commission's decision of 3 December 2013 rejecting the tenders submitted by the applicant in the context of a call for tenders concerning the provision of safety checks services and, secondly, a claim for compensation for the damage allegedly suffered as a result of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Secolux, Association pour le contrôle de la sécurité de la construction, to bear its own costs and to pay those incurred by the European Commission.*

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 13 October 2015 — Commission v Verile and Gjergji

(Case T-104/14 P) (1)

(Appeal — Cross appeal — Civil Service — Officials — Pensions — Transfer of national pension rights — Proposals concerning additional pensionable years — Measure not having an adverse effect — Inadmissibility of the action at first instance — Article 11(2) of Annex VIII to the Staff Regulations — Legal certainty — Legitimate expectation — Equal treatment)

(2015/C 398/55)

Language of the case: French

Parties

Appellant: European Commission (represented by: J. Currall, G. Gattinara and D. Martin, acting as Agents)

Other parties to the proceedings: Marco Verile (Cadrezzate, Italy) and Anduela Gjergji (Brussels, Belgium) (represented initially by: D. de Abreu Caldas, J.-N. Louis and M. de Abreu Caldas, and subsequently by: J.-N. Louis and N. de Montigny, lawyers)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Full Court) of 11 December 2013, *Verile and Gjergji* v *Commission* (F-130/11, ECR, EU:F:2013:195), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Full Court) of 11 December 2013 in Verile and Gjergji v Commission (F-130/11);*

2. *Dismisses the action brought by Mr. Marco Verile and Ms Anduela Gjergji before the Civil Service Tribunal in Case F-130/11;*

3. *Orders Mr. Verile, Ms. Gjergji and the European Commission each to pay their own costs.*

(1) OJ C 151, 19.5.2014.

Judgment of the General Court of 13 October 2015 — Teughels v Commission

(Case T-131/14 P) ([1])

(Appeal — Cross-appeal — Civil service — Officials — Pensions — Transfer of national pension rights — Proposal to add years of pensionable service — Act not having an adverse effect — Inadmissibility of the action at first instance — Article 11(2) of Annex VIII to the Staff Regulations)

(2015/C 398/56)

Language of the case: French

Parties

Appellant: Catherine Teughels (Eppegem, Belgium) (represented by: L. Vogel and B. Braun, lawyers)

Other party to the proceedings: European Commission (represented by: J. Currall and G. Gattinara, Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Full Court) in *Teughels* v *Commission* (F-117/11, ECR-SC, EU:F:2013:196), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 December 2013 in Teughels v Commission (F-117/11).*

2. *Dismisses the action brought by Catherine Teughels before the Civil Service Tribunal in Case F-117/11.*

3. *Orders Ms Teughels to bear her own costs on appeal and to pay those incurred by the European Commission on appeal, and orders the Commission to bear its own costs associated with the cross-appeal.*

4. *Orders Ms Teughels and the Commission each to bear their own costs at first instance.*

([1]) OJ C 159, 26.5.2014.

Judgment of the General Court of 7 October 2015 — Atlantic Multipower Germany v OHIM — Nutrichem Diät + Pharma (NOxtreme)

(Case T-186/14) ([1])

(Community trade mark — Invalidity proceedings — Community word mark NOxtreme — Earlier Community and national figurative marks X-TREME — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 — Genuine use of the earlier mark — Article 43 (2) and (3) of Regulation No 207/2009 — Article 15(2) of Regulation No 207/2009)

(2015/C 398/57)

Language of the case: German

Parties

Applicant: Atlantic Multipower Germany GmbH & Co. OHG (Hambourg, Allemagne) (represented by: W. Berlit, lawyer)

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

The other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Nutrichem Diät + Pharma GmbH (Roth, Germany) (represented by: D. Jochim and R. Egerer, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 January 2014 (case R 764/2013-4), relating to invalidity proceedings between Atlantic Multipower Germany GmbH & Co. OHG and Nutrichem Diät + Pharma GmbH.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Atlantic Multipower Germany GmbH & Co. OHG to pay the costs.*

([1]) OJ C 142, 12.5.2014.

Judgment of the General Court of 7 October 2015 — Sonova Holding v OHIM (Flex)

(Case T-187/14) ([1])

(Community trade mark — Community word mark FLEX — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) and Article 7(2) of Regulation (EC) No 207/2009)

(2015/C 398/58)

Language of the case: English

Parties

Applicant: Sonova Holding AG (Stäfa, Switzerland) (represented by: C. Hawkes, Solicitor)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 12 December 2013 (Case R 357/2013-2), relating to an application for registration of the word sign FLEX as a community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sonova Holding AG to pay the costs.*

(1) OJ C 151, 19.5.2014.

Judgment of the General Court of 7 October 2015 — CBM v OHIM — Aeronautica Militare (Trecolore)

(Case T-227/14) ([1])

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

(2015/C 398/59)

Language of the case: English

Parties

Applicant: CBM Creative Brands Marken GmbH (Zurich, Switzerland) (represented by: U. Lüken, M. Grundmann and N. Kerger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Aeronautica Militare — Stato Maggiore (Rome, Italy)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 January 2014 (Case R 253/2013-1), relating to opposition proceedings between Aeronautica Militare — Stato Maggiore and CBM Creative Brands Marken GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CBM Creative Brands Marken GmbH to pay the costs.*

(1) OJ C 245, 28.7.2014.

Judgment of the General Court of 7 October 2015 — CBM v OHIM — Aeronautica Militare (TRECOLORE)

(Case T-228/14) ([1])

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

(2015/C 398/60)

Language of the case: English

Parties

Applicant: CBM Creative Brands Marken GmbH (Zurich, Switzerland) (represented by: U. Lüken, M. Grundmann and N. Kerger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Aeronautica Militare — Stato Maggiore (Rome, Italy)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 January 2014 (Case R 594/2013-1), relating to opposition proceedings between Aeronautica Militare — Stato Maggiore and CBM Creative Brands Marken GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CBM Creative Brands Marken GmbH to pay the costs.*

([1]) OJ C 245, 28.7.2014.

Judgment of the General Court of 7 October 2015 — The Smiley Company v OHIM (Shape of a face with horns)

(Case T-242/14) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a face with horns — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/61)

Language of the case: English

Parties

Applicant: The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag and C. Albrecht, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 January 2014 (Case R 836/2013-1) concerning an application for registration as a Community trade mark of a three-dimensional sign comprising the shape of a face with horns.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 January 2014 (Case R 836/2013-1) with regard to the refusal to register the mark applied for in respect of 'preserved, frozen, dried and cooked fruits and vegetables; milk products';*

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

3. *Orders the parties to bear their own costs.*

([1]) OJ C 282, 25.8.2014.

Judgment of the General Court of 7 October 2015 — The Smiley Company v OHIM (Shape of a face)

(Case T-243/14) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a face — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/62)

Language of the case: English

Parties

Applicant: The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag and C. Albrecht, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 January 2014 (Case R 837/2013-1) concerning an application for registration as a Community trade mark of a three-dimensional sign comprising the shape of a face.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 January 2014 (Case R 837/2013-1) with regard to the refusal to register the mark applied for in respect of 'preserved, frozen, dried and cooked fruits and vegetables; milk products';*

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

3. *Orders the parties to bear their own costs.*

([1]) OJ C 282, 25.8.2014.

Judgment of the General Court of 7 October 2015 — The Smiley Company v OHIM (Shape of a face in the form of a star)

(Case T-244/14) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a face in the form of a star — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2015/C 398/63)

Language of the case: English

Parties

Applicant: The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag and C. Albrecht, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 January 2014 (Case R 838/2013-1) concerning an application for registration as a Community trade mark of a three-dimensional sign comprising the shape of a face in the form of a star.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 January 2014 (Case R 838/2013-1) with regard to the refusal to register the mark applied for in respect of 'preserved, frozen, dried and cooked fruits and vegetables; milk products';*

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

3. *Orders the parties to bear their own costs.*

([1]) OJ C 282, 25.8.2014.

Judgment of the General Court of 15 October 2015 — Promarc Technics v OHIM — PIS (Part of door)

(Case T-251/14) ([1])

(Community design — Invalidity proceedings — Registered Community design representing part of a door — Earlier international design consisting of an American patent — Ground of invalidity — No individual character — No different overall impression — Evidence that the earlier design was made available to the public — Circles specialised in the sector concerned — Informed user — Degree of freedom of the designer — Article 6, Article 7(1) and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2015/C 398/64)

Language of the case: Polish

Parties

Applicant: Promarc Technics s.c. Tomasz Pokrywa, Rafał Natorski (Zabierzów, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Petrycki i Sorys sp.j. (PIS) (Jasło, Poland) (represented by: D. Kulig, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 29 January 2014 (Case R 1464/2012-3) concerning invalidity proceedings between Petrycki i Sorys sp.j. (PIS) and Promarc Technics s.c. Tomasz Pokrywa, Rafał Natorski.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Promarc Technics s.c. Tomasz Pokrywa, Rafał Natorski to pay the costs*

([1]) OJ C 212, 7.7.2014.

Judgment of the General Court of 7 October 2015 — Cyprus v OHIM (ΧΑΛΛΟΥΜΙ and HALLOUMI)

(Joined Cases T-292/14 and T-293/14) ([1])

(Community trade mark — Applications for Community word marks ΧΑΛΛΟΥΜΙ and HALLOUMI — Absolute ground for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2015/C 398/65)

Language of the case: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz, Barrister, and V. Marsland, Solicitor)

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

Re:

Two actions brought against two decisions of the Fourth Board of Appeal of OHIM of 19 February 2014 (Case R 1849/2013-4 and Case R 1503/2013-4), concerning applications for registration of the word sign ΧΑΛΛΟΥΜΙ and the word sign HALLOUMI, respectively, as Community trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Cyprus to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 245, 28.7.2014.

Judgment of the General Court of 8 October 2015 — Société des produits Nestlé v OHIM (NOURISHING PERSONAL HEALTH)

(Case T-336/14) ([1])

(Community trade mark — International registration designating the European Community — Word mark NOURISHING PERSONAL HEALTH — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009 — Obligation on OHIM to examine the facts of its own motion — Article 76(1) of Regulation No 207/2009)

(2015/C 398/66)

Language of the case: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by: A. Jaeger-Lenz, A. Lambrecht and S. Cobet-Nüse, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 March 2014 (Case R 149/2013-4) concerning the international registration designating the European Community of the word mark NOURISHING PERSONAL HEALTH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Société des produits Nestlé SA to pay the costs.*

(1) OJ C 261, 11.8.2014.

Judgment of the General Court of 7 October 2015 — CBM v OHIM — Aeronautica Militare (TRECOLORE)

(Case T-365/14) (1)

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

(2015/C 398/67)

Language of the case: English

Parties

Applicant: CBM Creative Brands Marken GmbH (Zurich, Switzerland) (represented by: U. Lüken, M. Grundmann and N. Kerger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Aeronautica Militare — Stato Maggiore (Rome, Italy)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 1 April 2014 (Case R 411/2013-5), relating to opposition proceedings between Aeronautica Militare — Stato Maggiore and CBM Creative Brands Marken GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CBM Creative Brands Marken GmbH to pay the costs.*

([1]) OJ C 253, 4.8.2014.

Judgment of the General Court of 7 October 2015 — JP Divver Holding Company v OHIM (EQUIPMENT FOR LIFE)

(Case T-642/14) ([1])

(Community trade mark — International registration designating the European Community — Word mark EQUIPMENT FOR LIFE — Absolute ground for refusal — No distinctive character — Article 7(1) (b) of Regulation (EC) No 207/2009)

(2015/C 398/68)

Language of the case: English

Parties

Applicant: JP Divver Holding Company Ltd (Newry, United Kingdom) (represented by: A. Franke and E. Bertram, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 June 2014 (Case R 64/2014-2) concerning the international registration designating the European Community of the word mark EQUIPMENT FOR LIFE.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders JP Divver Holding Company Ltd to pay the costs.*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 7 October 2015 — Jurašinović v Council

(Case T-658/14) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents exchange with the International Criminal Tribunal for the former-Yugoslavia in the course of legal proceedings — Decision taken following the partial annulment by the Tribunal of the initial decision — Partial refusal of access — Exception relating to the protection of international relations)

(2015/C 398/69)

Language of the case: French

Parties

Applicant: Ivan Jurašinović (Angers, France) (represented by: O. Pfligersdorffer and S. Durieu, lawyers)

Defendant: Council of the European Union (represented by: E. Rebasti and A. Jensen, Agents)

Re:

Application for annulment of the Council decision of 8 July 2014 refusing to grant the applicant full access to certain documents exchanged with the International Criminal Tribunal for the former Yugoslavia in the case against A. Gotovina, taken following the partial annulment of the initial decision by judgment of 3 October 2012 in *Jurašinović* v *Council* (T-63/10, Rec, EU:T:2012:516).

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the action in so far as the form of order seeking annulment of the decision of the Council of the European Union of 8 July 2014 refusing to grant Mr Ivan Jurašinović full access to certain documents exchanged with the International Criminal Tribunal for the former Yugoslavia in the proceedings against Mr A. Gotovina, taken following the partial annulment of the initial decision by judgment of 3 October 2012 in Jurašinović v Council (T-63/10, Rec, EU:T:2012:516) concern Documents No 7, 25, 33, 34 and 36.*

2. *Dismisses the remainder of the action.*

3. *Orders Mr Jurašinović to bear his own costs and to pay those incurred by the Council.*

([1]) OJ C 380, 27.10.2014.

Order of the General Court of 8 October 2015 — Agrotikos Synetairismos Profitis Ilias v Council

(Case T-731/14) ([1])

(Action for annulment — Common Foreign and Security Policy — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Lack of direct concern — Inadmissibility)

(2015/C 398/70)

Language of the case: Greek

Parties

Applicant: Agrotikos Synetairismos Profitis Ilias (Skydra, Greece) (represented by: K. Chrysogonos, lawyer)

Defendant: Council of the European Union (represented by: S. Boelaert and I. Rodios, agents)

Re:

Application for annulment of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Agrotikos Synetairismos Profitis Ilias is to bear its own costs and is ordered to pay the costs incurred by the Council of the European Union;*

3. *There is no need to rule on the application for leave to intervene submitted by the European Commission;*

4. *Agrotikos Synetairismos Profitis Ilias, the Council and the Commission are each to bear their own costs in relation to the application for leave to intervene.*

([1]) OJ C 16, 19.1.2015.

Order of the President of the Fourth Chamber of the General Court of 15 October 2015 — Ahrend Furniture v Commission

(Case T-482/15 R)

(Interim measures — Public procurement — Call for tenders — Provision of furniture — Rejection of a tenderer's bid and award of the contract to another tenderer — Application for interim measures — Prima facie case not made out)

(2015/C 398/71)

Language of the case: French

Parties

Applicant: Ahrend Furniture (Zaventem, Belgium) (represented by: initially, A. Lepièce, V. Dor and S. Engelen, then A. Lepièce, V. Dor, S. Engelen and F. Caillol, lawyers)

Defendant: European Commission (represented by: S. Delaude and J. Estrada de Solà, agents)

Re:

Primarily, an application for a suspension of operation of the Commission's decision by which that institution awarded Lot No 1 of the call for tenders OIB.DR.2/PO/2014/055/622 — 'Provision of furniture' to another tenderer and, in the alternative, an application seeking an order for the production of documents concerning the financial analysis of the tenders and for suspension of operation of that decision until the expiry of a new standstill period of ten days from the date on which those documents are sent.

Operative part of the order

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

2. *The order of 26 August 2015 delivered in Case T-482/15 R is set aside.*

3. *Costs are reserved.*

Action brought on 18 September 2015 — De Capitani v Parlement

(Case T-540/15)

(2015/C 398/72)

Language of the case: English

Parties

Applicant: Emilio De Capitani (Brussels, Belgium) (represented by: O. Brouwer and J. Wolfhagen, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision A(2015)4931 of the European Parliament of 8 July 2015 to refuse full access to documents LIBE-2013-0091-02 and LIBE-2013-0091-03 related to the legislative proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA;

— order the defendant to pay the costs of the procedure, including the costs if any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging an error in law and a misapplication of Article 4(3) first subparagraph of 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 L 145, p. 43).

The applicant puts forward that the Parliament committed an error in law and misapplied Article 4(3) first subparagraph of Regulation 1049/2001 in that:

— access to the requested documents, which are part of the legislative process, does not specifically, effectively and in a non-hypothetical manner undermine the legislative decision-making process;

— the Parliament ignores that, notably after the Lisbon Treaty, legislative preparatory documents are subject to the principle of widest possible access;

— if Article 4(3) would still be applicable to legislative preparatory works after the entry into force of the Lisbon Treaty and of the Charter of Fundamental Rights of the European Union, the Parliament has committed an error in law and misapplied the overriding public interest test.

2. Second plea in law, alleging a failure to state reasons in accordance with Article 296 TFUE.

According to the applicant, the Parliament has failed to state reasons as to why it denied access to the requested documents on the basis of Article 4(3), first subparagraph of Regulation 1049/2001, by not stating reasons as to (i) why full disclosure of the documents requested would effectively and specifically undermine the decision-making process in question, and (ii) why no overriding public interest exists in this case.

Action brought on 22 September 2012 — Guiral Broto v OHIM — Gastro & Soul (Café del Sol)

(Case T-548/15)

(2015/C 398/73)

Language in which the application was lodged: Spanish

Parties

Applicant: Ramón Guiral Broto (Marbella, Spain) (represented by: J. de Castro Hermida, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gastro & Soul GmbH (Hildesheim, Germany)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'Café del Sol' — Application for registration No 6 105 985

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 16 July 2015 in Case R 2755/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and declare the admissibility of the opposition based on the priority trade mark owned by the opposing party, Ramón Guiral Broto, Spanish trade mark No 2348110, falling within Class 42 of the International Classification.

— if the opposition is allowed, confirm the decision of the Opposition Division refusing Community trade mark No 006105985 **CAFÉ DEL SOL** applied for with respect to the 'provision of food and beverages, temporary accommodation and catering', falling within Class 43 of the International Classification, requested by German company Gastro & Soul GmbH; or, in the event that the Court does not have jurisdiction to do so, refer the matter back to the Board of Appeal of the Office for Harmonisation in the Internal Market, with the direction to grant the opposition.

— with respect to the evidence, consider the documents annexed to the present application, numbered 1 to 4, as specified in the attached list of accompanying documents, as having been provided together with the relevant evidence in the administrative procedure.

Pleas in law

— Inconsistency 'extra petitum' of the contested decision, since the applicant did not raise the inadmissibility of the opposition as one of the grounds for the application.

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

Action brought on 25 September 2015 — Bank Refah Kargaran v Council

(Case T-552/15)

(2015/C 398/74)

Language of the case: French

Parties

Applicant: Bank Refah Kargaran (Tehran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should declare:

— that by adopting and maintaining the restrictive measure adopted by the Council of the European Union against BRK, which was annulled by judgment of the General Court of 6 September 2013 (Case T-25/11), the Council of the European Union incurred the non-contractual liability of the European Union;

— that, consequently, the European Union must compensate the applicant for the damage suffered;

— that the material damage amounts to EUR 68 651 318, to which statutory interest must be added, plus any other justified amount;

— that the non-material damage amounts to EUR 52 547 415, to which statutory interest must be added, plus any other justified amount;

— in the alternative, that all or part of the amounts claimed in respect of non-material damage be considered to relate to material damage and be taken into account as such; and

— that the Council must be ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law, two of which relate to the question of the European Union's non-contractual liability and three to the damage resulting from the unlawful act committed by the Council of the European Union.

— As regards the question of the European Union's non-contractual liability

1. First plea in law, alleging that the conduct of which the Council is accused (adoption and maintenance of measure freezing the applicant's funds) is unlawful, as established by judgment of 6 September 2013 in *Bank Refah Kargaran* v *Council*, T-24/11, ECR, EU:T:2013:403.

2. Second plea in law, alleging that the unlawful act committed by the Council is a sufficiently serious breach of rules of law intended to confer rights on individuals.

— As regards the damage resulting from the unlawful act committed by the Council of the European Union

3. Third plea in law, alleging that the applicant's business with institutions situated in the European Union ceased as a result of the freezing of its funds.

4. Fourth plea in law, alleging loss of earnings following the blocking of credit lines.

5. Fifth plea in law, alleging non-material damage.

Action brought on 25 September 2015 — Export Development Bank of Iran v Council

(Case T-553/15)

(2015/C 398/75)

Language of the case: French

Parties

Applicant: Export Development Bank of Iran (Tehran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should hold:

— that by adopting and maintaining in force the restrictive measure adopted by the Council of the European Union against EDBI, annulled by judgment of the General Court of 6 September 2013 (Cases T-4/11 and T-5/11), the Council of the European Union has incurred non-contractual liability on behalf of the European Union;

— that in consequence, the European Union is required to make good the resulting harm suffered by the applicant;

— that the material harm amounts to USD 56 470 860, that is to say EUR 50 508 718 at the current rate, to which sum must be added legal interest and any other sum justified;

— that the non-material harm amounts to USD 74 132 366, that is to say EUR 6 620 613[sic] at the current rate, to which sum must be added legal interest and any other sum justified;

— in the alternative, that all or part of the sums claimed in respect of non-material harm are to be regarded as falling within material harm and are to be recorded as such; and

— that the Council must be ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law, of which two concern the incurring of non-contractual liability on behalf of the European Union and four the harm resulting from the unlawful conduct of the Council of the European Union.

— The incurring of non-contractual liability on behalf of the European Union

1. First plea in law, alleging unlawful conduct on the part of the Council (adoption and maintenance in force of a freezing of the applicant's funds), duly held by judgment of 6 September 2013 in Export Development Bank of Iran v Council, T-4/11 and T-5/11, EU:T:2013:400.

2. Second plea in law, alleging that the unlawful conduct committed by the Council is a sufficiently serious breach of the rules of law intended to confer rights on individuals.

— The harm resulting from the unlawful conduct of the Council of the European Union

3. Third plea in law, alleging the ceasing of documentary credit activities by the applicant as a direct consequence of the unlawful measure.

4. Fourth plea in law, alleging loss of earnings consequent upon the applicant's inability to access its funds frozen in the European Union.

5. Fifth plea in law, alleging the harm consequent upon the interruption to currency transfers.

6. Sixth plea in law, alleging non-material harm.

Action brought on 25 September 2015 — Hungary v Commission

(Case T-554/15)

(2015/C 398/76)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér and G. Koós)

Defendant: European Commission

Form of order sought

— Annul in part Commission Decision C(2015) 4805 of 15 July 2015 on the health contribution of tobacco industry businesses in Hungary insofar as that decision orders the suspension of the application of the progressive tax rate and the tax reduction in the case of investment provided for by Law XCIV of 2014 on the health contribution of tobacco industry businesses (a dohányipari vállalkozások 2015. évi egészségügyi hozzájárulásáról szóló 2014. évi XCIV. törvény) adopted by the Hungarian Parliament, and

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. Misuse of discretion, manifest error of assessment and breach of the principle of proportionality

— First, the applicant argues that, in ordering the suspension, the Commission made a manifest error of assessment and thereby overstepped the bounds of its discretion and breached the principle of proportionality.

2. Breach of the prohibition on discrimination and of the requirement of equal treatment

— Secondly, the applicant argues that the Commission's conduct as regards the suspension can be said to be inconsistent and as a result gives rise to a breach of the prohibition on discrimination and the requirement of equal treatment.

3. Breach of the obligation to state reasons and of the principle of sound administration and rights of the defence

— Thirdly, the applicant takes the view, inter alia, that, in ordering the suspension, the Commission failed to observe the requirement to state reasons.

4. [Breach of] the requirement of sincere cooperation and the right to effective legal remedies

— The applicant takes the view that the suspension ordered by the Commission results in the breach of guaranteed basic rights such as the requirement of sincere cooperation and the right to an effective legal remedy.

5. The provisions of the decision are contradictory and not sufficiently specific

— The applicant states, that in its view, the Commission, in taking the decision, disregarded the fact that in the case of taxes to be determined on the basis of tax returns the Hungarian authorities are unable to prevent the grant of the aid, and that, further, the Commission's decision was contradictory as regards the subject-matter of the suspension. Consequently, it did not define clear rules of conduct, whilst it can none the less require the Hungarian authorities to implement the decision.

Action brought on 25 September 2015 — Hungary v Commission

(Case T-555/15)

(2015/C 398/77)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér and G. Koós)

Defendant: European Commission

Form of order sought

— Annul in part Commission Decision C(2015) 4808 of 15 July 2015 on the 2014 amendment of the Hungarian food chain inspection fee insofar as that decision orders the suspension of the application of the progressive rate of the Hungarian food chain inspection fee.

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea(s) in law.

1. Misuse of discretion, manifest error of assessment and breach of the principle of proportionality

— First, the applicant argues that, in ordering the suspension, the Commission made a manifest error of assessment and thereby overstepped the bounds of its discretion and breached the principle of proportionality.

2. Breach of the prohibition on discrimination and of the requirement of equal treatment

— Secondly, the applicant argues that the Commission's conduct as regards the suspension can be said to be inconsistent and as a result gives rise to a breach of the prohibition on discrimination and the requirement of equal treatment.

3. Breach of the obligation to state reasons and of the principle of sound administration and rights of the defence

— Thirdly, the applicant takes the view, inter alia, that, in ordering the suspension, the Commission failed to observe the requirement to state reasons.

4. [Breach of] the requirement of sincere cooperation and the right to effective legal remedies

— Finally, the applicant takes the view that the suspension ordered by the Commission results in the breach of guaranteed basic rights such as the requirement of sincere cooperation and the right to an effective legal remedy.

Action brought on 25 September 2015 — Portugal v Commission

(Case T-556/15)

(2015/C 398/78)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Fernandes, M. Figueiredo, P. Estêvão and J. Almeida, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

1. annul Commission Decision C(2015)4076 ([1]), in so far as, under the reason 'Weaknesses in the LPIS', it excludes from financing the sum of EUR 137 389 156,95 relating to expenditure declared by the Portuguese Republic under the measure Other Direct Area Aid, in the financial years 2010, 2011 and 2012;

2. order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law based on the following defects:

A — With regard to 2009 and 2010

Infringement of the principle of proportionality and of Article 5 TEU, in that, since the calculations and the assumptions are exactly the same as those which had already been accepted by the Commission in previous enquiries, the Commission's refusal to accept, in a properly reasoned manner, the calculation submitted by the Portuguese authorities, together with the application of a flat-rate correction, despite having found a number of improvements when the Action Plan in the IACS was implemented, constitutes a clear infringement of the principle of sincere cooperation.

B — With regard to 2011:

1. Infringement of the principle of sincere cooperation, in that the Commission, in relation to the defects in the functioning of the LPIS/GIS for 2011, undervalued all the work carried out by the Portuguese authorities, in particular, the measures which they adopted, such as the Action Plan, validated by the certification body and implemented with specific reference to 2011, with the consent and knowledge of the Commission.

2. Infringement of the principle of *audi alteram partem*, in that the notification under Article 11 of Regulation (EC) No 885/06 ([2]) relating to 2011, states that the subject matter of the enquiry concerns the irregularities found in the LPIS, but the decision is based on the unlawful consolidation of entitlements, a subject which is not mentioned in the letter, as is required under Article 11, and as such, the Portuguese authorities did not have the opportunity to express their views.

3. Infringement of Article 11 of Regulation (EC) No 885/06, in that the decision is not properly reasoned, because its grounds/reasoning are inaccurate, and as such, it infringes Article 11(1) of Regulation No 885/06.

C — Increase/Flat-rate correction rates — For 2009 to 2011

Infringement of Article 31(2) of Regulation No 1290/2005 ([3]) and of the principle of proportionality, and the punitive nature of AGRI/61 495/2002- REV1, in that the measures adopted (see decisions) are not appropriate or necessary for the aim pursued and go beyond what is necessary to achieve that purpose, since the Portuguese authorities make the calculation in accordance with the Commission's guidelines and after the Commission decides to apply a flat-rate correction.

([1]) Decision of 22 June 2015 excluding from financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39).

([2]) Commission Regulation (EC) No 885/06 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90).

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

Action brought on 25 September 2015 — Spliethoff's Bevrachtingskantoor/Commission

(Case T-564/15)

(2015/C 398/79)

Language of the case: English

Parties

Applicant: Spliethoff's Bevrachtingskantoor BV (Amsterdam, Netherlands) (represented by: P. Glazener, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 17 July 2015 rejecting the applicant's proposal in response to the call for proposals in the context of the Commission Implementing decision C(2014)1921 final of 26 March 2014 establishing a multi-Annual Work Programme 2014 for financial assistance in the field of Connecting Europe Facility;

— order the Commission to take a new decision with respect to the applicant's proposal, taking account of the judgment of the General Court, within three months from the date of the judgment;

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

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment

   — The assessment of the applicant's proposal is incorrect as regards the award criteria of relevance, impact and quality. With a proper evaluation against those award criteria, the proposal should have been selected for EU co-funding.

2. Second plea in law, alleging an infringement of the principle of equal treatment

   — The Commission has infringed the principle of equal treatment in the contested decision because it has not selected the applicant's proposal, while it has selected other, similar proposals related to emission abatement technologies.

Action brought on 28 September 2015 — Excalibur City v OHIM — Ferrero (MERLIN'S KINDERWELT)

(Case T-565/15)

(2015/C 398/80)

Language in which the application was lodged: English

Parties

Applicant: Excalibur City s.r.o. (Znojmo, Czech Republic) (represented by: E. EnginDeniz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ferrero SpA (Alba, Italy)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'MERLIN'S KINDERWELT' – Application for registration No 11 201 969

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 9 July 2015 in Case R 1538/2014-1

Form of order sought

The applicant claims that the Court should:

— annul in whole the contested decision;

— order OHIM to pay the fees and costs of the proceedings.

Pleas in law

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

— Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 28 September 2015 — Excalibur City v OHIM — Ferrero (MERLIN'S KINDERWELT)

(Case T-566/15)

(2015/C 398/81)

Language in which the application was lodged: English

Parties

Applicant: Excalibur City s.r.o. (Znojmo, Czech Republic) (represented by:E. EnginDeniz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ferrero SpA (Alba, Italy)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'MERLIN'S KINDERWELT'– Application for registration No 11 202 066

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 16 July 2015 in Case R 1617/2014-1

Form of order sought

The applicant claims that the Court should:

— alter the contested decision so as to reject the opposition of the Opponent;

in eventu

— annul the contested decision as well as the decision of the Opposition Division of 26 May 2014, opposition No B 002152844;

— order OHIM to pay the fees and costs of the proceedings.

Pleas in law

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

— Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 24 September 2015 — Morgese e.a. v OHIM — All Star

(Case T-568/15)

(2015/C 398/82)

Language in which the application was lodged: English

Parties

Applicants: Giuseppe Morgese (Barletta, Italy), Pasquale Morgese (Barletta, Italy), Felice D'Onofrio (Barletta, Italy) (represented by: D. Russo, lawyer)

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

Other party to the proceedings before the Board of Appeal: All Star CV (Hilversum, Netherlands)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicants

Trade mark at issue: Community figurative mark containing the word element '2 STAR 2S' — Application for registration No 10 161 065

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 1July 2015 in Case R 1906/2014-5

Form of order sought

The applicants claim that the Court should:

— set aside the Board's Decision and Order;

— the applicants seek an award of costs of this application and the proceedings before the Fifth Board of Appeal together with any further or other relief and/or Order that the Court may consider is appropriate.

Plea in law

— The contested decision reached an erroneous conclusion as to the nature of the marks and the elements thereof, which could impact to a significant degree the relevant consumers.

Action brought on 25 September 2015 — Fondazione Casamica v Commission and EASME

(Case T-569/15)

(2015/C 398/83)

Language of the case: Italian

Parties

Applicant: Fondazione Casamica (Salerno, Italy) (represented by: M. Lamberti, lawyer)

Defendants: Executive Agency for Small and Medium-sized enterprises (EASME), European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested measure: Results of the evaluation — Ineligible proposal. Proposal: A4A, 699442 — Decision ref. Ares (2015)3187639, notified on 29 July 2015, adopted by the European Commission, EASME Executive Agency for Small and Medium-sized enterprises, inasmuch as it is unlawful for the reasons stated;

— declare the proposal to participate, Proposal number A4A, 699442, acronym A4A, title: Archaeology 4 All, to be suitable and admit to the tender procedure the applicant and its partners, within the framework of the consortium formed for the purpose of taking part in that procedure.

Pleas in law and main arguments

The call for proposals forming the subject-matter of this action is intended to establish, define and develop a model for accessible tourism which, after identifying the difficulties linked to disabilities, overcomes them by means of a standard model which represents an appropriate response and may be offered at every site of cultural and archaeological interest.

The eligibility requirements for submitting a project included, in addition to specialised and long-standing experience in the specific sector and in addition to a legal person closely associated with the objectives of the proposal, the presence of a national, regional or local governmental authority.

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

1. First plea in law, concerning the eligibility of the proposal.

   — The Supervisory Authority for Archaeology, Campania (Soprintendenza Archeologia della Campania) is a body recognised as a governmental authority in that it is a local managing department of the Ministry of Cultural Heritage and Activities and Tourism (Ufficio Dirigenziale Periferico del Ministero dei Beni e delle Attività Culturali e del Turismo).

2. Second plea in law, concerning the legal nature of the Soprintendenza, a partner in the consortium

   — In the coordination of departments having general management functions within the Ministry, the Prime Minister, by Decree No 171 of 29 August 2014, recognised the supervisory authorities as local managing departments whose nature, legal form and function derive from and are defined within the legal and administrative structure of the Ministry itself of which they are an integral part; they do not exercise delegated powers and cannot be regarded as bodies which act by delegation on behalf of a government authority.

Action brought on 5 October 2015 — For Tune v OHIM — Gastwerk Hotel Hamburg (fortune)

(Case T-579/15)

(2015/C 398/84)

Language in which the application was lodged: English

Parties

Applicant: For Tune sp. z o.o. (Warszawa, Poland) (represented by: K. Popławska, lawyer)

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

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

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word element 'fortune' — Application for registration No 11 525 491

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 7 August 2015 in Case R 2808/2014-5

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 to pay the costs.

Plea(s) in law

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

Action brought on 1 October 2015 — Syndial v Commission

(Case T-581/15)

(2015/C 398/85)

Language of the case: Italian

Parties

Applicant: Syndial SpA — Attività Diversificate (San Donato Milanese, Italy) (represented by: L. Acquarone and S. Grassi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should (i) annul and/or alter the note of the European Commission — Secretariat-General Ref. Ares (20015)3238796 of 03/08/2015, headed *'Decision of the Secretary General on behalf of the Commission pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001'*, concerning the *'Confirmatory application for access to documents under Regulation (EC) No 1049/2001 — GESTDEM 2015/2796'*, confirming the refusal of the Commission's Directorate-General for Environment, by note ENV.D.2/MC/vf/ARES(2015) of 16 June 2015, to grant the application for access to documents made by Syndial SpA by note INAMB-10/15 of 6 May 2015, sent by certified e-mail on 8 May 2015, and, as a consequence, (ii) find that Syndial is entitled to acquaint itself with the documentation relating to infringement procedure No 2009/4426 and therefore order full or partial disclosure of the documents requested in the application for access made by abovementioned note INAMB-10/15 of 6 May 2015, sent by certified e-mail on 8 May 2015, and/or find that Syndial has the right to be formally heard by the Commission in order to clarify and confirm the information that underpins the infringement procedure in question.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement and/or incorrect application of Article 4(2) of Regulation (EC) No 1049/2001.

— The applicant submits that there has in the present case been an incorrect assessment of the limit to the exception relied on by the Commission to refuse access to the documents relating to infringement procedure No 2009/4426, that limit consisting in the existence of '*an overriding public interest in disclosure*', to which the final part of Article 4(2) of Regulation No 1049/2001 refers.

— The reclamation plan authorised and now completed, which was to be directly implemented by Syndial (the owner of the land), on the site at Cengio, fully complies with Community principles relating to the remediation and rehabilitation of areas affected by historical contamination.

— The position adopted by the Italian Republic in procedure No 2009/4426 appears, unexpectedly, to surrender the public interest pursued at national level by uncritically accepting the Commission's complaints, forgetting that the procedure which culminated in authorisation of the reclamation plan for the site followed the steps laid down at national level for the purpose of obtaining authorisation — and did so before the Ministry which is now challenging its validity. There is therefore an important and overriding public interest within the meaning of Article 4(2) of Regulation 1049/2001 in allowing Syndial to ascertain whether any checks are actually being carried out as to whether there is compliance with Community principles.

— Syndial's requests do not pursue a private interest — which would in any event be legitimate — but rather the, more significant, public interest in ensuring that the propriety and proper conduct of the Community procedure in question and of the domestic administrative procedure are effectively protected (matters which are expressly protected, as regards the Community procedure, under Article 41 of the Charter of Fundamental Rights of the European Union and, as regards the domestic administrative procedure, under Article 97 of the Constitution of the Italian Republic): that interest is related not only to the rights of defence of the individual (directly concerned by the effects of the decisions adopted in the infringement procedure) but, in particular, to the fundamental right to environmental information which is confirmed by the principles of EU law (Article 191(2) and (3), first subparagraph, TFEU in conjunction with the principle in Article 11 TFEU, also given effect by the accession of the European Union to the Aarhus Convention of 27 June 1998).

2. Second plea in law, alleging infringement and/or incorrect application of Article 4(6) of Regulation (EC) No 1049/2001. Unlawful refusal to grant partial access

— The general presumption of non-disclosure provided for in the third indent of Article 4(2) of Regulation No 1049/2001 '*does not exclude the right of interested parties to demonstrate that a specific document disclosure of which has been requested is not covered by that presumption, or that there is an overriding public interest in disclosure of the document by virtue of Article 4(2) of Regulation No 1049/2001*' (judgment in *Sea Handling* v *Commission*, T-456/13, EU:T:2015:185, paragraph 64).

— The present case involves a request for documents whose disclosure is not contrary to any public interest but in fact serves that interest, inasmuch as it is only if access to those documents is granted that it will be possible to obtain information that may be used not only to rebut from a technical and legal point of view the complaints raised in the infringement procedure but also to demonstrate the legitimacy of the procedure that has, in full agreement with the competent bodies, been followed in order to select the most appropriate remediation plan for the former ACNA site at Cengio, in accordance with the Community principles concerning the rehabilitation of sites affected by historical contamination and the sustainability of environmental measures, and to implement that plan.

— Access could have been limited to indicating the documents produced in the procedure by the Italian Republic, following exclusion of the other documents in the case-file.

Action brought on 12 October 2015 — Rose Vision v Commission

(Case T-587/15)

(2015/C 398/86)

Language of the case: Spanish

Parties

Applicant: Rose Vision, S.L. (Pozuelo de Alarcón, Spain) (represented by: J. Marín López, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— first, pursuant to Article 263 TFEU, annul Commission Decision C(2015) 5449 final of 28 July 2015 relating to the recovery of a total amount of EUR 535 613,20, plus interest, owed by Rose Vision;

— second, pursuant to Article 272 TFEU, declare that the Commission has failed to comply with paragraph 1(a) of Article II.14 and paragraph 5 of Article II.22 of the General Conditions of the Seventh Framework Programme ('General Conditions FP7'), in relation to the final audit report 11-INFS-025 and audit 11-BA119-016 concerning Rose Vision and its participation in the project 'Support action to the Integral Satcon Initiative (sISI)', the project 'Implementing cooperation on Future Internet and ICT Components between Europe and Latin America (FIRST)', the project 'Supporting the future of the NEM European Technology Platform (FutureNEM)', the project 'Support Action for the NEM European Technology Platform (4NEM)' and the project 'Structural Funds for Regional Research Advancement (SFERA)';

— third, pursuant to Article 272 TFEU, declare that the final audit report 11-INFS-025 and the audit report 11-A119-016, which are in breach of paragraph 1(a) of Article II.14 and paragraph 5 of Article II.22 of General Conditions FP7, are, in contractual terms, null and void and have no validity or legal effect;

— fourth, pursuant to Article 272 TFEU, in conjunction with the first paragraph of Article 340 TFEU, declare that Rose Vision does not owe the Commission the amount of EUR 535 613,20, plus interest, as referred to in Commission Decision C(2015) 5449 final of 28 July 2015;

— fifth, pursuant to Article 272 TFEU, in conjunction with the first paragraph of Article 340 TFEU, order the Commission to pay Rose Vision the outstanding sums in respect of Rose Vision's participation in the FP7 projects, which currently amount to EUR 195 571,13, for Commission projects sISI, FIRST, FutureNEM, 4NEM and SFERA, and to EUR 217 729,37, plus those amounts that will accrue in the future, for the European Research Agency projects E-Sponder and MaPEer SME. Both amounts, which are provisional and need to be calculated more accurately at a later stage in this procedure, should, in any event, be increased by the interest provided for in paragraph 5 of Article II.5 of General Conditions FP7;

— sixth, pursuant to Article 272 TFEU, in conjunction with the first and second paragraphs of Article 340 TFEU, order the Commission to pay Rose Vision contractual damages arising from breach of paragraph 1(a) of Article II.14, paragraph 5 of Article II.22 and paragraph 3(d) of Article II.5 of General Conditions FP7 and non-contractual damages resulting from Rose Vision's registration in level W2 of the Early Warning System (EWS), in the amount indicated in paragraph 114 of the application or such other amount as the Court should deem equitable.

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 final audit report 11-INFS-025 of 9 October 2012 and the final audit report 11-BA119-016 of 22 April 2013 are in breach of paragraph 1(a) of Article II.4 of General Conditions FP7 in finding that the costs incurred by Rose Vision are not eligible since they are not actual costs.

2. Second plea in law, alleging that the final audit report 11-INFS-025 of 9 October 2012 and the final audit report 11-BA119-016 of 22 April 2013 are in breach of paragraph 5 of Article II.22 of General Conditions FP7.

3. Third plea in law, alleging that the Commission's suspension of payments to Rose Vision in all the projects of the Seventh Framework Programme in which Rose Vision was taking part, as well as the suspension of payments adopted by the Agency as a result of the Commission's decision to suspend payments, constitute a breach of paragraph 3 of Article II.5 of General Conditions FP7.

4. Fourth plea in law, alleging that the activation of EWS at level W2 with respect to Rose Vision lacks any legal basis, in accordance with the test approved by the judgment of the General Court of 22 April 2012 in Case T-320/09 *Planet* v *Commission*.

Action brought on 13 October 2015 — Transavia Airlines v Commission

(Case T-591/15)

(2015/C 398/87)

Language of the case: Dutch

Parties

Applicant: Transavia Airlines (Schiphol, Netherlands) (represented by: R. Elkerbout and M. R. Baneke, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1(3) and (in so far as they concern Article 1(3)) Articles 3, 4 and 5 of the decision of the European Commission; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (notified under document C(2014) 5085) (OJ 2015 L 201, p. 109).

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

1. First plea in law, alleging infringement of the principle of good administration, set out in Article 41 of the Charter of Fundamental Rights of the European Union, and of the rights of the defence.

   — The applicant was not, before the contested decision was adopted, given the opportunity to put forward its views.

   — The Commission was not entitled to deny the applicant's request of 25 August 2015 for access to certain documents on the file.

2. Second plea in law, alleging breach of Article 107(1) TFEU inasmuch as the alleged aid measures were wrongly attributed to the French State.

   — The Commission erred in classifying the 'chambre de commerce et d'industrie de Pau-Béarn' as a State body.

   — The Commission contradicts itself in its assessment of the character of the 'chambre de commerce et d'industrie de Pau-Béarn'.

3. Third plea in law, alleging breach of Article 107(1) TFEU inasmuch as the test of the operator in a market economy was applied incorrectly.

   — The Commission provided insufficient reasons as to why it applied the profitability test rather than making a comparison with the market price.

   — The Commission applied the profitability test incorrectly in disregarding the rationale of Pau Airport in accepting the agreement with the applicant, in adopting too short a time-frame and in not making it clear what revenue and benefits for Pau Airport it was taking into account.

4. Fourth plea in law, alleging breach of Article 107(1) TFEU inasmuch as the Commission unduly found that the alleged economic advantage was selective.

5. Fifth plea in law, alleging breach of Article 107(1) TFEU inasmuch as the Commission failed to assess whether the alleged economic advantages also had actual adverse effects on competition.

6. Sixth plea in law, alleging breach of Article 107(1) TFEU and of Article 108(2) TFEU inasmuch as the Commission made an error of assessment and misinterpreted the law in determining that the aid provided to the applicant was equivalent to the cumulative losses for Pau Airport over the period from 2006 to 2009, whereas it ought to have examined what advantage the applicant actually enjoyed in practice.

Action brought on 14 October 2015 — Metabolic Balance Holding GmbH v OHIM (Metabolic Balance)

(Case T-594/15)

(2015/C 398/88)

Language of the case: German

Parties

Applicant: Metabolic Balance Holding GmbH (Isen, Germany) (represented by: W. Riegger, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word element 'Metabolic Balance' — Application for registration No 12 586 137

Contested decision: Decision of the First Board of Appeal of OHIM of 12 August in Case R 2156/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs, including those of the proceedings before the Board of Appeal.

Pleas in law

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

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

Order of the General Court of 13 October 2015 — Mabrouk v Council

(Case T-218/14) ([1])

(2015/C 398/89)

Language of the case: English

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

([1]) OJ C 194, 24.6.2014.

Order of the General Court of 13 October 2015 — Pelikan v OHIM — RMP (be.bag)

(Case T-517/14) ([1])

(2015/C 398/90)

Language of the case: English

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

([1]) OJ C 448, 15.12.2014.

Order of the General Court of 14 October 2015 — Montenegro v OHIM (Shape of a bottle)

(Case T-748/14) ([1])

(2015/C 398/91)

Language of the case: English

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

([1]) OJ C 7, 12.1.2015.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 21 October 2015 — AQ v Commission

(Case F-57/14) ([1])

(Civil Service — Officials — Regulation No 45/2001 — Processing of personal data acquired for private purposes — Administrative enquiry — Disciplinary procedure — Rights of the defence — Duty to state reasons — Disciplinary penalty — Proportionality)

(2015/C 398/92)

Language of the case: French

Parties

Applicant: AQ (represented initially by: L. Massaux, lawyer, and subsequently by: H. Mignard, lawyer)

Defendant: European Commission (represented by: J. Currall and C. Ehrbar, acting as Agents)

Re:

Application to annul the decision to impose a disciplinary penalty consisting of a reprimand following a disciplinary enquiry and application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 421, 24.11.2014, p. 60.

Order of the Civil Service Tribunal (Second Chamber) of 21 October 2015 — Arsène v Commission

(Case F-89/14) ([1])

(Civil Service — Remuneration — Expatriation allowance — Condition set out in Article 4(1)(b) of Annex VII to the Staff Regulations — Ten-year reference period — Starting point — Disregarding of periods of duty in the service of an international organisation — Application by analogy of the provisions of Article 4(1)(a) of Annex VII to the Staff Regulations — Usual residence outside the State of employment before performing duties in the service of an international organisation — Article 81 of the Staff Regulations — Action manifestly unfounded)

(2015/C 398/93)

Language of the case: French

Parties

Applicant: Maria Lucia Arsène (Bucarest, Romania) (represented by: M.-A. Lucas, lawyer)

Defendant: European Commission (represented by: J. Currall and T.S. Bohr, acting as Agents)

Re:

Application for annulment of the Commission's decision to refuse the applicant the expatriation allowance and for an order that it pay that allowance, together with interest, from the date of the applicant's entry into service.

Operative part of the order

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

2. *Ms Arsène shall bear her own costs and pay the costs incurred by the European Commission.*

([1]) OJ C 421, 24.11.2014, p. 62.

Action brought on 21 September 2015 — ZZ v Commission

(Case F-123/15)

(2015/C 398/94)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the selection board in competition EPSO/AD/293/14 not to award the applicant a sufficient number of points for admission to the assessment centre.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 11 June 2015 by which the selection board in competition EPSO/AD/293/14 refused to admit the applicant to the selection tests held at the assessment centre;

— order the Commission to pay the costs.

Action brought on 22 September 2015 — ZZ v Commission

(Case F-125/15)

(2015/C 398/95)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision not to promote the applicant to grade AD 8 in the 2014 promotion exercise and compensation for the non-material damage which the applicant claims to have suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the appointing authority of 14 November 2014 not to promote the applicant in the 2014 promotion exercise;

— order the European Commission to pay EUR 15 000 by way of compensation for the non-material damage suffered;

— order the Commission to pay the costs.

Order of the Civil Service Tribunal of 20 October 2015 — Drakeford v EMA

(Case F-29/13) ([1])

(2015/C 398/96)

Language of the case: French

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

([1]) OJ C 207, 20.7.2013, p. 57.

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