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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Corte Suprema di cassazione (Italy) lodged on 21 February 2014 — Agenzia delle Entrate v Aquapur Multiservizi SpA

(Case C-307/14)

(2016/C 027/02)

Language of the case: Italian

Referring court

Corte Suprema di cassazione

Parties to the main proceedings

Applicant: Agenzia delle Entrate

Defendant: Aquapur Multiservizi SpA

Questions referred

By order of 18 November 2015 the President of the Court has ordered that the case be removed from the register.

Appeal brought on 18 September 2015 by Rainer Typke against the judgment of the General Court (Third Chamber) delivered on 2 July 2015 in Case T-214/13: Rainer Typke v European Commission

(Case C-491/15 P)

(2016/C 027/03)

Language of the case: English

Parties

Appellant: Rainer Typke (represented by: C. Cortese, avocate)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside points 2 and 3 of the operative part of the General Court judgment of 2 July 2015 in the case T-214/13, Typke v. European Commission;

— Annul the decision adopted by the Secretary-General of the European Commission in procedure Gestdem 2012/3258

— Condemn the Commission to pay the appellant's costs in both first and second instance judicial proceedings.

Pleas in law and main arguments

In support of the appeal, the appellant relies on a single plea in law, articulated in two main branches.

First, the General Court erred in interpreting Regulation 1049/2001 ([1]), and in particular its articles 3 a) and 4, paragraph 6, because it assumed that the application of the relevant articles to normalized relational databases requires a distinction between partial access to documents stored in a relational database, and bare access to information contained in it. The latter would not be covered by the Regulation's provisions on access, as it would allegedly amount to the creation of a new document. In particular, the General Court erred in concluding essentially that Regulation 1049/2001 would exclude from its scope of application a request for access to a normalized relational database requiring the formulation of an SQL search query not previously used by the requested Institution 'on a more or less regular basis for the database at issue' *and* 'pre-programmed', as this would allegedly not involve a search to be carried using the search tools available for the database in question, and would therefore imply the creation of a new document.

Second, the General Court erred in stating that the applicant's request did not refer to an existing document, and in any case was not included in the field of application of Regulation 1049/2001, based on the following false assumptions:

— it would not be possible for the requested Institution to answer positively to the application for access, as existing documents would be unsuitable to match the request (first instance judgement, paragraph 73) or as access to them was allegedly not requested by the applicant (first instance judgement, paragraph 67)

— the applicant's request would be framed according to a classification not supported by the relevant database, in particular because of the data processing operations they would require (first instance judgement, paragraphs 58, 66, 68; 62, 63)

— it would imply the creation of a new document containing information in a new format and according to selection criteria specified by the applicant (first instance judgement, paragraphs 61, 67)

In making all the statements criticized in the present paragraph, moreover, the General Court distorted the clear sense of evidence lodged and available before it. The same is true for the statement made by the General Court that a presumption of legality would apply in the present case as to the statement of the requested Institution that documents to which access was requested did not exist (first instance judgement, paragraph 66).

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

Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 22 September 2015 — Euro-Team Kft. v Budapest Rendőrfőkapitánya

(Case C-497/15)

(2016/C 027/04)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Euro-Team Kft.

Defendant: Budapest Rendőrfőkapitánya

Questions referred

1) Must the requirement for proportionality laid down in Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures ([1]) ('the Eurovignette Directive') be interpreted as meaning that it precludes a system of penalties such as that laid down in Annex 9 to Decree No 410/2007 of 29 December on the list of traffic offences subject to the penalty of an administrative fine, the amount of the fines that may be imposed in the event of breach of the relevant provisions, the system of imposing those fines and the conditions for participating in controls [a közigazgatási bírsággal sújtandó közlekedési szabályszegések köréről, az e tevékenységekre vonatkozó rendelkezések megsértése esetén kiszabható bírságok összegéről, felhasználásának rendjéről és az ellenőrzésben történő közreműködés feltételeiről szóló 410/2007. (XII. 29.) Korm. Rendelet] ('the Law on penalties') which provides for the imposition of a fine at a certain amount — unrelated to the gravity of the offence — in the event of failure to comply with the requirements relating to the acquisition of a route ticket?

2) Does Paragraph 9 of the Law on penalties comply with the requirement imposed by Article 9a of the Eurovignette Directive, according to which penalties established under national law must be effective, proportionate and dissuasive?

3) Must the requirement for proportionality laid down in Article 9a of the Eurovignette Directive be interpreted as precluding, on the one hand, a system of penalties such as that at issue in the main proceedings, which provides for the strict liability of the person responsible for an offence and, on the other hand, the amount of the fine laid down under that system?

([1]) Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42).

Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 22 September 2015 — Spirál-Gép Kft. v Budapest Rendőrfőkapitánya

(Case C-498/15)

(2016/C 027/05)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Spirál-Gép Kft.

Defendant: Budapest Rendőrfőkapitánya

Questions referred

1) Must the requirement for proportionality laid down in Article 9*a* of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures ([1]) ('the Eurovignette Directive') be interpreted as meaning that it precludes a system of penalties such as that laid down in Annex 9 to Decree No 410/2007 of 29 December on the list of traffic offences subject to the penalty of an administrative fine, the amount of the fines that may be imposed in the event of breach of the relevant provisions, the system of imposing those fines and the conditions for participating in controls [a közigazgatási bírsággal sújtandó közlekedési szabályszegések köréről, az e tevékenységekre vonatkozó rendelkezések megsértése esetén kiszabható bírságok összegéről, felhasználásának rendjéről és az ellenőrzésben történő közreműködés feltételeiről szóló 410/2007. (XII. 29.) Korm. Rendelet] ('the Law on penalties') which provides for the imposition of a fine at a certain amount — unrelated to the gravity of the offence — in the event of failure to comply with the requirements relating to the acquisition of a route ticket?

2) Does Paragraph 9 of the Law on penalties comply with the requirement imposed by Article 9*a* of the Eurovignette Directive, according to which penalties established under national law must be effective, proportionate and dissuasive?

3) Must the requirement for proportionality laid down in Article 9*a* of the Eurovignette Directive be interpreted as precluding, on the one hand, a system of penalties such as that at issue in the main proceedings, which provides for the strict liability of the person responsible for an offence and, on the other hand, the amount of the fine laid down under that system?

([1]) Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42).

Request for a preliminary ruling from the Prekršajni Sud u Bjelovaru (Croatia) lodged on 25 September 2015 — Renata Horžić v Privredna banka Zagreb, Božo Prka

(Case C-511/15)

(2016/C 027/06)

Language of the case: Croatian

Referring court

Prekršajni Sud u Bjelovaru

Parties to the main proceedings

Applicant: Renata Horžić

Defendants: Privredna banka Zagreb, Božo Prka

Questions referred

1. May the retrospective application of the law [on consumer credit] be interpreted and determined exclusively in accordance with the provisions of that law, and is such an application of the law [on consumer credit] consistent with EU law, in particular Article 30 of Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008, ([1]) the first paragraph of which expressly states that that directive does not apply to credit agreements concluded before the entry into force of national legislation that transposed the directive into national law?

2. May the criminal provision of Article 26(1)(28) of the Croatian law on consumer credit, in the context described above, be interpreted consistently with Article 23 of the directive and in the light of the transitory provisions in Article 30 thereof, as meaning that the penalties laid down for breach of a national provision adopted on the basis of the directive in question may not be applied to breaches that may be found in respect of credit agreements ongoing at the date of the implementation of the national implementing measures?

(1) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Request for a preliminary ruling from the Prekršajni Sud u Bjelovaru (Croatia) lodged on 25 September 2015 — Siniša Pušić v Privredna banka Zagreb, Božo Prka

(Case C-512/15)

(2016/C 027/07)

Language of the case: Croatian

Referring court

Prekršajni Sud u Bjelovaru

Parties to the main proceedings

Applicant: Siniša Pušić

Defendants: Privredna banka Zagreb, Božo Prka

Questions referred

1. May the retrospective application of the law [on consumer credit] be interpreted and determined exclusively in accordance with the provisions of that law, and is such an application of the law [on consumer credit] consistent with EU law, in particular Article 30 of Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008, (1) the first paragraph of which expressly states that that directive does not apply to credit agreements concluded before the entry into force of national legislation that transposed the directive into national law?

2. May the criminal provision of Article 26(1)(28) of the Croatian law on consumer credit, in the context described above, be interpreted consistently with Article 23 of the directive and in the light of the transitory provisions in Article 30 thereof, as meaning that the penalties laid down for breach of a national provision adopted on the basis of the directive in question may not be applied to breaches that may be found in respect of credit agreements ongoing at the date of the implementation of the national implementing measures?

(1) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Request for a preliminary ruling from the Rechtbank Midden-Nederland (Netherlands) lodged on 5 October 2015 — Stichting Brein v Jack Frederik Wullems, currently trading under the name Filmspeler

(Case C-527/15)

(2016/C 027/08)

Language of the case: Dutch

Referring court

Rechtbank Midden-Nederland

Parties to the main proceedings

Applicant: Stichting Brein

Defendant: Jack Frederik Wullems, currently trading under the name Filmspeler

Questions referred

1) Must Article 3(1) of the Copyright Directive ([1]) be interpreted as meaning that there is 'a communication to the public' within the meaning of that provision, when someone sells a product (mediaplayer) in which he has installed add-ons containing hyperlinks to websites on which copyright-protected works, such as films, series and live broadcasts are made directly accessible, without the authorisation of the right holders?

2) Does it make any difference

— whether the copyright-protected works as a whole have not previously been published on the internet or have only been published through subscriptions with the authorisation of the right holder?

— whether the add-ons containing hyperlinks to websites on which copyright-protected works are made directly accessible without the authorisation of the right holders are freely available and can also be installed in the mediaplayer by the users themselves?

— whether the websites and thus the copyright-protected works made accessible thereon — without the authorisation of the right holders — can also be accessed by the public without the mediaplayer?

3) Should Article 5 of the Copyright Directive (Directive 2001/29/EC) be interpreted as meaning that there is no 'lawful use' within the meaning of Article 5(1)(b) of that Directive if a temporary reproduction is made by an end user during the streaming of a copyright-protected work from a third-party website where that copyright-protected work is offered without the authorisation of the right holder(s)?

4) If the answer to question 1) is in the negative, is the making of a temporary reproduction by an end user during the streaming of a copyright-protected work from a website where that copyright-protected work is offered without the authorisation of the right holder(s) then contrary to the 'three-step test' referred to in Article 5(5) of the Copyright Directive (Directive 2001/29/EC)?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 13 October 2015 — Tele2 (Netherlands) BV and Others v Autoriteit Consument en Markt (ACM), Other party: European Directory Assistance NV

(Case C-536/15)

(2016/C 027/09)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Tele2 (Netherlands) BV, Ziggo BV, Vodafone Libertel BV

Respondent: Autoriteit Consument en Markt (ACM)

Other party: European Directory Assistance NV

Questions referred

1) Must Article 25(2) of Directive 2002/22/EC ([1]) be interpreted as meaning that requests should be understood to include a request from a company established in another Member State, which requests information for the purposes of the provision of publicly available telephone directory enquiry services and directories which are provided in that Member State and/or in other Member States?

2) If question 1 is answered in the affirmative: may a provider who makes telephone numbers available, and who is obliged under national legislation to request a subscriber's consent prior to inclusion in standard telephone directories and standard directory enquiry services, differentiate in the request for consent on the basis of the non-discrimination principle according to the Member State in which the company requesting the information as referred to in Article 25(2) of Directive 2002/22/EC provides the telephone directory and directory enquiry service?

([1]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 15 October 2015 — Daniel Bowman v Pensionsversicherungsanstalt

(Case C-539/15)

(2016/C 027/10)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Daniel Bowman

Defendant: Pensionsversicherungsanstalt

Questions referred

1. Is Article 21 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 2(1) and (2) and Article 6 of Council Directive 2000/78/EC ([1]), and also having regard to Article 28 of the Charter of Fundamental Rights, to be interpreted as meaning that

   a) a provision in a collective agreement which provides for a longer period for incremental advancement for employment at the start of a career, thereby making it more difficult to advance to the next salary step, constitutes an indirect difference in treatment based on age,

b) and, if such is the case, that such a rule is appropriate and necessary in the light of the limited professional experience at the start of a career?

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 20 October 2015 — Interservice d.o.o. Koper v Sándor Horváth

(Case C-547/15)

(2016/C 027/11)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Interservice d.o.o. Koper

Defendant: Sándor Horváth

Questions referred

1. Must Article 96(2) of Regulation (EEC) No 2913/92 (1) establishing the Community Customs Code be interpreted as meaning that not only the person who enters into a transport agreement with the seller for the transport of the goods (the contractual or main carrier), but also the person who carries out the transport, in full or in part, on the basis of another transport agreement concluded with the contractual or main carrier (the transport subcontractor), is to be regarded as a carrier of the goods?

2. If the first question is answered in the affirmative, must Article 96(2) of Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, in a case such as that in the main proceedings, the transport subcontractor is required, before continuing the transport of the goods, to ensure in a satisfactory manner that the main carrier actually produced the goods at the customs office of destination in the manner prescribed?

(1) Corrigendum to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302) (OJ 2014 L 367, p. 126).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 26 October 2015 — Undis Servizi Srl v Comune di Sulmona

(Case C-553/15)

(2016/C 027/12)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Undis Servizi Srl

Defendant: Comune di Sulmona

Questions referred

1. When the 'essential activity' undertaken by the controlled body is assessed, must an activity imposed on it by a non-shareholder public administration and undertaken in favour of non-shareholder public bodies also be taken into account?

2. When the 'essential activity' undertaken by the controlled body is assessed, must the contracts awarded to shareholder public bodies before the requirement of 'similar control' became applicable also be taken into account?

Request for a preliminary ruling from the Audiencia Provincial de Cantabria (Spain) lodged on 27 October 2015 — Lucas Jerónimo García Almodovar and Catalina Molina Moreno v Banco de Caja España de Inversiones, Salamanca y Soria, S.A.U.

(Case C-554/15)

(2016/C 027/13)

Language of the case: Spanish

Referring court

Audiencia Provincial de Cantabria

Parties to the main proceedings

Appellants: Lucas Jerónimo García Almodovar and Catalina Molina Moreno

Respondent: Banco de Caja España de Inversiones, Salamanca y Soria, S.A.U.

Questions referred

1. Is the limiting of the retroactive effects of the nullity, on grounds of unfairness, of a 'floor clause' inserted in a consumer contract compatible with the principle that unfair terms are not to be binding on the consumer and with Articles 6 and 7 of Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts?

2. Is the maintaining of the effects produced by a 'floor clause' declared void because unfair, inserted in a consumer contract, compatible with Articles 6 and 7 of Directive [93/13]?

3. Is the limitation of the retroactive effects of the nullity on grounds of unfairness of a 'floor clause' inserted in a consumer contract because of a finding that there is a risk of serious difficulties with implications for the economic public order and because of good faith compatible with Articles 6 and 7 of Directive [93/13]?

4. If the reply to the previous question is in the affirmative, when the consumer against whom enforcement is sought lodges an objection to mortgage enforcement proceedings on the grounds of the unfairness of a contractual term inserted in the consumer contract which forms the basis of the enforcement proceedings or which determined the amount payable, is it compatible with Articles 6 and 7 of Directive [93/13] for it to be assumed that there is a risk of serious difficulties for the economic public order, or must that risk be assessed and evaluated in the light of the specific economic data from which it is inferred that granting retroactive effects to a ruling that an unfair term is null and void has macro-economic consequences?

5. In turn, when the consumer against whom enforcement is sought lodges an objection to mortgage enforcement proceedings on the grounds of the unfairness of a contractual term inserted in the consumer contract which forms the basis of the enforcement proceedings or which determined the amount payable, is it compatible with Articles 6 and 7 of Directive [93/13] for the risk of serious difficulties for the economic public order to be assessed in the light of the economic effects that might be engendered by the potential bringing of an individual action or lodging of an objection to enforcement by a large number of consumers on the grounds that the clause is unfair, or, on the contrary, must that risk to be assessed in the light of the financial effect on the economy of the specific objection to enforcement brought by the consumer against whom enforcement is sought?

6. If the reply to the third question is in the affirmative, is abstract evaluation of the conduct of any seller or supplier for the purposes of assessing good faith compatible with Articles 6 and 7 of Directive [93/13]?

7. Or, on the contrary, on construing Article 6 of Directive [93/13], must that good faith be examined and evaluated in every specific case, in the light of the specific conduct of the seller or supplier when concluding the contract and inserting the unfair term in the contract?

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

Request for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 4 November 2015 — Carrefour Hypermarchés SAS v ITM Alimentaire International SASU

(Case C-562/15)

(2016/C 027/14)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Appellant: Carrefour Hypermarchés SAS

Respondent: ITM Alimentaire International SASU

Questions referred

1. Whether Article 4(a) and (c) of Directive 2006/114/EC of 12 December 2006 (1) …, which provides that '[c]omparative advertising shall … be permitted when … it is not misleading [and] it objectively compares one or more material, relevant, verifiable and representative features of those goods and services', must be interpreted as meaning that a comparison of the price of goods sold by retail outlets is permitted only if the goods are sold in shops having the same format or of the same size;

2. Whether the fact that the shops whose prices are compared are of different sizes and formats constitutes material information within the meaning of Directive 2005/29/EC (2) that must necessarily be brought to the knowledge of the consumer;

3. If so, to what degree and/or via what medium must that information be disseminated to the consumer?

(1) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ 2006 L 376, p. 21).

(2) 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') (OJ 2005 L 149, p. 22).

Request for a preliminary ruling from the Vilniaus apygardos teismas (Lithuania) lodged on 2 November 2015 — LitSpecMet UAB v Vilniaus lokomotyvų remonto depas UAB

(Case C-567/15)

(2016/C 027/15)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos teismas

Parties to the main proceedings

Applicant: LitSpecMet UAB

Defendant: Vilniaus lokomotyvų remonto depas UAB

Third party: Plienmetas UAB

Questions referred

Must Article 1(9) of Directive 2004/18/EC (1) be interpreted as meaning that a company:

— which has been founded by a contracting authority which engages in activity in the field of rail transport, namely: management of public railway infrastructure; passenger and freight transportation;

— which independently engages in business activity, establishes a business strategy, adopts decisions concerning the conditions of the company's activity (product market, customer segment and so forth), participates in a competitive market throughout the European Union and outside the EU market, providing the services of rolling stock manufacture and rolling stock repair, and participates in procurement procedures connected with that activity, seeking to obtain orders from third parties (not the parent company);

— which provides rolling stock repair services to its founder on the basis of in-house transactions and the value of those services represents 90 per cent of the company's entire activity;

— whose services provided to its founder are intended to ensure the founder's passenger and freight transportation activity;

is not to be considered to be a contracting authority?

If the Court of Justice of the European Union determines that the company is to be considered to be a contracting authority in the circumstances set out above, must Article 1(9) of Directive 2004/18/EC be interpreted as meaning that the company loses the status of contracting authority where the value of the rolling stock repair services provided on the basis of in-house transactions to the contracting authority which is the company's founder falls and constitutes less than 90 per cent or not the main part of the total financial turnover from the company's activity?

([1]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 2 November 2015 — F. Hoffmann-La Roche AG v Accord Healthcare OÜ

(Case C-572/15)

(2016/C 027/16)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: F. Hoffmann-La Roche AG

Defendant: Accord Healthcare OÜ

Questions referred

1) Must Article 21(2) of Regulation No 469/2009 ([1]) of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified version) be interpreted as shortening the duration of a supplementary protection certificate issued in a Member State which was issued under national law before the accession of the State in question to the European Union and whose duration in relation to an active substance, as stated in the supplementary protection certificate, would be longer than 15 years from the time when the first marketing authorisation in the Union was granted for a medicinal product consisting of the active substance or containing it?

2) If the answer to the first question is in the affirmative, is Article 21(2) of Regulation No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified version) compatible with EU law, in particular the general principles of EU law on the protection of acquired rights, the principle of the prohibition of retroactive effect of law, and the Charter of Fundamental Rights of the European Union?

([1]) OJ 2009 L 152, p. 1.

Request for a preliminary ruling from the Administrativen sad Veliko Tarnovo (Bulgaria) lodged on 9 November 2015 — ET 'Maya Marinova' v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na natsionalnata agentsia za prihodite

(Case C-576/15)

(2016/C 027/17)

Language of the case: Bulgarian

Referring court

Administrativen sad Veliko Tarnovo

Parties to the main proceedings

Applicants: ET 'Maya Marinova'

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na natsionalnata agentsia za prihodite

Questions referred

1. Must Article 273, Article 2(1)(a), Article 9(1) and Article 14(1) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax, taken together, having regard to the principles of fiscal neutrality and proportionality, be interpreted as meaning that a Member State is to be entitled to treat the actual absence of goods which were transferred to a taxable person by way of taxable supplies as subsequent taxable supplies of those goods for consideration by that taxable person, without the recipient of those goods being identified, where the aim is to prevent VAT evasion?

2. Must the provisions referred to in Question 1, having regard to the principles of fiscal neutrality and proportionality, be interpreted as meaning that a Member State is to be entitled to treat the failure by a taxable person to record tax-relevant documents relating to taxable supplies received in the manner described above, where this serves the same aim?

3. Must Article 273, Article 73 and Article 80 of Directive 2006/112/EC, taken together, having regard to the principles of equal treatment and proportionality, be interpreted as meaning that Member States are to be entitled, on the basis of national provisions which do not serve to transpose the VAT Directive, to determine taxable amounts for supplies of goods by a taxable person in a way which diverges from the general rule provided for in Article 73 of the VAT Directive and the exceptions expressly provided for in Article 80 of that directive, where the aim is, first, to prevent VAT evasion and, secondly, to determine a taxable amount for the transactions concerned that is a reliable as possible?

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

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 6 November 2015 — Openbaar Ministerie v Daniel Adam Popławski

(Case C-579/15)

(2016/C 027/18)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Daniel Adam Popławski

Questions referred

1. May a Member State transpose Article 4(6) of Framework Decision 2002/584/JHA ([1]) in its national law in such a way that:

   — its executing judicial authority is, without more, obliged to refuse surrender, for purposes of executing a sentence, of a national or resident of the executing Member State,

— by operation of law, that refusal gives rise to the willingness to take over the execution of the custodial sentence imposed on the national or resident,

— but the decision to take over execution of the sentence is taken only after refusal of surrender for purposes of executing the sentence, and a positive decision is dependent on (1) a basis for the decision in a treaty or convention which is in force between the issuing Member State and the executing Member State, (2) the conditions set by that treaty or convention, and (3) the cooperation of the issuing Member State by, for example, making a request to that effect,

with the result that there is a risk that, following refusal of surrender for purposes of executing the sentence, the executing Member State cannot take over execution of that sentence, while that risk does not affect the obligation to refuse surrender for purposes of executing the sentence?

2. If the answer to Question 1 is in the negative:

(a) Can the national courts apply the provisions of Framework Decision 2002/584/JHA directly even though, under Article 9 of Protocol (No 36) on transitional provisions, the legal effects of that Framework Decision are preserved after the entry into force of the Treaty of Lisbon until that Framework Decision is repealed, annulled or amended?

(b) If so, is Article 4(6) of Framework Decision 2002/584/JHA sufficiently precise and unconditional to be applied by the national courts?

3. If the answers to Questions 1 and 2(b) are in the negative: may a Member State whose national law requires that the taking-over of the execution of the foreign custodial sentence must be based on an appropriate treaty or convention transpose Article 4(6) of Framework Decision 2002/584/JHA in its national law in such a way that Article 4(6) of Framework Decision 2002/584/JHA itself provides the required conventional basis, in order to avoid the risk of impunity associated with the national requirement of a conventional basis (see Question 1)?

4. If the answers to Questions 1 and 2(b) are in the negative: may a Member State transpose Article 4(6) of Framework Decision 2002/584/JHA in its national law in such a way that:

for refusal of surrender for purposes of executing a sentence in respect of a resident of the executing Member State who is a national of another Member State, it sets the condition that the executing Member State must have jurisdiction in respect of the offences cited in the EAW [European arrest warrant] and that there must be no actual obstacles in the way of a (possible) criminal prosecution in the executing Member State of that resident in respect of those offences (such as the refusal by the issuing Member State to hand over the case-file to the executing Member State),

whereas it does not set such a condition for refusal of surrender for purposes of executing a sentence in respect of a national of the executing Member State?

(1) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1).

Action brought on 10 November 2015 — European Commission v Czech Republic

(Case C-581/15)

(2016/C 027/19)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: Z. Malůšková, J. Hottiaux, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by failing to set up a national electronic register of road transport undertakings and failing to connect it to the national electronic registers of the other Member States, the Czech Republic has failed to fulfil its obligations under Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

In support of its application, the Commission puts forward the following arguments:

The Czech Republic did not, by 30 June 2015, when the period laid down in the reasoned opinion expired, set up a national electronic register of road transport undertakings and did not connect it to the national electronic registers of the other Member States, as it should have done in accordance with Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC ([1]).

([1]) OJ 2009 L 300, p. 51.

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 11 November 2015 — Openbaar Ministerie v Gerrit van Vemde

(Case C-582/15)

(2016/C 027/20)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Gerrit van Vemde

Question referred

Must the first sentence of Article 28(2) of Framework Decision 2008/909/JHA ([1]) be understood as meaning that the declaration referred to therein may relate only to judgments issued before 5 December 2011, irrespective of when those judgments became final, or must that provision be understood as meaning that the declaration may relate only to judgments which became final before 5 December 2011?

([1]) Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 12 November 2015 — *Lietuvos Respublikos transporto priemonių draudikų biuras* v *Gintaras Dockevičius and Jurgita Dockevičienė*

(Case C-587/15)

(2016/C 027/21)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant in cassation: Lietuvos Respublikos transporto priemonių draudikų biuras

Other parties to the proceedings in cassation: Gintaras Dockevičius and Jurgita Dockevičienė

Questions referred

1. Are Articles 2, 10(1) and (4) and 24(2) of Directive 2009/103 ([1]), Articles 3(4), 5(1) and (4), 6(1) and 10 of the Internal Regulations, and Article 47 of the Charter (together or separately, but without limitation to the aforementioned provisions) to be understood and interpreted as meaning that, in the case where:

   — *a national insurers' bureau (Bureau A) pays compensation to the party injured in a road traffic accident in the Member State in which that bureau is established because the national of another Member State who was responsible for the damage was not insured against civil liability;*

   — *by reason of that compensation, Bureau A is subrogated to the injured party in his rights and seeks reimbursement of the costs incurred in the settlement of the claim from the national insurers' bureau in the country of origin of the person responsible (Bureau B);*

   — *Bureau B, without carrying out any independent investigation or requesting additional information, accedes to the request for reimbursement made by Bureau A;*

   — *Bureau B brings legal proceedings against the defendants (the person responsible and the owner of the vehicle) seeking indemnification of the expenses which it incurred,*

   the applicant in those proceedings (Bureau B) can base its claim against the defendants (the person responsible and the owner of the vehicle) solely on the fact of the payment of the costs made to Bureau A and it (the applicant) is not under any obligation to establish that the conditions governing the civil liability of the defendant/person responsible were satisfied (his fault, unlawful acts, the causal link and the amount of damage), and is not under any obligation to establish that the foreign law was properly applied when the injured party was compensated?

2. Are point (c) of the fifth subparagraph of Article 24(1) of Directive 2009/103 and Article 3(1) and (4) of the Internal Regulations (together or separately, but without limitation to the aforementioned provisions) to be understood and interpreted as meaning that Bureau A must, before taking a final decision to pay compensation for the damage suffered by the injured party, inform, in a clear and comprehensible manner (including in regard to the language in which the information is provided), the person responsible and the owner of the vehicle (if not the same person) about the initiation of the claim-handling process and its progress, and give them sufficient time to submit their comments on, or objections to, the decision to be taken to pay compensation and/or the amount of that compensation?

3. If the answer to Question 1 is in the negative (*that is to say, the defendants (the person responsible and the owner of the vehicle) may require the applicant (Bureau B) to provide proof or may raise any objections or doubts concerning, inter alia, the circumstances of the road traffic accident, the application of the regulatory framework relating to civil liability of the person responsible, the amount of the damage and how it was calculated*), are Articles 2, 10(1) and 24(2) of Directive 2009/103 and the second subparagraph of Articles 3(4) of the Internal Regulations (together or separately, but without limitation to the aforementioned provisions) to be understood and interpreted as meaning that, notwithstanding the fact that Bureau B did not, before the final decision was taken, request Bureau A to provide information on the interpretation of the legislation applicable in the country in which the road accident occurred and on the settlement of the claim, Bureau A must in any event provide that information to Bureau B if the latter subsequently requests it, together with any other information necessary for Bureau B establish its claim [for indemnification] against the defendants (the person responsible and the owner of the vehicle)?

4. If the answer to Question 2 is in the affirmative (*that is to say, Bureau A is required to inform the person responsible and the owner of the vehicle about the claim-settlement process and to provide them with an opportunity to submit objections concerning liability or the amount of the damage*), what consequences will failure on the part of Bureau A to comply with its duty to provide information entail for:

   (a) the obligation of Bureau B to accede to the request for reimbursement presented by Bureau A;

   (b) the obligation of the person responsible and the owner of the vehicle to indemnify Bureau B for the expenses which it has incurred?

5. Are Articles 5(1) and 10 of the Internal Regulations to be understood and interpreted as meaning that the amount paid as compensation by Bureau A to the injured party is to be regarded as a non-reimbursable risk assumed by Bureau A itself (unless that risk is assumed by Bureau B) rather than a pecuniary obligation on the other person involved in the same road traffic accident, regard being had, *a fortiori*, to the circumstances of the present case:

   — *initially, the compensation body (Bureau A) rejected the injured party's claim for compensation;*

   — *for that reason, the injured party brought a legal action seeking compensation;*

   — *that action brought against Bureau A was dismissed by the lower courts as being unfounded and not supported by evidence;*

   — *an amicable settlement between the injured party and Bureau A was reached only in a higher court, when the latter pointed out that, if the parties refused to enter into an amicable settlement, the case would be referred back for fresh examination;*

   — *Bureau A justified its decision to enter into an amicable settlement essentially on the basis that this would avoid additional costs due to prolonged litigation;*

   — *in the present proceedings, no court has established the liability (fault) of the defendant involved in the road traffic accident?*

(1) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (United Kingdom) made on 13 November 2015 — The Gibraltar Betting and Gaming Association Limited v Commissioners for Her Majesty's Revenue and Customs, Her Majesty's Treasury

(Case C-591/15)

(2016/C 027/22)

Language of the case: English

Referring court

High Court of Justice Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: The Gibraltar Betting and Gaming Association Limited

Defendant: Commissioners for Her Majesty's Revenue and Customs, Her Majesty's Treasury

Questions referred

1. For the purposes of Article 56 TFEU and in the light of the constitutional relationship between Gibraltar and the United Kingdom:

   1.1. Are Gibraltar and the UK to be treated as if they were part of a single Member State for the purposes of EU law and so that Article 56 TFEU does not apply, save to the extent that it can apply to an internal measure? Alternatively,

   1.2. Having regard to Article 355(3) TFEU, does Gibraltar have the constitutional status of a separate territory to the UK within the EU such that the provision of services between Gibraltar and the UK is to be treated as intra-EU trade for the purposes of Article 56 TFEU? Alternatively,

   1.3. Is Gibraltar to be treated as a third country or territory with the effect that EU law is only engaged in respect of trade between the two in circumstances where EU law has effect between a Member State and a non-Member State? Alternatively,

   1.4. Is the constitutional relationship between Gibraltar and the UK to be treated in some other way for the purposes of Article 56 TFEU?

2. Do national measures of taxation that have features such as those found in the New Tax Regime constitute a restriction on the right to the free movement of services for the purposes of Article 56 TFEU?

3. If so, are the aims, which the referring Court has found domestic measures (such as the New Tax Regime) to pursue, legitimate aims, which are capable of justifying the restriction on the right to free movement of services under Article 56 TFEU?

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 13 November 2015 — Commissioners for Her Majesty's Revenue and Customs v British Film Institute

(Case C-592/15)

(2016/C 027/23)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: British Film Institute

Questions referred

i. Are the terms of Article 13A(1)(n) of the Sixth Directive ([1]), in particular the words 'certain cultural services', sufficiently clear and precise such that Article 13A(1)(n) is of direct effect so as to exempt the supply of those cultural services by bodies governed by public law or other recognised cultural bodies, such as the supplies made by the Respondent in the present case, in the absence of any domestic implementing legislation?

ii. Do the terms of Article 13A(1)(n) of the Sixth Directive, in particular the words 'certain cultural services', permit Member States any discretion in their application by means of implementing legislation and, if so, what discretion?

iii. Do the same conclusions as above apply to Article 132(1)(n) of the Principal VAT Directive ([2])?

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

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

Appeal brought on 13 November 2015 by the Slovak Republic against the order of the General Court (Third Chamber) delivered on 14 September 2015 in Case T-678/14 Slovak Republic v European Commission

(Case C-593/15 P)

(2016/C 027/24)

Language of the case: Slovak

Parties

Appellant: Slovak Republic (represented by: B. Ricziová, Agent)

Other party to the proceedings: European Commission

Form of order sought

The Slovak Republic claims that the Court should:

(i) set aside in its entirety the order of the General Court of 14 September 2015 in Case T-678/14 *Slovak Republic* v *European Commission*, in which the General Court dismissed as inadmissible the Slovak Republic's application, brought under Article 263 of the Treaty on the Functioning of the European Union, for annulment of the European Commission's decision, contained in its letter of 15 July 2014, formally demanding the Slovak Republic to make funds available corresponding to a loss of traditional own resources;

(ii) itself rule on the admissibility of the Slovak Republic's application and refer the case back to the General Court for that latter court to rule on the substance of the application;

(iii) order the European Commission to pay the costs of the proceedings.

In the event that the Court should conclude that it does not have sufficient information to make a final decision on the Commission's objection of inadmissibility, the Slovak Republic claims, in the alternative, that the Court should:

(i) set aside in its entirety the order of the General Court of 14 September 2015 in Case T-678/14 *Slovak Republic* v *European Commission*, in which the General Court dismissed as inadmissible the Slovak Republic's application, brought under Article 263 of the Treaty on the Functioning of the European Union, for annulment of the European Commission's decision, contained in its letter of 15 July 2014, formally demanding the Slovak Republic to make funds available corresponding to a loss of traditional own resources;

(ii) refer the case back to the General Court for that latter court to rule on both the admissibility of the Slovak Republic's application and the substance of that application;

(iii) order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The Slovak Republic puts forward two grounds in support of its appeal:

1. In the first ground of appeal, the Slovak Republic alleges that the General Court erred in law so far as concerns (i) the nature of the funds demanded and the applicability of the legal rules concerning own resources and the related case-law, (ii) the criterion of the institution's competence in the assessment of whether the contested act was open to challenge, and (iii) the right of access to a court and the urgency of the situation.

2. In the alternative, in the second ground of appeal the Slovak Republic alleges that the General Court stated inadequate reasons in the order under appeal so far as concerns (i) the nature of the funds demanded and the applicability of the legal rules concerning own resources and the related case-law and (ii) the right of access to a court and the urgency of the situation, which is confirmed by the fact that it applied (iii) identical reasoning in cases involving different facts.

Appeal brought on 13 November 2015 by the Slovak Republic against the order of the General Court (Third Chamber) delivered on 14 September 2015 in Case T-779/14 Slovak Republic v European Commission

(Case C-594/15 P)

(2016/C 027/25)

Language of the case: Slovak

Parties

Appellant: Slovak Republic (represented by: B. Ricziová, Agent)

Other party to the proceedings: European Commission

Form of order sought

The Slovak Republic claims that the Court should:

(i) set aside in its entirety the order of the General Court of 14 September 2015 in Case T-779/14 *Slovak Republic* v *European Commission*, in which the General Court dismissed as inadmissible the Slovak Republic's application, brought under Article 263 of the Treaty on the Functioning of the European Union, for annulment of the European Commission's decision, contained in its letter of 24 September 2014, formally demanding the Slovak Republic to make funds available corresponding to a loss of traditional own resources;

(ii) itself rule on the admissibility of the Slovak Republic's application and refer the case back to the General Court for that latter court to rule on the substance of the application;

(iii) order the European Commission to pay the costs of the proceedings.

In the event that the Court should conclude that it does not have sufficient information to make a final decision on the Commission's objection of inadmissibility, the Slovak Republic claims, in the alternative, that the Court should:

(i) set aside in its entirety the order of the General Court of 14 September 2015 in Case T-779/14 *Slovak Republic* v *European Commission*, in which the General Court dismissed as inadmissible the Slovak Republic's application, brought under Article 263 of the Treaty on the Functioning of the European Union, for annulment of the European Commission's decision, contained in its letter of 24 September 2014, formally demanding the Slovak Republic to make funds available corresponding to a loss of traditional own resources;

(ii) refer the case back to the General Court for that latter court to rule on both the admissibility of the Slovak Republic's application and the substance of that application;

(iii) order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The Slovak Republic puts forward two grounds in support of its appeal:

1. In the first ground of appeal, the Slovak Republic alleges that the General Court erred in law so far as concerns (i) the nature of the funds demanded and the applicability of the legal rules concerning own resources and the related case-law, (ii) the criterion of the institution's competence in the assessment of whether the contested act was open to challenge, and (iii) the right of access to a court and the urgency of the situation.

2. In the alternative, in the second ground of appeal the Slovak Republic alleges that the General Court stated inadequate reasons in the order under appeal so far as concerns (i) the nature of the funds demanded and the applicability of the legal rules concerning own resources and the related case-law and (ii) the right of access to a court and the urgency of the situation, which is confirmed by the fact that it applied (iii) identical reasoning in cases involving different facts.

Action brought on 17 November 2015 — European Commission v Czech Republic

(Case C-606/15)

(2016/C 027/26)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: Z. Malůšková, J. Hottiaux, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that:

— by entrusting to the investigating body the function of supervision of the railway system, the Czech Republic has failed to fulfil its obligations under Article 19(1) of Directive 2004/49/EC;

— by failing to ensure that the investigating body starts its investigation no later than one week after receipt of the report of an accident or incident, the Czech Republic has failed to fulfil its obligations under Article 21(3) of Directive 2004/49/EC;

— by failing to ensure that the final report of its investigation is communicated to the relevant parties referred to in Article 22(3) of Directive 2004/49/EC, the Czech Republic has failed to fulfil its obligations under Article 23(2) of Directive 2004/49/EC;

— by failing to ensure that the investigating body addresses safety recommendations to the safety authority, the Czech Republic has failed to fulfil its obligations under the first sentence of Article 25(2) of Directive 2004/49/EC;

— by failing to lay down an obligation of the safety authority to take measures to ensure that safety recommendations are duly taken into consideration and acted upon, the Czech Republic has failed to fulfil its obligations under the second sentence of Article 25(2) of Directive 2004/49/EC;

— by failing to lay down an obligation of the safety authority to report back at least annually on measures that are taken or planned as a consequence of safety recommendations, the Czech Republic has failed to fulfil its obligations under Article 25(3) of Directive 2004/49/EC;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

In support of its application, the Commission puts forward the following arguments:

The Czech Republic did not, by 30 June 2015, when the period prescribed in the reasoned opinion expired, communicate any amendment to its national legislation to ensure its compliance with Articles 19(1), 21(3), 23(2) and 25(2) and (3) of Directive 2004/49/EC. ([1])

([1]) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ 2004 L 164, p. 44, corrigendum OJ 2004 L 220, p. 16).

Appeal brought on 17 November 2015 by Panasonic Corp. against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-82/13: Panasonic Corp. and MT Picture Display Co. Ltd v European Commission

(Case C-608/15 P)

(2016/C 027/27)

Language of the case: English

Parties

Appellant: Panasonic Corp. (represented by: R. Gerrits, advocaat, M. Hoskins QC, M. Gray, Barrister)

Other parties to the proceedings: European Commission, MT Picture Display Co. Ltd

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment and Order of the General Court: (i) to the extent that the Judgment found that Commission Decision C(2012) 8839 final of 5 December 2012 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.437 — TV and Computer Monitor Tubes) had not infringed Panasonic's rights of defence and right to be heard in the period prior to 10 February 2003; and/or (ii) insofar as it failed to annul in whole or in part the finding at Articles 1(2)(c) and (e) of the Decision that Panasonic and MTPD participated in the infringement during the period from 1 April 2003 to 12 June 2006;

— annul: (i) Article 1(2)(c) of the Decision insofar as it found that Panasonic participated in the CPT cartel from 15 July 1999 to 10 February 2003; and/or (ii) Articles 1(2)(c) and (e) of the Decision in respect of the period from 1 April 2003 to 12 June 2006;

— reduce the fine imposed by Article 2(2)(f) of the Decision; and/or annul and/or further reduce the fines imposed on Panasonic and MTPD by Articles 2(2)(h) and 2(2)(i) of the Decision as appropriate, from the levels of those fines fixed by the Judgment at EUR 82 826 000 and EUR 7 530 000 respectively; further or alternatively

— remit the case to the General Court for further consideration in accordance with the law;

— order the European Commission to pay the costs of Panasonic arising from the present appeal.

Pleas in law and main arguments

1. First plea: The General Court incorrectly found that the Commission had discharged its burden of setting out in the statement of objections the essential elements against Panasonic, including the basis upon which it was alleged that Panasonic knew about the overall CPT cartel. The General Court erred in law by holding that it is sufficient for the Commission to set out one of the essential elements of the infringement implicitly but necessarily in the statement of objections.

2. Second plea: The General Court should afford Panasonic and MTPD the same relief as may be granted to Toshiba Corporation ('Toshiba') in any appeal that it may bring in relation to the period of time for which Toshiba was found jointly and severally liable with Panasonic and MTPD. In T-104/13 Toshiba v Commission, the General Court held that any annulment or alteration of the Decision in relation to the imputation of the unlawful conduct of the joint venture MTPD to Panasonic also benefitted Toshiba. Consequently, Panasonic contends that, should Toshiba obtain an order from this Court setting aside the judgment of the General Court insofar as it did not annul the Decision and/or annul or reduce the fine in relation to the period of time for which Toshiba was found jointly and severally liable for an infringement with Panasonic and MTPD, the General Court would also have erred in not granting Panasonic and MTPD the same relief as ought to have been granted to Toshiba.

Appeal brought on 18 November 2015 by Samsung SDI Co. Ltd, Samsung SDI (Malaysia) Bhd against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-84/13: Samsung SDI Co. Ltd, Samsung SDI (Malaysia) Bhd v European Commission

(Case C-615/15 P)

(2016/C 027/28)

Language of the case: English

Parties

Appellants: Samsung SDI Co. Ltd, Samsung SDI (Malaysia) Bhd (represented by: M. Struys, avocat, L. Eskenazi, avocate, A. Fall, advocate, C. Erol, avocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 9 September 2015 in Case T-84/13, Samsung SDI Co. Ltd, Samsung SDI Germany GmbH and Samsung SDI (Malaysia) Bhd v. European Commission;

— As a consequence, to annul Articles 2.1 (b) and 2.2(b) of the Commission's decision insofar as they concern the Appellants and to reduce the relevant fines;

— To order the European Commission to pay the costs at first instance and for the present appeal.

Pleas in law and main arguments

In support of the appeal, the Appellants rely on four pleas in law. The first two concern the CPT cartel and the last two — the CDT cartel.

First plea: the General Court failed to address SDI's plea according to which sales of non-cartelized products should have been excluded from the CPT cartel fine calculation. Even assuming that the General Court's reasoning regarding the existence of a single and continuous infringement offers an implicit justification for the rejection of SDI's plea (quod non), such implicit justification violates the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ([1]) (the Fining Guidelines).

Second plea: as regards the determination of the end date of the CPT cartel, the General Court dismissed without any valid reasons SDI's plea that collusion requires the involvement of at least two undertakings, and further violated Article 101 TFEU insofar as the judgment concluded that SDI's participation in the CPT cartel lasted, alone, until 15 November 2006. Further, the General Court violated the principle of equal treatment insofar as it refused to reduce the fine imposed on SDI.

Third plea: the General Court made an error in law by taking into account in the calculation of the CDT cartel fine SDI's sales to Samsung Electronics Corporation (SEC). The General Court misapplied the concept of EEA sales under the Fining Guidelines insofar as it failed to determine the place where competition takes place.

Fourth plea: the General Court committed an error of law in assessing the application of the Leniency Notice, which resulted in a failure to grant SDI a 50 % fine reduction in relation to the CDT cartel. The General Court's conclusions regarding the CPT cartel are legally irrelevant in the context of the CDT cartel. Furthermore, the General Court misapplied the Leniency Notice and erred in upholding the Commission's finding that the lack of description of the market sharing aspect of the infringement by SDI in its reply to the Statement of Objections could, in itself, impact the assessment of SDI's cooperation during the administrative procedure.

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

Appeal brought on 19 November 2015 by Koninklijke Philips Electronics NV against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-92/13: Koninklijke Philips Electronics NV v European Commission

(Case C-622/15 P)

(2016/C 027/29)

Language of the case: English

Parties

Appellant: Koninklijke Philips Electronics NV (represented by: E. Pijnacker Hordijk, J. K. de Pree, S. Molin, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court in Case T-92/13;

— annul in whole or in part, Articles 1.1(c) and 1.2(f), Articles 2.1(c) and 2.1(e), and Articles 2.2(c) and 2.2(e) of the Commission Decision of 5 December 2012 in Case COMP/39437 — TV and Computer Monitor Tubes (the 'Decision'), insofar as they concern KPNV; and/or reduce the fines imposed on KPNV in Articles 2.1(c) and 2.1(e) and Articles 2.2(c) and 2.2(e) of the Decision;

— order the Commission to pay the costs in first instance and on appeal.

Pleas in law and main arguments

In support of the action, the applicant relies on the following main pleas and arguments:

The General Court erred in law in the application of Article 101 TFEU and Article 23(2) of Regulation No. 1/2003 ([1]) by holding that the Commission could characterize the sales of Cathode Ray Tubes ('CRTs') made by the LPD Group to the Philips Group (and the LGE Group) as intragroup sales and by holding that the Commission was entitled to include the value of Direct EEA Sales through Transformed Products ('DSTP') in the calculation of KPNV's fine, where it concerned downstream sales of computer screens and colour televisions by subsidiaries of KPNV incorporating CRTs supplied by the LPD Group.

The General Court erred in law by holding that the Commission did not violate KPNV's rights of defence when it chose — even in the circumstances of this case — not to include the LPD Group in the administrative proceedings and issue a statement of objections to it on the ground that KPNV would have a general duty of care to keep records in its books and files regarding the activities of the LPD Group, even in case of the bankruptcy of LPD.

The General Court committed an error of assessment in that it misrepresented the plea raised by KPNV regarding the treatment of DSTP and thereby failed to address one of the main grounds of appeal of KPNV against the Decision. The appellant further submits it was deprived of the protection of the fundamental principle of equal treatment in that the General Court failed to recognize that different legal standards were applied to different undertakings in determining the basis for the calculation of the fine. This discriminatory treatment resulted in a significantly higher fine for KPNV.

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

Appeal brought on 20 November 2015 by Toshiba Corp. against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-104/13: Toshiba Corp. v European Commission

(Case C-623/15 P)

(2016/C 027/30)

Language of the case: English

Parties

Appellant: Toshiba Corp. (represented by: J. F. MacLennan, Solicitor, A. Schulz, Rechtsanwalt, J. Jourdan, avocat, A. Kadri, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside the Judgment of the General Court in Case T-104/13 insofar as it upheld the finding of the European Commission that Toshiba is jointly and severally liable for the conduct of MTPD;

— Annul the Decision of the European Commission in Case COMP/39.437 TV and Computer Monitor Tubes insofar as it found that Toshiba infringed Article 101 TFEU and held Toshiba jointly and severally liable for the conduct of MTPD;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law:

The General Court misapplied the concept of undertaking by incorrectly classifying certain elements as indicating that Toshiba was in a position to, or did actually, exercise decisive influence over MTPD and by concluding that the sum of those elements was sufficient to support the conclusion that Toshiba did exercise such influence over MTPD.

Appeal brought on 23 November 2015 by Schniga GmbH against the judgment of the General Court (Third Chamber) delivered on 10 September 2015 in joined Cases T-91/14 and T-92/14: Schniga GmbH v Community Plant Variety Office

(Case C-625/15 P)

(2016/C 027/31)

Language of the case: English

Parties

Appellant: Schniga GmbH (represented by: G. Würtenberger, R. Kunze, Rechtsanwälte)

Other parties to the proceedings: Community Plant Variety Office, Brookfield New Zealand Ltd, Elaris SNC

Form of order sought

The appellant claims that the Court should:

— annul the judgement of the General Court of 10 September 2015 in joined cases T-91/14 and T-92/14;

— order the CPVO and the Interveners to bear the costs of the proceedings.

Pleas in law and main arguments

The General Court committed a legal error in the application of Article 7 of Regulation No. 2100/94 ([1]) on Community Plant Variety Rights (hereinafter: CPVR) as well as of Articles 22 and 23 of Commission Regulation (EC) No. 1239/95 ([2]) of 31 May 1995.

The General Court wrongly assessed the competence of the President of the Community Plant Variety Office in the inclusion of additional characteristics in the examination process of a variety to be granted Community plant variety protection.

The General Court wrongly assessed the legal nature of technical protocols and guidelines to be applied in the technical examination of an applied for Community plant variety right, resulting in a wrong assessment of the time frame in which the President of the Community Plant Variety Office may decide that a new characteristic for determination of distinctness of the new variety may be taken into account.

The General Court erred in assessing the consequence of the application of the principles of legal certainty, the objectivity of the Community Plant Variety Office and equal treatment in relation to the decisions of the President of the Community Plant Variety Office in the examination of a new variety.

(1) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights OJ L 227, p. 1.

(2) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office OJ L 121, p. 37.

Appeal brought on 2 December 2015 by Hungary. against the judgment delivered on 15 September 2015 in Case T-346/12 Hungary v European Commission

(Case C-644/15 P)

(2016/C 027/32)

Language of the case: Hungarian

Parties

Appellant: Hungary (represented by: M.Z. Fehér)

Other party to the proceedings: European Commission

Form of order sought

— Annul the judgment of the General Court in Case T-346/12;

— Decide the case on the basis of the possibility provided by Article 61 of the Statute;

— Order the Commission to bear the costs.

Pleas in law and main arguments

The Hungarian Government submits that the General Court misapplied the law in holding that, in its decision on the partial reimbursement of national financial assistance granted — on the basis of Article 103e of Council Regulation (EC) No 1234/2007 (1) — to producers' organisations operating in the fruit and vegetable sector, the Commission had a legal basis for making the amount repaid by the European Union subject to the amount of assistance notified.

The Hungarian Government submits that, on the basis of the interpretation of the relevant provisions of Regulation No 1234/2007/EC in conjunction with Regulation No 1580/2007/EC, (2) the Commission was not entitled to agree to reimburse only those amounts which were indicated by the Hungarian Government in its application for the grant of national assistance, where they are given as estimated, expected or provisional amounts, in its decision on the partial reimbursement of national financial assistance granted to producers' organisations operating in the fruit and vegetable sector.

Under Article 103e of Regulation No 1234/2007/EC the authorisation of the Commission for national assistance concerns the grant of assistance but not the establishment of an upper limit by the Commission for the amount of assistance which may be granted. Such an upper limit is provided for unequivocally by Regulation No 1234/2007, which provides that national assistance may not exceed 80 % of financial contributions to operational funds of members or producers' organisations. Nor do the rules on partial reimbursement of Community assistance allow the Commission, when granting the partial reimbursement of assistance, to establish as the upper limit for reimbursement the amount which the Member State indicated to the Commission in its application for authorisation, either as the total amount of the assistance, or as the amount of assistance scheduled for certain producers' organisations.

The use of the term 'amount' in the wording of the second paragraph of Article 94(1) of Regulation No 1580/2007 — having regard to the 80 % limit on assistance in Article 103e of Regulation No 1234/2007 together with the limit of 25 % for the amount of the operational fund referred to in Article 67 of Regulation No 1580/2007 — is intended to ensure that the Commission, when granting authorisation, is able to calculate in advance the amount of national assistance which might be paid, and thus the potential amount of any reimbursement. Thus, the purpose of the notification of amounts is in no way the approval of the notified amounts, but is to make clear to the Commission the extent of the assistance which potentially might be paid under the rules in the basic regulation and the Commission regulation.

([1]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

([2]) Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 299, p. 1).

GENERAL COURT

Judgment of the General Court of 3 December 2015 — Cuallado Martorell v Commission

(Case T-506/12 P) ([1])

(Appeal — Civil Service — Officials — Recruitment — Open competition to draw up a reserve list of lawyer-linguists with Spanish as their main language — Decision of the jury confirming failure to pass the written tests and non-admittance to the oral test — Article 90(2) of the Statute — Admissibility of the action at first instance — Duty to state reasons — Refusal to send the marked written tests to the appellant — Access to documents)

(2016/C 027/33)

Language of the case: Spanish

Parties

Appellant: Eva Cuallado Martorell (Valencia, Spain) (represented by: C. Pinto Cañón, lawyer)

Other party to the proceedings: European Commission (represented by: J. Baquero Cruz and G. Gattinara, acting as agents)

Re:

Appeal brought against the judgment of the Civil Service Appeal Tribunal of the European Union (Second Chamber) of 18 September 2012 in *Cuallado Martorell* v *Commission* (F-96/09, ECRFP, EU:F:2012:129) and seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Appeal Tribunal of the European Union (Second Chamber) of 18 September 2012 in Cuallado Martorell v Commission (F-96/09, ECRFP, EU:F:2012:129) inasmuch as it declares the action to be inadmissible in seeking the annulment of the decision refusing admission to the oral test and, consequently, the reserve list;*

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

3. *Refers the case back to the Civil Service Tribunal;*

4. *Reserves the costs.*

([1]) OJ C 135, 5.5.2014.

Judgment of the General Court of 26 November 2015 — HK Intertrade v Council

(Joined Cases T-159/13 and T-372/14) ([1])

(Common foreign and security policy — Restrictive measures against Iran with a view to preventing nuclear proliferation — Freezing of funds — Actions for annulment — Period allowed for commencing proceedings — Point from which time starts to run — Admissibility — Right to be heard — Obligation to notify — Obligation to state reasons — Rights of defence — Manifest error of assessment)

(2016/C 027/34)

Language of the case: English

Parties

Applicant: HK Intertrade Co. Ltd (Wanchai, Hong Kong, China) (represented by: J. Grayston, Solicitor, P. Gjørtler, G. Pandey, D. Rovetta, N. Pilkington and D. Sellers, lawyers)

Defendant: Council of the European Union (represented by: V. Piessevaux and M. Bishop, acting as Agents)

Re:

Application, in Case T 159/13, for annulment of Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71) and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55), and, in Case T 372/14, for annulment of the Council decision contained in the letter of 14 March 2014 concerning the maintenance of the restrictive measures adopted in respect of the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders HK Intertrade Co. Ltd to bear its own costs and to pay the costs incurred by the Council of the European Union.*

([1]) OJ C 147, 25.5.2013.

Judgment of the General Court of 4 December 2015 — Sarafraz v Council

(Case T-273/13) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Iran — Freezing of funds — Restrictions on the entry into and transit through European Union territory — Legal base — Obligation to state reasons — Right to be heard — Error of assessment — Ne bis in idem — Freedom of expression — Freedom of the media — Freedom to choose an occupation — Free movement — Right to property)

(2016/C 027/35)

Language of the case: German

Parties

Applicant: Mohammad Sarafraz (Tehran, Iran) (represented by: initially, T. Walter, then by J.M. Viñals Camallonga, L. Barriola Urruticoechea and J.L. Iriarte Ángel, lawyers)

Defendant: Council of the European Union (represented by: J.-P Hix and Á. de Elera-San Miguel Hurtado, acting as agents)

Intervener in support of the defendant: Stiftung Organisation Justice for Iran (Amsterdam, the Netherlands) (represented by: initially, G. Pulles, then by R. Marx, lawyers)

Re:

Application for the annulment in part, first, of Council Decision 2013/124/CSFP of 11 March 2013 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ 2013 L 68, p. 57), second, of Council Implementing Regulation (EU) No 206/2013 of 11 March 2013 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2013 L 68, p. 9), third, of Council Decision 2014/205/CFSP of 10 April 2014 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ 2014 L 109, p. 25), fourth, Council Implementing Regulation (EU) No 371/2014 of 10 April 2014 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2014 L 109, p. 9), fifth, Council Decision (CFSP) 2015/555 of 7 April 2015 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ 2015 L 92, p. 91), and, sixth, Council Implementing Regulation (EU) 2015/548 of 7 April 2015 implementing Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2015 L 92, p. 1), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Mohammad Sarafraz to pay his own costs and those incurred by the Council of the European Union;*

3. *Orders Stiftung Organisation Justice for Iran to bear its own costs.*

([1]) OJ C 207, 20.7.2013.

Judgment of the General Court of 4 December 2015 — Emadi v Council

(Case T-274/13) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Iran — Freezing of funds — Restrictions on the entry into and transit through European Union territory — Legal base — Obligation to state reasons — Right to be heard — Error of assessment — Ne bis in idem — Freedom of expression — Freedom of the media — Freedom to choose an occupation — Free movement — Right to property)

(2016/C 027/36)

Language of the case: German

Parties

Applicant: Hamid Reza Emadi (Tehran, Iran) (represented initially by: T. Walter, then by J.M. Viñals Camallonga, L. Barriola Urruticoechea and J.L. Iriarte Ángel, lawyers)

Defendant: Council of the European Union (represented by: J.-P. Hix and Á. de Elera-San Miguel Hurtado, agents)

Intervener in support of the defendant: Stiftung Organisation Justice for Iran (Amsterdam, the Netherlands) (represented by: initially, G. Pulles, then R. Marx, lawyers)

Re:

Application for the annulment in part, first, of Council Decision 2013/124/CSFP of 11 March 2013 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ 2013 L 68, p. 57), second, of Council Implementing Regulation (EU) No 206/2013 of 11 March 2013 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2013 L 68, p. 9), third, of Council Decision 2014/205/CFSP of 10 April 2014 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ 2014 L 109, p. 25), fourth, Council Implementing Regulation (EU) No 371/2014 of 10 April 2014 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2014 L 109, p. 9), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Hamid Reza Emadi to pay his own costs and those incurred by the Council of the European Union;*

3. *Orders Stiftung Organisation Justice for Iran to bear its own costs.*

(1) OJ C 207, of 20.7.2013.

Judgment of the General Court of 3 December 2015 — CN v Parliament

(Case T-343/13) (1)

(Non-contractual liability — Petition addressed to the Parliament — Dissemination on the Parliament website of certain personal data — No sufficiently serious breach of a rule of law conferring rights on individuals)

(2016/C 027/37)

Language of the case: Italian

Parties

Applicant: CN (Brumath, France) (represented by: M. Velardo, lawyer)

Defendant: European Parliament (represented by: N. Lorenz and S. Seyr, acting as Agents)

Intervener in support of the applicant: European Data Protection Supervisor (EDPS) (represented initially by A. Buchta and V. Pozzato, then by A. Buchta, M. Pérez Asinari, F. Polverino, M. Guglielmetti and U. Kallenberger, acting as Agents)

Re:

Application for damages to compensate for the loss allegedly suffered by the applicant following the dissemination on the Parliament website of certain personal data relating to the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CN to pay the costs of the European Parliament and to bear his own costs;*

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

(1) OJ C 245, 24.8.2013.

Judgment of the General Court of 3 December 2015 — Poland v Commission

(Case T-367/13) (1)

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Rural Development — Expenditure incurred by Poland — Article 33b of Regulation (EC) No 1257/1999 — Article 7 of Regulation (EC) No 1258/1999 — Article 31 of Regulation (EC) No 1290/2005 — Mixed financial correction — Obligation to state reasons)

(2016/C 027/38)

Language of the case: Polish

Parties

Applicant: Republic of Poland (Represented by: B. Majczyna and K. Straś, acting as Agents)

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

Re:

Application for annulment of Commission Implementing Decision 2013/214/EU of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 123, p. 11), in so far as the Commission applies in that decision corrections amounting to EUR 8 292 783,94 and EUR 71 610 559,39 to expenditure declared by the Republic of Poland in respect of support for semi-subsistence farms.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 260, 7.9.2013.

Judgment of the General Court of 2 December 2015 — Tsujimoto v OHIM — Kenzo (KENZO ESTATE)

(Case T-414/13) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark KENZO ESTATE — Earlier Community word mark KENZO — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 207/2009)

(2016/C 027/39)

Language of the case: English

Parties

Applicant: Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, W. von der Osten-Sacken and M. Ring, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Kenzo (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 May 2013 (Case R 333/2012-2), relating to opposition proceedings between Kenzo and Mr K. Tsujimoto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Kenzo Tsujimoto to pay the costs.*

([1]) OJ C 304, 19.10.2013.

Judgment of the General Court of 26 November 2015 — Giant (China) v Council

(Case T-425/13) ([1])

(Dumping — Imports of bicycles originating in China — Interim review — Article 9(5) and Article 18 of Regulation (EC) No 1225/2009 — Individual treatment — Non-cooperation — Necessary information — Facts available — Related companies — Circumvention)

(2016/C 027/40)

Language of the case: English

Parties

Applicant: Giant (China) Co. Ltd (Kunshan, China) (represented by: P. De Baere, lawyer)

Defendant: Council of the European Union (represented by: S. Boelaert, acting as Agent, B. O'Connor, Solicitor, and S. Gubel, lawyer)

Interveners in support of the defendant: European Commission (represented by: J.-F. Brakeland and M. França, acting as Agents) and European Bicycle Manufacturers Association (EBMA) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Re:

Application for annulment of Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ 2013 L 153, p. 17).

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 so far as it concerns Giant (China) Co. Ltd;*

2. *Orders the Council of the European Union to pay the costs of Giant (China) and to bear its own costs;*

3. *Orders the European Commission and the European Bicycle Manufacturers Association (EBMA) to bear their own costs.*

([1]) OJ C 325, 9.11.2013.

Judgment of the General Court of 26 November 2015 — Spain v Commission

(Case T-461/13) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — Concept of undertaking — Economic activity — Advantage — Service of general economic interest — Distortion of competition — Article 107(3)(c) TFEU — Duty of diligence — Reasonable period — Legal certainty — Equal treatment — Proportionality — Subsidiarity — Right to information)

(2016/C 027/41)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González, lawyer)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders the Kingdom of Spain to pay the costs incurred in the main proceedings and those relating to the interim proceedings.*

([1]) OJ C 304, 19.10.2013.

Judgment of the General Court of 26 November 2015 — Comunidad Autónoma del País Vasco and Itelazpi v Commission

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

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — Advantage — Service of general economic interest — Article 107(3)(c) TFEU — New aid)

(2016/C 027/42)

Language of the case: Spanish

Parties

Applicants: Comunidad Autónoma del País Vasco (Spain) and Itelazpi, SA (Zamudio, Spain) (represented by: initially N. Ruiz García, J. Buendía Sierra, A. Lamadrid de Pablo and M. Muñoz de Juan, then J. Buendía Sierra and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno, V. Romero Algarra, lawyers)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Comunidad Autónoma del País Vasco (Spain) and Itelazpi, SA to bear their own costs and to pay those incurred by the European Commission and by SES Astra in the main proceedings;*

3) *Orders Comunidad Autónoma del País Vasco and Itelazpi to bear their own costs relating to the interim proceedings.*

([1]) OJ C 304, 19.10.2013.

Judgment of the General Court of 26 November 2015 — Comunidad Autónoma de Galicia and Retegal v Commission

(Joined Cases T-463/13 and T-464/13) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — Concept of undertaking — Economic activity — Advantage — Service of general economic interest — Selective nature — Article 107(3)(c) TFEU — Obligation to state reasons)

(2016/C 027/43)

Language of the case: Spanish

Parties

Applicants: Comunidad Autónoma de Galicia (Spain) (represented by: M. Lorenzo Outón and P. Egerique Mosquera, lawyers) (Case T-463/13); and Redes de Telecomunicación Galegas Retegal SA (Retegal) (Santiago de Compostela, Spain) (represented by: F. García Martínez and B. Pérez Conde, lawyers) (Case T-464/13)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno and in Case T-463/13, V. Romero Algarra, lawyers)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Comunidad Autónoma de Galicia (Spain) and Redes de Telecomunicación Galegas Retegal, SA (Retegal) to bear their own costs and to pay those incurred by the European Commission and by SES Astra.*

([1]) OJ C 304, 19.10.2013.

Judgment of the General Court of 26 November 2015 — Comunidad Autónoma de Cataluña and CTTI v Commission

(Case T-465/13) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — Advantage — Service of general economic interest — Article 107(3)(c) TFEU — New aid)

(2016/C 027/44)

Language of the case: Spanish

Parties

Applicants: Comunidad Autónoma de Cataluña (Spain) and Centre de Telecomunicacions i Tecnologies de la Informació de la Generalitat de Catalunya (CTTI) (Hospitalet de Llobregat, Spain) (represented by: initially J. Buendía Sierra, N. Ruiz García, M. Muñoz de Juan and M. Reverter Baquer, then J. Buendía Sierra, N. Ruiz García, M. Reverter Baquer and A. Lamadrid de Pablo, and finally J. Buendía Sierra, M. Reverter Baquer and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno, V. Romero Algarra, lawyers)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Comunidad Autónoma de Cataluña (Spain) and Centre de Telecomunicacions i Tecnologies de la Informació de la Generalitat de Catalunya (CTTI) to bear their own costs and to pay those incurred by the European Commission and by SES Astra.*

([1]) OJ C 304, 19.10.2013.

Judgment of the General Court of 26 November 2015 — Navarra de Servicios y Tecnologías v Commission

(Case T-487/13) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — State resources — Economic activity — Advantage — Effect on trade between Member States and distortion of competition — Service of general economic interest — Article 107(3)(c) TFEU — Misuse of power)

(2016/C 027/45)

Language of the case: Spanish

Parties

Applicant: Navarra de Servicios y Tecnologías, SA (Pamplona, Spain) (represented by: A. Andérez González, lawyer)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno, V. Romero Algarra, lawyers)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Navarra de Servicios y Tecnologías, SA to bear its own costs and to pay those incurred by the European Commission and by SES Astra.*

([1]) OJ C 313, 26.10.2013.

Judgment of the General Court of 2 December 2015 — Tsujimoto v OHIM — Kenzo (KENZO ESTATE)

(Case T-522/13) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark KENZO ESTATE — Earlier Community word mark KENZO — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 207/2009 — Belated submission of documents — Discretion of the Board of Appeal — Article 76(2) of Regulation No 207/2009 — Partial refusal of registration)

(2016/C 027/46)

Language of the case: English

Parties

Applicant: Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, W. von der Osten-Sacken and M. Ring, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Kenzo (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 July 2013 (Case R 1363/2012-2), relating to opposition proceedings between Kenzo and Mr K. Tsujimoto.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Kenzo Tsujimoto to pay the costs.*

(1) OJ C 352, 30.11.2013.

Judgment of the General Court of 2 December 2015 — Kenzo v OHIM — Tsujimoto (KENZO ESTATE)

(Case T-528/13) (1)

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark KENZO ESTATE — Earlier Community word mark KENZO — Relative ground for refusal — Reputation — Article 8(5) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009 — Partial rejection of the opposition)

(2016/C 027/47)

Language of the case: English

Parties

Applicant: Kenzo (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, W. von der Osten-Sacken and M. Ring, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 July 2013 (Case R 1363/2012-2), relating to opposition proceedings between Kenzo and Mr K. Tsujimoto.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 3 July 2013 (Case R 1363/2012-2) in so far as it rejected the opposition in respect of the goods in Classes 29 to 31 covered by the international registration applied for;*

2. *Orders OHIM to pay the costs incurred by Kenzo in the course of the present proceedings;*

3. *Orders OHIM and Mr Kenzo Tsujimoto to bear the costs which each of them has respectively incurred in the course of the present proceedings;*

4. *Orders Mr K. Tsujimoto to bear his costs and to pay half of the costs incurred by Kenzo for the purposes of the proceedings before the Board of Appeal of OHIM.*

(1) OJ C 367, 14.12.2013.

Judgment of the General Court of 26 November 2015 — Abertis Telecom and Retevisión I v Commission

(Case T-541/13) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas in Spain — Decision declaring aid to be partly compatible and partly incompatible with the internal market — Advantage — Service of general economic interest — Article 107(3)(c) TFEU — New aid — Obligation to state reasons)

(2016/C 027/48)

Language of the case: Spanish

Parties

Applicants: Abertis Telecom, SA (Barcelona, Spain) and Retevisión I, SA (Barcelona) (represented by: initially L. Cases Pallarès, J. Buendía Sierra, N. Ruiz García, A. Lamadrid de Pablo, M. Muñoz de Juan and M. Reverter Baquer, then L. Cases Pallarès, J. Buendía Sierra, A. Lamadrid de Pablo and M. Reverter Baquer, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, B. Stromsky and P. Němečková, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno and V. Romero Algarra, lawyers)

Re:

Application for annulment of Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 [(C 23/2010) (ex NN 36/010, ex CP 163/2009)] implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less-urbanised areas (other than Castilla-La Mancha) (OJ 2014 L 217, p. 52).

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Abertis Telecom, SA and Retevisión I, SA to bear their own costs and to pay those incurred by the European Commission and by SES Astra.*

([1]) OJ C 352, 30.11.2013.

Judgment of the General Court of 2 December 2015 — European Dynamics Luxembourg and Evropaïki Dynamiki v Joint undertaking Fusion for Energy

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

(Public service contracts — Tendering procedure — Supply of IT services, consulting, software development, Internet and support — Rejection of the tender of one tenderer and award of the contracts to other tenderers — Non-contractual liability)

(2016/C 027/49)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg) and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: D. Mabger and I. Ampazis, lawyers)

Defendant: European Joint Undertaking for ITER and the Development of Fusion Energy (represented: initially by H. Jahreiss, R. Hanak, A. Verpont, I. Costin and A. Nagy, and subsequently by R. Hanak, A. Verpont, I. Costin and A. Nagy, acting as Agents, and by P. Wytinck and B. Hoorelbeke, lawyers)

Re:

Application for (i) annulment of the decision of the European Joint Undertaking for ITER and the Development of Fusion Energy of 7 August 2013 taken in the context of the tendering procedure F4E-ADM-0464 concerning IT services, consulting, software development, Internet and support services (OJ 2012/S 213-352451) rejecting the tender submitted by European Dynamics Luxembourg SA and awarding the contracts to other tenderers, and (ii) an award of damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders European Dynamics Luxembourg SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.*

([1]) OJ C 367, 14.12.2013.

Judgment of the General Court of 26 November 2015 — Demp v OHIM (TURBO DRILL)

(Case T-50/14) ([1])

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

(2016/C 027/50)

Language of the case: German

Parties

Applicant: Demp BV (Vianen, Netherlands) (represented by: C. Gehweiler, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 22 November 2013 (Case R 1254/2013-4), concerning an application for registration of the word sign TURBO DRILL as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Demp BV to pay the costs.*

([1]) OJ C 78, 15.3.2014.

Judgment of the General Court of 3 December 2015 — TrekStor v OHIM (iDrive)

(Case T-105/14) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark iDrive — Prior German word mark IDRIVE — Relative ground for refusal — Likelihood of confusion — Article 8 (1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/51)

Language of the case: German

Parties

Applicant: TrekStor Ltd (Hong Kong, Hong Kong, China) (represented by: M. Alber and O. Spieker, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Scanlab AG (Puchheim, Germany) (represented by: P. Rath and W. Festl-Wietek, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 December 2013 (Case R 2330/2012-1) concerning opposition proceedings between Scanlab AG and TrekStor Ltd.

Operative part of the judgment

The Court:

1. *Rejects the request to stay the proceedings lodged by TrekStor Ltd;*

2. *Dismisses the action;*

3. *Orders TrekStor Ltd to pay the costs.*

([1]) OJ C 112, 14.4.2014.

Judgment of the General Court of 3 December 2015 — Sesma Merino v OHIM

(Case T-127/14 P) ([1])

(Appeal — Civil Service — Officials — Appraisal — Staff report — Objectives 2011-2012 — Measure adversely affecting a person — Admissibility)

(2016/C 027/52)

Language of the case: German

Parties

Appellant: Alvaro Sesma Merino (El Campello, Spain) (represented by: H. Tettenborn, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Saba and D. Botis, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 11 December 2013 in Sesma Merino v OHIM (F-125/12, ECR-SC, EU:F:2013:192) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Alvaro Sesma Merino to pay the costs.*

(1) OJ C 184, 16.6.2014.

Judgment of the General Court of 26 November 2015 — Nürburgring v OHIM — Biedermann (Nordschleife)

(Case T-181/14) (1)

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

(2016/C 027/53)

Language of the case: German

Parties

Applicant: Nürburgring GmbH (Nürburg, Germany) (represented by: M. Viefhues and C. Giersdorf, 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: Lutz Biedermann (Villingen-Schwenningen, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 January 2014 (Case R 163/2013-4) relating to opposition proceedings between Mr Lutz Biedermann and Nürburgring GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 151, 19.5.2014.

Judgment of the General Court of 26 November 2015 — Bionecs v OHIM — Fidia farmaceutici (BIONECS)

(Case T-262/14) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark BIONECS — Earlier international word mark BIONECT — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/54)

Language of the case: English

Parties

Applicant: Bionecs GmbH (Munich, Germany) (represented by: M. Knitter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Fidia farmaceutici SpA (Abano Terme, Italy) (represented by: R. Kunz-Hallstein, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 February 2014 (Case R 1179/2013/1) concerning opposition proceedings between Fidia Farmaceutici SpA and Bionecs GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 235, 21.7.2014.

Judgment of the General Court of 3 December 2015 — Compagnie des fromages & Richesmonts v OHIM (representation of a red and white Vichy motif)

(Case T-327/14) ([1])

(Community trade mark — Invalidity proceedings — Community figurative mark representing a red and white Vichy motif — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/55)

Language of the case: French

Parties

Applicant: Compagnie des fromages & Richesmonts (Puteaux, France) (represented by: T. Mollet-Viéville and T. Cuche, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: V. Melgar, and subsequently by: J. Crespo Carillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Grupo Lactalis Iberia SA (Madrid, Spain) (represented by: D. Masson, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 2 March 2014 (Case R 1295/2012-4) concerning invalidity proceedings between Grupo Lactalis Iberia SA and Compagnie des fromages & Richesmonts.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Compagnie des fromages & Richesmonts to pay the costs.*

(1) OJ C 235, 21.7.2014.

Judgment of the General Court of 26 November 2015 — NICO v Council

(Case T-371/14) (1)

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Manifest error of assessment)

(2016/C 027/56)

Language of the case: English

Parties

Applicant: Naftiran Intertrade Co. (NICO) Sàrl (Pully, Switzerland) (represented by: J. Grayston, Solicitor, P. Gjørtler, G. Pandey, D. Rovetta and N. Pilkington, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop and I. Rodios, acting as Agents)

Re:

Application for annulment of the Council decision contained in the letter of 14 March 2014 by which the applicant's name was maintained on the list of person and entities subject to restrictive measures set out in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), as amended by Council Decision 2012/635/CFSP of 15 October 2012 (OJ 2012 L 282, p. 58), and in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), as implemented by Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 (OJ 2012 L 282, p. 16).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Naftiran Intertrade Co. (NICO) Sàrl to bear its own costs and to pay the costs incurred by the Council of the European Union.*

(1) OJ C 261, 11.8.2014.

Judgment of the General Court of 26 November 2015 — Établissement Amra v OHIM (KJ KANGOO JUMPS XR)

(Case T-390/14) (1)

(Community trade mark — Application for Community trade mark KJ Kangoo Jumps XR — Absolute ground for refusal — Devoid of any distinctive character — Article 7(1)(b) of Regulation No 207/2009)

(2016/C 027/57)

Language of the case: English

Parties

Applicant: Établissement Amra (Vaduz, Liechtenstein) (represented by: S. Rizzo, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 March 2014 (Case R 1511/2013-2), concerning an application for registration of the '3D position mark' KJ Kangoo Jumps XR as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Établissement Amra to pay the costs.*

([1]) OJ C 315, 15.9.2014.

Judgment of the General Court of 26 November 2015 — Junited Autoglas Deutschland v OHIM — United Vehicles (UNITED VEHICLEs)

(Case T-404/14) ([1])

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

(2016/C 027/58)

Language of the case: German

Parties

Applicant: Junited Autoglas Deutschland GmbH & Co. KG (Cologne, Germany) (represented by: C. Weil, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: United Vehicles GmbH (Munich, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 April 2014 (Case R 859/2013-4) relating to opposition proceedings between Junited Autoglas Deutschland GmbH & Co. KG and United Vehicles GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Junited Autoglas Deutschland GmbH & Co. KG to pay the costs.*

([1]) OJ C 292, 1.9.2014.

Judgment of the General Court of 8 December 2015 — Compagnie générale des établissements Michelin v OHIM — Continental Reifen Deutschland (XKING)

(Case T-525/14) ([1])

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

(2016/C 027/59)

Language of the case: English

Parties

Applicant: Compagnie générale des établissements Michelin (Clermont-Ferrand, France) (represented initially by L. Carlini, and subsequently by E. Carrillo, 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, intervener before the General Court: Continental Reifen Deutschland GmbH (Hanover, Germany) (represented by: S. Gillert, K. Vanden Bossche, B. Köhn-Gerdes and J. Schumacher, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 May 2014 (Case R 1522/2013-4), relating to opposition proceedings between Compagnie générale des établissements Michelin and Continental Reifen Deutschland GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 May 2014 (Case R 1522/2013-4);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Compagnie générale des établissements Michelin;*

3. *Orders Continental Reifen Deutschland GmbH to bear its own costs.*

([1]) OJ C 303, 8.9.2014.

Judgment of the General Court of 2 December 2015 — Information Resources v OHIM (Growth Delivered)

(Case T-528/14) ([1])

(Community trade mark — Application for Community word mark Growth Delivered — Mark consisting of an advertising slogan — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/60)

Language of the case: English

Parties

Applicant: Information Resources, Inc. (Chicago, Illinois, United States) (represented by: C. Schulte, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 May 2014 (Case R 1777/2013-4), concerning an application for registration of the word sign Growth Delivered as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Information Resources, Inc. to pay the costs.*

(1) OJ C 303, 8.9.2014.

Judgment of the General Court of 2 December 2015 — adp Gauselmann v OHIM (Multi Win)

(Case T-529/14) (1)

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

(2016/C 027/61)

Language of the case: German

Parties

Applicant: adp Gauselmann GmbH (Lübbecke, Germany) (represented by: P. Koch Moreno, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 April 2014 (Case R 1326/2013-1), concerning an application for registration of the word sign Multi Win as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders adp Gauselmann GmbH to pay the costs.*

(1) OJ C 303, 8.9.2014.

Judgment of the General Court of 8 December 2015 — Giand v OHIM — Flamagas (FLAMINAIRE)

(Case T-583/14) ([1])

(Community mark — Opposition proceedings — Application for Community word mark FLAMINAIRE — Earlier national and international word marks FLAMINAIRE — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Ne bis in idem)

(2016/C 027/62)

Language of the case: Italian

Parties

Applicant: Giand Srl (Rimini, Italy) (represented by: F. Caricato, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Flamagas, SA (Barcelona, Spain) (represented by: G. Hinarejos Mulliez, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 June 2014 (Case R 2117/2011-4), relating to opposition proceedings between Flamagas, SA and Giand Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 351, 6.10.2014.

Judgment of the General Court of 3 December 2015 — Hewlett Packard Development Company v OHIM (FORTIFY)

(Case T-628/14) ([1])

(Community trade mark — Application for Community word mark FORTIFY — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2016/C 027/63)

Language of the case: English

Parties

Applicant: Hewlett Packard Development Company LP (Dallas, Texas, United States) (represented by: T. Raab and H. Lauf, 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 3 June 2014 (Case R 249/2014-2), concerning an application for registration of the word sign FORTIFY as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hewlett Packard Development Company LP to bear its own costs and to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 361, 13.10.2014.

Judgment of the General Court of 3 December 2015 — Infusion Brands v OHIM (DUALSAW)

(Case T-647/14) ([1])

(Community trade mark — Application for the Community figurative mark DUALSAW — Absolute grounds for refusal — Partial refusal of registration — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2016/C 027/64)

Language of the case: English

Parties

Applicant: Infusion Brands, Inc. (Myerlake Circle Clearwater, Florida, United States) (represented by: K. Piepenbrink, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by V. Melgar, and subsequently by H. O'Neill and M. Rajh, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 1 July 2014 (Case R 397/2014-4), concerning an application for registration of the figurative sign DUALSAW as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Infusion Brands, Inc. to pay the costs.*

([1]) OJ C 380, 27.10.2014.

Judgment of the General Court of 3 December 2015 — Infusion Brands v OHIM (DUALTOOLS)

(Case T-648/14) ([1])

(Community trade mark — Application for the Community figurative mark DUALTOOLS — Absolute grounds for refusal — Partial refusal of registration — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2016/C 027/65)

Language of the case: English

Parties

Applicant: Infusion Brands, Inc. (Myerlake Circle Clearwater, Florida, United States) (represented by: K. Piepenbrink, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by V. Melgar, and subsequently by H. O'Neill and M. Rajh, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 1 July 2014 (Case R 398/2014-4), concerning an application for registration of the figurative sign DUALTOOLS as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Infusion Brands, Inc. to pay the costs.*

([1]) OJ C 380, 27.10.2014.

Judgment of the General Court of 26 November 2015 — Morgan v OHIM

(Case T-683/14 P) ([1])

(Appeal — Civil service — Officials — Appraisal report — 2010-2011 Appraisal period — Distortion — Obligation to state reasons — Manifest error of assessment)

(2016/C 027/66)

Language of the case: English

Parties

Appellant: Rhys Morgan (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by M. Paolacci and A. Lukošiūtė, and subsequently by A. Lukošiūtė, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 8 July 2014 in *Morgan* v *OHIM* (F-26/13, ECR-SC, EU:F:2014:180), and seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Declares that Rhys Morgan is to bear his own costs and orders him to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in the present appeal proceedings.*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 3 December 2015 — Omega International v OHIM (Representation of a white circle and a white rectangle inside a black rectangle)

(Case T-695/14) ([1])

(Community trade mark — Application for a Community figurative mark representing a white circle and a white rectangle inside a black rectangle — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/67)

Language of the case: German

Parties

Applicant: Omega International (Bad Oldesloe, Germany) (represented by: J. P. Becker, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 18 July 2014 (Case R 1037/2014-5) relating to an application for registration of a figurative sign representing a white circle and a white rectangle inside a black rectangle as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Omega International GmbH to pay the costs.*

([1]) OJ C 409, 17.11.2014.

Judgment of the General Court of 30 November 2015 — Hong Kong Group v OHIM — WE Brand (W E)

(Case T-718/14) ([1])

(Community trade mark — Opposition proceedings — Application for a Community figurative mark W E — Earlier Community word mark WE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/68)

Language of the case: English

Parties

Applicant: Hong Kong Group Oy (Vantaa, Finland) (represented by: J.-H. Spåre, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: WE Brand Sàrl (Luxembourg, Luxembourg) (represented by: R. van Oerle and E. de Groot, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 August 2014 (Case R 2305/2013-2) concerning opposition proceedings between WE Brand Sàrl and Hong Kong Group Oy.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 August 2014 (Case R 2305/2013-2) concerning opposition proceedings between WE Brand Sàrl and Hong Kong Group Oy and the decision of the Opposition Division of OHIM of 30 September 2013;*

2. *Rejects the opposition;*

3. *Orders OHIM and WE Brand to bear their own costs and to pay those incurred by Hong Kong Group, including those necessarily incurred by Hong Kong Group for the purposes of the proceedings before the Board of Appeal of OHIM.*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 4 December 2015 — K-Swiss v OHIM (Representation of parallel stripes on a shoe)

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

(Community trade mark — International registration designating the European Community — Figurative mark representing parallel stripes on a shoe — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2016/C 027/69)

Language of the case: English

Parties

Applicant: K-Swiss Inc. (Westlake Village, California, United States) (represented by: R. Niebel and M. Hecht, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 October 2014 (Case R 1093/2014-2), concerning the international registration, designating the European Community, of a figurative mark representing parallel stripes on a shoe.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders K-Swiss Inc. to pay the costs.*

([1]) OJ C 65, 23.2.2015.

Order of the General Court of 13 November 2015 — Švyturys-Utenos Alus v OHIM — Nordbrand Nordhausen (KISS)

(Case T-360/14) ([1])

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

(2016/C 027/70)

Language of the case: English

Parties

Applicant: Švyturys-Utenos Alus UAB (Utena, Lithuania) (represented by: R. Žabolienė and I. Lukauskienė, lawyers)

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, intervener before the General Court: Nordbrand Nordhausen GmbH (Nordhausen, Germany) (represented by: C. Düchs, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 17 March 2014 (Case R 1302/2013-4) concerning opposition proceedings between Nordbrand Nordhausen GmbH and Švyturys-Utenos Alus UAB.

Operative part of the order

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

2. *Švyturys-Utenos Alus UAB and Nordbrand Nordhausen GmbH shall bear their own costs and shall each pay half of those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 253, 4.8.2014.

Order of the General Court of 27 November 2015 — Italy v Commission

(Case T-636/14) ([1])

(Language regime — Vacancy notice for a post of director of the Translation Centre for the Bodies of the European Union — Language requirements in the module for the online submission of applications — Alleged divergence with the vacancy notice published in the Official Journal — Action manifestly lacking any foundation in law)

(2016/C 027/71)

Language of the case: Italian

Parties

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

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

Intervener in support of the applicant: Republic of Lithuania (represented by: D. Kriaučiūnas, V. Čepaitė and R. Krasuckaitė, acting as Agents)

Re:

Application for annulment of Vacancy Notice COM/2014/10356 for a post of director of the Translation Centre for the Bodies of the European Union (OJ 2014, C 185 A, p. 1).

Operative part of the order

1. *The action is dismissed.*

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

3. *The Republic of Lithuania is ordered to bear its own costs relating to its intervention.*

([1]) OJ C 388, 3.11.2014.

Order of the General Court of 23 November 2015 — Beul v Parliament and Council

(Case T-640/14) ([1])

(Action for annulment — Functioning of financial markets — Regulation (EU) No 537/2014 — Legislative act — Lack of individual concern — Inadmissibility)

(2016/C 027/72)

Language of the case: German

Parties

Applicant: Carsten René Beul (Neuwied, Germany) (represented initially by K.-G Stümper, then by H.-M. Pott and T. Eckhold, lawyers)

Defendants: European Parliament (represented by: P. Schonard and D. Warin, acting as Agents) and Council of the European Union (represented by R. Weimann and N. Rouam, acting as Agents)

Re:

Application for annulment of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ 2014 L 158, p. 77).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the European Commission's application for leave to intervene.*

3. *Mr Carsten René Beul shall bear his own costs and shall pay those incurred by the European Parliament and the Council of the European Union.*

4. *The Commission and the Parliament shall bear their own costs relating to the application to intervene.*

(1) OJ C 409, 17.11.2014.

Order of the General Court of 23 November 2015 — Milchindustrie-Verband and Deutscher Raiffeisenverband v Commission

(Case T-670/14) (1)

(Action for annulment — Guidelines on State aid for environmental protection and energy 2014-2020 — Association — Members not directly concerned — Inadmissibility)

(2016/C 027/73)

Language of the case: German

Parties

Applicants: Milchindustrie-Verband eV (Berlin, Germany) and Deutscher Raiffeisenverband eV (Berlin) (represented by: I. Zenke and T. Heymann, lawyers)

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

Re:

Application for annulment of the Commission's Communication of 28 June 2014 entitled 'Guidelines on State aid for environmental protection and energy 2014-2020' (OJ 2014 C 200, p. 1), in so far as the sector for the operation of dairies and cheese-making (NACE 10.51) is not mentioned in Annex 3 to that communication.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Milchindustrie-Verband eV and Deutscher Raiffeisenverband eV shall bear their own costs and pay those incurred by the European Commission.*

(1) OJ C 431, 1.12.2014.

Order of the General Court of 24 November 2015 — Delta Group agroalimentare v Commission

(Case T-163/15) (1)

(Action for annulment — Italian market in poultrymeat — Exceptional support measures to resolve specific problems concerning the poultrymeat sector in Italy — Export refunds for poultrymeat destined for certain African countries — Rejection of the applicant's request for exceptional measures — Act not open to challenge — Inadmissibility)

(2016/C 027/74)

Language of the case: Italian

Parties

Applicant: Delta Group agroalimentare Srl (Porto Viro, Italy) (represented by: V. Migliorini, lawyer)

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

Re:

Application for annulment of the Commission's letter of 9 February 2015 (Ref. Ares (2015) 528512), sent in reply to the applicant's request for the adoption of exceptional support measures for the poultrymeat market on the basis of Article 219 (1) or of Article 221 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007(OJ 2013 L 347, p. 671).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Delta Group agroalimentare shall bear its own costs and shall pay those incurred by the European Commission.*

(1) OJ C 178, 1.6.2015.

Action brought on 25 September 2015 — Iran Insurance v Council

(Case T-558/15)

(2016/C 027/75)

Language of the case: English

Parties

Applicant: Iran Insurance Company (Tehran, Iran) (represented by: D. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— order the Council of the European Union to pay the applicant compensation of the material and moral damage incurred by the applicant due to the illegal imposition by the Council of the restrictive measures against the applicant pursuant to the following illegal Council acts: i) Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (1); ii) Council Regulation (EU) n° 961/2010 of 25 October 2010 (2); iii) Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (3); iv) Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (4); v) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (5);

— award damages for a total amount of: i) 84 767,66 UK Pounds plus; ii) 4774 187,07 Euros plus; iii) 1 532 688 USD plus iv) any other amount that may be established in the course of the procedure, covering both the moral damage and the material damage suffered by the applicant as a result of the Council's illegal acts;

— order that the Council pay the applicant's costs of this application.

Pleas in law and main arguments

In support of the action, the applicant relies on the following arguments.

1. The applicant contends that pursuant to Article 340 TFEU, a victim of a damage caused by an institution of the EU may claim compensation against that institution. Case law specified the conditions for such a claim, which the General Court Judgment of 25 November 2014 in *Safa Nicu Sepahan v Council* (T-384/11, ECR, EU:T:2014:986) summarizes: a) the institution's conduct must be unlawful; b) actual damage must have been suffered; and c) there must be a causal link between the conduct complained of and the damage pleaded.

2. The applicant states that the above-mentioned three conditions are met with respect to the applicant's situation: the Council has committed a 'serious breach of a rule of law intended to confer rights on individuals within the meaning of the case-law', as ruled by the General Court in its judgment of 6 September 2013 in *Iran Insurance v Council* (T-12/11, EU:T:2013:401); the applicant suffered substantial moral and material damage; and such damage is the direct consequence of the illegal sanctions.

3. The applicant also indicates that as further specified in the developments contained in the application, the moral damage suffered by the applicant is quantified to the amount of 1 000 000 Euros; and the material damage, which is quantified by independent auditors, amounts to 84 767,66 UK Pounds plus 3 774 187,07 Euro plus 1 532 688 USD, without prejudice of any additional amount that may be established in the course of the procedure. Therefore, the total amount of the applicant's claim for damages is 84 767,66 UK Pounds plus 4 774 187,07 Euro plus 1 532 697,01 USD plus any other amount that may be established in the course of the procedure.

(1) OJ 2010 L 281, p. 81.
(2) Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007, OJ 2010 L 281, p. 1.
(3) OJ 2011 L 319, p. 71.
(4) OJ 2011 L 319, p. 11.
(5) OJ 2012 L 88, p. 1.

Action brought on 25 September 2015 — Post Bank Iran v Council

(Case T-559/15)

(2016/C 027/76)

Language of the case: English

Parties

Applicant: Post Bank Iran (Tehran, Iran) (represented by: D. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— order the Council of the European Union to pay the applicant compensation of the material and moral damage incurred by the applicant due to the illegal imposition by the Council of the restrictive measures against the applicant pursuant to the following illegal Council acts: i) Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (1); ii) Council Regulation (EU) nº 961/2010 of 25 October 2010 (2); iii) Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (3); iv) Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (4); v) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (5);

— award damages for a total amount of 203 695 040 Euros, covering both the moral damage and the material damage suffered by the applicant as a result of the Council's illegal acts;

— order that the Council pay the applicant's costs of this application.

Pleas in law and main arguments

In support of the action, the applicant relies on the following arguments.

1. The applicant contends that pursuant to Article 340 TFEU, a victim of a damage caused by an institution of the EU may claim compensation against that institution. Case law specified the conditions for such a claim, which the General Court Judgment of 25 November 2014 in *Safa Nicu Sepahan v Council* (T 384/11, ECR, EU:T:2014:986) summarizes: a) the institution's conduct must be unlawful; b) actual damage must have been suffered; and c) there must be a causal link between the conduct complained of and the damage pleaded.

2. The applicant states that the above-mentioned three conditions are met with respect to the applicant's situation: the Council has committed a 'serious breach of a rule of law intended to confer rights on individuals within the meaning of the case-law', as ruled by the General Court in its judgment of 6 September 2013 in *Post Bank Iran v Council* (T-13/11, EU:T:2013:402); the applicant suffered substantial moral and material damage; and such damage is the direct consequence of the illegal sanctions.

3. The applicant also indicates that as further specified in the developments contained in the application, the moral damage suffered by the applicant is quantified to the amount of 1 000 000 Euros; and the material damage, which is quantified by independent auditors, amounts to 202 695 040 Euros.

(1) OJ 2010 L 281, p. 81.
(2) Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007, OJ 2010 L 281, p. 1.
(3) OJ 2011 L 319, p. 71.
(4) OJ 2011 L 319, p. 11.
(5) OJ 2012 L 88, p. 1.

Action brought on 9 October 2015 — GABO:mi v Commission

(Case T-588/15)

(2016/C 027/77)

Language of the case: English

Parties

Applicant: GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG (München, Germany) (represented by: M. Ahlhaus and C. Mayer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the contested decisions to be void; and

— order the defendant to bear all costs including the applicant's costs.

Pleas in law and main arguments

The applicant contests the decisions of the Commission, contained in the e-mail of 29 July 2015 and in the letters of 19 August 2015 (Ref. Ares(2015)3466903) and of 28 August 2015 (Ref. Ares(2015)3557576), to suspend all payments to the applicant related to FP7 grants managed by the defendant's Directorate E, i.e. FP7 Grant Agreement No 602299 regarding Project EU-CERT-ICD and FP7 Grant Agreement No. 260777 regarding project HIP-Trial and Directorate F, i.e. FP7 Grant Agreement No. 312117 regarding project BIOFECTOR.

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

1. First plea in law, alleging that the contested decisions are not covered by Article II.5(3)(d) of Annex II to the FP7 Grant Agreement.

2. Second plea in law, alleging that the contested decisions do not meet the applicable formal and procedural requirements and are vitiated by infringement of principles of good governance.

3. Third plea in law, alleging that the defendant's true intention is to enforce an illegitimate set-off rather than impose precautionary measures.

4. Fourth plea in law, alleging that the contested decisions are based on illegitimate discretionary decisions of the defendant.

5. Fifth plea in law, alleging that the contested decisions are vitiated on violations of the principle of proportionality.

Action brought on 12 October 2015 — Eurorail v Commission and INEA

(Case T-589/15)

(2016/C 027/78)

Language of the case: English

Parties

Applicant: Eurorail NV (Aalst, Belgium) (represented by: J. Derenne, N. Pourbaix and M. Domecq, lawyers)

Defendants: Innovation and Networks Executive Agency (INEA) and European Commission

Form of order sought

The applicant claims that the Court should:

— declare, pursuant to Article 272 TFEU, that INEA's decision of 17 July 2015 terminating the Grant Agreement ([1]) and ordering the recovery of part of the advances paid to the applicant, is invalid and unenforceable, and that the final grant amount due to the applicant be set at EUR 951,813;

— alternatively, the applicant claims that the Commission and INEA be held contractually liable for the loss caused to the applicant as a result of the decision and order the recovery of EUR 581,770 (plus interest);

— alternatively, order INEA/the Commission to withdraw the decision, and;

— order INEA/the Commission to bear the applicant's legal costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that INEA and the Commission acted in breach of their obligations under the Grant Agreement. As a result, the applicant submits that they wrongfully terminated the Grant Agreement and ordered recovery of part of the advances paid to the applicant.

2. Second plea in law, alleging that INEA and the Commission acted in breach of the principle of performance in good faith of contractual obligations.

3. Third plea in law, alleging that INEA and the Commission breached the applicant's legitimate expectations.

(1) Grant Agreement MPO/09/058/SI1.5555667 'RAIL2' (Marco Polo II Call 2009).

Action brought on 19 October 2015 — Europäischer Tier- und Naturschutz and Giesen v Commission

(Case T-595/15)

(2016/C 027/79)

Language of the case: German

Parties

Applicants: Europäischer Tier- und Naturschutz e.V. (Much, Germany) and Horst Giesen (Much) (represented by: P. Brockmann, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision not to take action of 17 August 2015, notified on 24 August 2015,

on the creation of a European law on associations in the form of a no longer published draft law or of a version of that draft law amended under the authorised framework, which gives equal treatment to cross-border activities for altruistic aims and profit-making associations, in the alternative,

on the harmonisation of the national laws concerning associations and bodies with cross-border activities for altruistic aims;

— thereby placing the European Commission in a situation whereby it is legally compliant for the purposes of Article 266 TFEU by ordering it to refrain from continuing to prevent or hinder the establishment of the detrimental situation described in the two preceding paragraphs and

— order the Commission and any potential interveners to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants challenge the decision to abandon the creation of a European law on associations and to address the current discrimination and interference with the collective and individual freedom of association.

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

1. First plea in law: infringement of Article 11 of the European Convention of Human Rights ('the ECHR'), Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter'), general principles of law within the meaning of Article 6(3) of TEU and Article 20 of the United Nations Universal Declaration of Fundamental Rights

2. Second plea in law: infringement of the right to equality before the law (Article 20 of the Charter and Article 14 of the ECHR) to the detriment of altruistic values and associations with altruistic aims

3. Third plea in law: infringement of the obligation to state reasons in Article 41 of the Charter

4. Fourth plea in law: limitation of the scope of fundamental rights by failing to act, an unlawful interpretation of the law, under Articles 52 and 54 of the Charter

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Action brought on 23 October 2015 — Wirtschaftsvereinigung Stahl and Others v Commission

(Case T-605/15)

(2016/C 027/80)

Language of the case: German

Parties

Applicants: Wirtschaftsvereinigung Stahl (Düsseldorf, Germany), Benteler Steel/Tube GmbH (Paderborn, Germany), BGH Edelstahl Freital GmbH (Freital, Germany), BGH Edelstahl Lippendorf GmbH (Lippendorf, Germany), BGH Edelstahl Siegen GmbH (Siegen, Germany), Buderus Edelstahl GmbH (Wetzlar, Germany), ESF Elbe-Stahlwerke Feralpi GmbH (Riesa, Germany), Friedr. Lohmann GmbH Werk für Spezial- & Edelstähle (Witten, Germany), Outokumpu Nirosta GmbH (Krefeld, Germany), Rogesa Roheisengesellschaft Saar mbH (Dillingen, Germany), Zentralkokerei Saar GmbH (Dillingen), Drahtwerk St. Ingbert GmbH (Sankt Ingbert, Germany), Ilsenburger Grobblech GmbH (Ilsenburg, Germany), ThyssenKrupp Electrical Steel GmbH (Gelsenkirchen, Germany), ThyssenKrupp Federn und Stabilisatoren GmbH (Hagen, Germany), ThyssenKrupp Gerlach GmbH (Homburg, Germany), ThyssenKrupp Rasselstein GmbH (Andernach, Germany) und Emscher Aufbereitung GmbH (Mühlheim an der Ruhr, Germany) (represented by: H. Janssen, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the contested decision;

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

Pleas in law and main arguments

By the present action, the applicants seek the annulment of Commission Decision (EU) 2015/1585 of 25 November 2014 (notified under document C(2014) 8786) on the aid scheme SA.33995 (2013/C) (ex 2013/NN) implemented by Germany for the support of renewable electricity and of energy-intensive users. ([1])

In support of the action, the applicants rely on four pleas in law which are, in essence, identical or similar to the pleas relied on in Case T-319/15 *Deutsche Edelstahlwerke* v *Commission*. ([2])

([1]) OJ 2015 L 250, p. 122.
([2]) OJ 2015 C 302, p. 60.

Action brought on 29 October 2015 — Repsol v OHIM — Basic (BASIC)

(Case T-609/15)

(2016/C 027/81)

Language in which the application was lodged: English

Parties

Applicant: Repsol, SA (Madrid, Spain) (represented by: J. Devaureix, lawyer)

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

Other party to the proceedings before the Board of Appeal: Basic AG Lebensmittelhandel (München, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word element 'BASIC'– Community trade mark No 5 648 159

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 11 August 2015 in Case R 2384/2013-1

Form of order sought

The applicant claims that the Court should:

— admit this writ of claim, with all the documents annexed, and the correspondent copies;

— admit all the evidences attached to this writ;

— annul the contested decision;

— order the Applicant to bear the costs of the proceedings.

Plea(s) in law

— The Board of appeal has incorrectly assessed the evidence submitted by Basic AG as to its genuine use of a company names 'Basic AG' and 'Basic' use in the course of trade in Germany;

— The contested decision is incorrectly based on article 8(4) of Regulation No 207/2009, in relation to Article 53 (1) (c), as far as between the marks 'basic' figuratives there is no likelihood of confusion. The term basic is lack of distinctiveness;

— The exceptional protection of the German Trademark Law regarding non registered trade names has to be interpreted restrictively, according to Rome Treaty, 23 March 1957 and Community case law.

Action brought on 26 October 2015 — British Aggregates v Commission

(Case T-610/15)

(2016/C 027/82)

Language of the case: English

Parties

Applicant: British Aggregates Association (Lanark, United Kingdom) (represented by: L. Van den Hende, lawyer, and A. White, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the annulment pursuant to Article 263 TFEU of the Commission's decision of 27 March 2015 C(2015) 2141 final in Case SA.34775 (2013/C) (ex 2012/NN) — Aggregates Levy; and

— order that the Commission pay the applicant's costs in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has made errors of assessment in deciding that eight exemptions from the aggregates levy ('AGL') under the Finance Act 2001 do not result in selectivity and thereby do not constitute State aid under Article 107(1) TFEU and in determining the normal taxation principle and objective of the AGL for the purposes of applying the selectivity criterion.

2. Second plea in law, alleging that the Commission has failed to make a genuinely diligent and impartial examination as to whether the eight exemptions in question result in selectivity and thereby constitute State aid under Article 107(1) TFEU.

3. Third plea in law, alleging that the Commission has failed to state reasons for the contested decision as required by Article 296 TFEU because the application made by the Commission of the normal taxation principle and objective of the AGL in explaining why the eight exemptions in question do not result in selectivity is contradictory on the face of the contested decision.

Action brought on 2 November 2015 — Edeka-Handelsgesellschaft Hessenring v Commission

(Case T-611/15)

(2016/C 027/83)

Language of the case: German

Parties

Applicant: Edeka-Handelsgesellschaft Hessenring mbH (Melsungen, Germany) (represented by: E. Wagner and H. Hoffmeyer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul entirely or, in the alternative, partially, the Commission Decision of 3 September 2015 in Case 2015/4023 by which the applicant's access to the non-confidential version of the Commission Decision of 4 December 2013 in the cartel proceedings AT/39914 — EIRD and to the enumerative list of the Commission's file relating to those proceedings was entirely refused, in so far as the Commission refused to grant access to the part of the non-confidential version of the decision or enumerative list whose confidentiality was not claimed by the undertaking affected by the decision, or was no longer claimed;

— in the alternative, in the event that the Commission Decision of 3 September 2015 in Case 2015/4023 by which the applicant's access to the non-confidential version of the Commission Decision of 4 December 2013 in the cartel proceedings AT/39914 — EIRD and to the enumerative list of the Commission's file relating to those proceedings was entirely refused, is not annulled on the ground and to the extent that the non-confidential version of the Commission Decision of 4 December 2013 in the cartel proceedings AT/39914 — EIRD and/or the non-confidential version of the enumerative list of the Commission's file relating to those proceedings does not exist, declare that the Commission unlawfully failed to issue and produce to the applicant a non-confidential version of the Commission Decision of 4 December 2013 in the cartel proceedings AT/39914 — EIRD and/or a non-confidential version of the enumerative list of the Commission's file relating to those proceedings;

— 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 ten pleas in law.

1. First plea in law, alleging infringement of the fundamental right to effective legal protection and the fundamental rights to good administration and the provision of reasons due to a failure to provide reasons for the contested decision

2. Second plea in law, alleging infringement of the fundamental right to effective legal protection and the right to be notified about legal remedies as a result of the failure to notify about possible legal remedies

3. Third plea in law, alleging infringement of the third indent of Article 4(2) of Regulation (EC) No 1049/2001 ([1])

4. Fourth plea in law, alleging infringement of the first indent of Article 4(2) of Regulation (EC) No 1049/2001

5. Fifth plea in law, alleging infringement of the first indent of Article 4(3)(1) of Regulation (EC) No 1049/2001

6. Sixth plea in law, alleging infringement of the first indent of Article 4(3)(2) of Regulation (EC) No 1049/2001

7. Seventh plea in law, alleging infringement of the fundamental right of access to documents

8. Eighth plea in law, alleging infringement of the fundamental right of access to documents and the principle of proportionality as a result of the failure to ensure at least partial access to the file as was requested

9. Ninth plea in law, alleging infringement of Article 101 TFEU as a result of the practical preclusion of the applicant's right to have its claim for competition law damages examined and, where appropriate, upheld

10. Tenth plea in law in the alternative, alleging infringement of the applicant's right to bed provided with a non-confidential version of the Commission decision in the cartel proceedings AT/39914 — EIRD and the enumerative list of the Commission's file relating to those proceedings (Regulation (EC) No 1049/2001 and Art. 30(2) of Regulation (EC) No 1/2003 ([2])

In that regard, the applicant claims that the conditions for the exemptions in Article 4(2) and (3) of Regulation (EC) No 1049/2001, which could justify a failure to reveal the contents of documents applied for by the applicant, are not satisfied.

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

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

Action brought on 2 November 2015 — LL v Parliament

(Case T-615/15)

(2016/C 027/84)

Language of the case: Lithuanian

Parties

Applicant: LL (Vilnius, Lithuania) (represented by: J. Petrulionis, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— annul Decision D(2014) 15503 of the Secretary-General of the European Parliament of 17 April 2014 and Debit Note No 2014-575 adopted on the basis of that decision on 5 May 2014;

— order the defendant to pay all of the legal costs incurred by the applicant.

Pleas in law and main arguments

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

The correctness of the payment and the validity and lawfulness of its recovery

The applicant submits that, in Decision D(2014) 15503, the Secretary-General of the European Parliament decided in an entirely unfounded and unlawful manner that the amount of EUR 37 728 had been unduly paid to the applicant and, in a manner which was unfounded and unlawful under Article 68 of the Implementing Measures for the Statute for Members of the European Parliament and Article 80 of the Rules of Application for the Financial Regulation, instructed the Accounting Officer of the European Parliament to recover from the applicant the payment of EUR 37 728 and, in accordance with the procedure laid down, to notify the applicant of that matter by Debit Note No 2014-575.

According to the applicant, the Secretary-General of the European Parliament, when adopting the decision, took into account only two elements: the OLAF report and the fact that the applicant had not adduced evidence that the payment was used for its intended purpose. However, the applicant claims, no information was collected which confirms that he used the payment received for purposes other than that for which it was intended, in breach of Article 14 of the Rules governing the payment of expenses and allowances to Members of the European Parliament.

The limitation period and the application of the principles of a reasonable period, legal security and the protection of legitimate expectations

The applicant claims that, in Decision D(2014) 15503 of the Secretary-General of the European Parliament and in Debit Note No 2014-575, the limitation period provided for in Article 81 of the Financial Regulation and in Article 93 of the Rules of Application for the Financial Regulation was not respected, and that the requirements of the principles of a reasonable period, legal security and the protection of legitimate expectations were not complied with.

According to the applicant, the relevant EU institutions delayed, in an unfounded and unfair manner and for an unreasonably long time, in exercising their powers and taking the relevant decisions. In this way, the applicant's rights were infringed, including the right of defence and the proper implementation of that right, since, owing to the long period between the events under investigation and the taking of the relevant decisions, the applicant was objectively deprived of the opportunity effectively to defend himself against the accusations made, to present evidence and to take all other necessary steps to ensure that the matter under examination would be resolved equitably.

Action brought on 3 November 2015 — Transtec v Commission

(Case T-616/15)

(2016/C 027/85)

Language of the case: French

Parties

Applicant: Transtec (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the set-off decisions of the European Commission contained in its letters of 25 August, 27 August, 7 September, 16 September and 23 September 2015 by which it recovered the sum of EUR 624 388,73;

— order the defendant to pay EUR 624 388,73 plus late payment interest on that sum, to be determined on the basis of the European Central Bank reference rate plus two percentage points;

— order the defendant to pay compensation for non-material damage, set at the symbolic amount of EUR 1;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of legal certainty, in so far as the contested decisions have no valid legal basis.

2. Second plea in law, alleging infringement of the principle of unjust enrichment, in so far as the sum of EUR 607 096,08 plus interest was deducted from the applicant's assets and increased the wealth of the Commission without any legal basis for that enrichment.

3. Third plea in law, alleging infringement of Articles 42, 44, 45 and 47 of the Financial Regulation of 27 March 2003 applicable to the 9th European Development Fund, in so far as the Commission did not exercise the discretion conferred on it by those provisions, and infringement of the principle of proportionality.

4. Fourth plea in law, alleging infringement of the principle of good administration, in so far as the Commission disregarded Article 41 of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law, alleging that the Commission committed manifest errors of assessment.

Action brought on 6 November 2015 — Badica and Kardiam v Council

(Case T-619/15)

(2016/C 027/86)

Language of the case: French

Parties

Applicants: Bureau d'achat de diamant Centrafrique (Badica) (Bangui, Central African Republic), Kardiam (Antwerp, Belgium) (represented by: D. Luff and L. Defalque, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Article 1 of Council Implementing Regulation (EU) 2015/1485 of 2 September 2015 and point B 1 of the Annex to that regulation in so far as the applicants are added to Annex I to Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of the defence and of the right to a fair hearing and to effective judicial protection. This plea is expressed in two parts:

   — first part, alleging a failure on the part of the Council to notify the applicants individually of the decision to freeze funds;

   — second part, alleging a failure to disclose the evidence and the file, and infringement of the principle of *audi alteram partem* and of transparency.

2. Second plea in law, alleging an error of assessment of the facts relating to the applicants' activities resulting in an error of law.

3. Third plea in law, alleging defects in the examination carried out by the Council.

Action brought on 10 November 2015 — Tillotts Pharma v OHIM — Ferring (OCTASA)

(Case T-632/15)

(2016/C 027/87)

Language in which the application was lodged: English

Parties

Applicant: Tillotts Pharma AG (Rheinfelden, Switzerland) (represented by: M. Douglas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ferring BV (Hoofddorp, Netherlands)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community word mark 'OCTASA' — Application for registration No 8 169 881

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 7 September 2015 in Case R 2386/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

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

Action brought on 12 November 2015 — JT International v OHIM — Habanos (PUSH)

(Case T-633/15)

(2016/C 027/88)

Language in which the application was lodged: English

Parties

Applicant: JT International SA (Geneva, Switzerland) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Gilbert, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Corporación Habanos, SA (La Habana, Cuba)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community word mark 'PUSH' — Application for registration No 11 639 903

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 10 August 2015 in Case R 3046/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and other party to bear their own costs and pay those of the applicant.

Plea in law

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

Action brought on 16 November 2015 — Alma-The Soul of Italian Wine v OHIM — Miguel Torres (SOTTO IL SOLE ITALIANO SOTTO il SOLE)

(Case T-637/15)

(2016/C 027/89)

Language in which the application was lodged: English

Parties

Applicant: Alma-The Soul of Italian Wine LLLP (Coral Gables, United States of America) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal: Miguel Torres, SA (Vilafranca del Penedès, Spain)

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 'SOTTO IL SOLE ITALIANO SOTTO il SOLE' — Application for registration No 9 784 539

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 3 September 2015 in Case R 356/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

— Infringement of Articles 8(5), 64(1) and 8(1)(b) of Regulation No 207/2009.

Action brought on 18 November 2015 — Jema Energy v European Joint Undertaking Fusion for Energy

(Case T-668/15)

(2016/C 027/90)

Language of the case: Spanish

Parties

Applicant: Jema Energy, S.A. (Lasarte-Oria, Spain) (represented by: N. Rey Rey, lawyer)

Defendant: European Joint Undertaking for ITER and the Development of Fusion Energy

Form of order sought

The applicant claims that the Court should:

— Annul the defendant's decision to reject the bid of the applicant, Jema Energy, and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, relating to the clarity of the rules applied to the procedure and alleging infringement of the principles of legal certainty and transparency

   — The applicant claims in that respect that the tender specifications in the present procedure contain vague and imprecise concepts, for which the applicant was obliged to request several clarifications from the defendant. The applicant submitted very clear questions, leaving no room for doubt. From the outset, F4E provided very ambiguous and sparsely-worded replies.

— Given the ambiguity of the selection criteria in the procedure and F4E's conduct in response to the applicant's question and actions, the applicant submits that the principles of legal certainty and transparency have been infringed.

2. Second plea in law, alleging infringement of the principles of equal treatment and equal opportunities between candidates during the procedure

— The applicant claims in that respect that one of the documents that the defendant sent to the applicant at the beginning of the procedure expressly states that if the examples submitted did not fulfil the technical requirements, the bidder would be permitted to present new examples in order to fully meet those requirements. At no point was the applicant advised that it had not fulfilled the requirements, with the result that it never had the opportunity to present other examples. Nonetheless, the reasons that the defendant has given to disqualify JEMA from the tender procedure is that its examples did not fulfil the requirements.

3. Third plea in law, alleging infringement of the principle of proportionality and the artificial restriction of competition

— The applicant claims in that respect that the selection criteria are too strict. F4E requested a reference that fulfils a combination of three requirements (power, voltage and current) which is unnecessary and disproportionate to the needs of the project. In addition, it has requested that a power supply project from the last five years be submitted by way of reference, which is another disproportionate criterion, since undertakings that might have references which fulfil those criteria are manufacturers of frequency inverters for high power motors. Those are typically large undertakings, thereby discouraging the participation of small and medium undertakings.

Action brought on 20 November 2015 — Osho Lotus Commune v OHIM — Osho International Foundation (OSHO)

(Case T-670/15)

(2016/C 027/91)

Language in which the application was lodged: German

Parties

Applicant: Osho Lotus Commune e.V. (Cologne, Germany) (represented by: M. Viefhues, lawyer)

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

Other party to the proceedings before the Board of Appeal: Osho International Foundation (Zurich, Switzerland)

Details of the proceedings before OHIM

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

Trade mark at issue: Community word mark 'OSHO' — Application for registration No 1 224 831

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 22 September 2015 in Case R 1997/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and, where relevant, the other party to the proceedings to pay the costs.

Plea in law

— Infringement of Article 7(1)(b), (c) and (f) of Regulation No 207/2009.

Action brought on 12 November 2015 — Malta Cross Foundation International v OHIM — Malteser Hilfsdienst (Malta Cross International Foundation)

(Case T-672/15)

(2016/C 027/92)

Language in which the application was lodged: English

Parties

Applicant: Malta Cross Foundation International, Inc. (Hallandale Beach, United States) (represented by: J. Pimenta, lawyer)

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

Other party to the proceedings before the Board of Appeal: Malteser Hilfsdienst e.V. (Cologne, Germany)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'Malta Cross International Foundation' — Application for registration No 7 252 554

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Grand Board of Appeal of OHIM of 9 July 2015 in Case R 863/2011-G

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and, if the case might be, the intervener to pay the costs of the opposition proceedings and of the appeal.

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 20 November 2015 — Panzeri v Parliament and Commission

(Case T-677/15)

(2016/C 027/93)

Language of the case: Italian

Parties

Applicant: Pier Antonio Panzeri (Calusco d'Adda, Italy) (represented by: C. Cerami, lawyer)

Defendants: European Parliament, European Commission

Form of order sought

The applicant claims that the Court should:

— As regards the substance of the case: uphold the present action and, consequently, annul the contested decision on the ground that it is unlawful;

— In the alternative: refer the applications to the Secretary General of the European Parliament for a fair reassessment of the sum in respect of which recovery is sought;

— Order the defendants to pay the costs of the present proceedings.

— Order that all rights deriving from the law and reasonableness should be reserved, including the right to seek an order requiring that the defendant refund, together with interest and adjustment for inflation, any sums which may have been paid in the interim period, in accordance with the contested order.

Pleas in law and main arguments

The present action is brought against letter No 315070 of 21 September 2015 of the Directorate-General for Finance of the European Parliament — Directorate for Members' Financial and Social Entitlements enclosing a debit note addressed to the applicant for EUR 83 764,00, and against letter No 312998 of 27 July 2012 of the Secretary General of the European Parliament, in English, relating to the reasons for debit note No 315070 of 21 September 2015; and against any other previous, connected and subsequent decisions relating to the abovementioned decisions.

The applicant relies on four pleas in law in support of his action.

1. First plea in law, alleging infringement of the substantive rule laid down in Article 81(1) of Regulation (EU, Euratom) No 966/2012, infringement of the 'reasonable time' principle, and the limitation period in respect of the European Union's claim.

   — In that regard, the applicant considers that the claim amounting to EUR 83 764,34 sought by the Parliament under an administrative procedure against Mr Panzeri is time-barred pursuant to Article 81(1) of Regulation No 966/2012. This is because the facts which served as the basis for the European Union's claim refer solely to the five year period 2004-2009, while the payment order adopted by the directorate was issued only on 21 September 2015 and is accordingly wholly out of time.

2. Second plea in law, alleging infringement of the essential procedural requirements laid down in Articles 1, 4(6), 6(5) and 9 of Regulation (EC) No 1073/1999 and recital 10 in the preamble thereto, infringement of the essential procedural requirements laid down in Article 4 of the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF; lack of competence of OLAF; infringement of the principle of proportionality and reasonableness and inadequate investigation and careful consideration.

— In that regard, the applicant considers that the procedure carried out by OLAF is vitatied on a number of grounds, given that the inter-partes procedure was not properly conducted in relation to Mr Panzeri, there was no final investigation report and the whole OLAF investigation procedure took place in clear breach of Article 6(5) of Regulation No 1073/1999 since it was opened on 23 November 2009 and only concluded (presumably) in July 2012. Furthermore, OLAF could not have been competent, given the trivial nature of the behaviour attributed to the applicant, with the result that the principle of proportionality has been breached.

3. Third plea in law, alleging infringement of Article 55 TEU, Article 20 TFEU and Article 24(4) TFEU and infringement of the essential procedural requirements laid down in Article 7(1) of Decision 2005/684/EC of the European Parliament (adopting the Statute for Members of the European Parliament).

— The applicant submits that letter No 312998 of 27 July 2012 of the Secretary General of the European Parliament, which contains the only claims actually made against the applicant, was written in English. This is a breach of several provisions of the European Treaties and the Statute for Members of the European Parliament, which are intended to ensure that every citizen of the European Union, including the Members of the European Parliament, has the right to communicate, orally or in writing, with all the institutions of the European Union in his own mother tongue.

4. Fourth plea in law, alleging infringement of the essential procedural requirements laid down in Articles 62 and 68 of the Decision of the Bureau of the European Parliament of 19 May and 9 July 2008; infringement of the essential procedural requirements laid down in Article 14(2) of the Rules on Payment of Expenses and Allowances to Members of the European Parliament (PEAM); non-existence of the decision and complete failure to give reasons.

— In that regard, it should be noted in that the Secretary-General failed to issue (or at least to communicate to Mr Panzeri) the final decision on the basis of which the payment order contested in the present case was issued. This clearly points to a complete failure to give reasons or even to the fact that there was no final decision. The prerequisites for the application of Article 14(2) of the PEAM rules are not met.

Order of the General Court of 25 November 2015 — Missir Mamachi di Lusignano and Others v Commission

(Case T-494/11) ([1])

(2016/C 027/94)

Language of the case: Italian

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

([1]) C 331, 12.11.2011.

Order of the General Court of 11 November 2015 — salesforce.com v OHIM (MARKETINGCLOUD)

(Case T-387/14) ([1])

(2016/C 027/95)

Language of the case: English

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

([1]) OJ C 261, 11.8.2014.

Order of the General Court of 11 November 2015 — salesforce.com v OHIM (MARKETINGCLOUD)

(Case T-388/14) ([1])

(2016/C 027/96)

Language of the case: English

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

([1]) OJ C 329, 22.9.2014.

Order of the General Court of 11 November 2015 — salesforce.com v OHIM (MARKETINGCLOUD)

(Case T-389/14) ([1])

(2016/C 027/97)

Language of the case: English

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

([1]) OJ C 329, 22.9.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (2nd Chamber) of 30 November 2015 — O'Riain v Commission

(Case F-104/14) ([1])

(Civil service — Competitions — Competition notice EPSO/AD/241/12 — Decision not to include the applicant on the reserve list — Principle of equal treatment of candidates — Impartiality of the selection board — Action manifestly unfounded)

(2016/C 027/98)

Language of the case: French

Parties

Applicant: Donncha O'Riain (Luxembourg, Luxembourg) (represented by: A. Salerno, lawyer)

Defendant: European Commission (represented by: C. Ehrbar and G. Gattinara, Agents)

Re:

Application for annulment of the decision not to include the applicant on the reserve list for Competition EPSO/AD/241/12-GA.

Operative part of the order

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly unfounded.*

2. *Mr O'Riain shall bear his own costs and is ordered to pay the costs incurred by the European Commission.*

([1]) OJ C 7 of 12/1/2015, p. 52.

Action brought on 30 October 2015 — ZZ v Council

(Case F-137/15)

(2016/C 027/99)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the final decisions to transfer the applicant's pension rights to the European Union pension scheme, which apply the new general implementing provisions of 3 March 2011 for Article 11(2) of Annex VIII to the Staff Regulations.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decisions of 5 and 7 January 2015 and the decision of 23 February 2015 calculating the bonus on the applicant's pension rights acquired prior to taking up his position at the Council;

— annul, so far as necessary, the decision of 23 July 2015 rejecting the applicant's complaint seeking the application of the general implementing provisions and the actuarial reference rate in force at the time of his application for the transfer of his pension rights;

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

Action brought on 2 November 2015 — ZZ v Parliament

(Case F-138/15)

(2016/C 027/100)

Language of the case: English

Parties

Applicant: ZZ (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision to terminate the applicant's contract of employment and claim for damages in respect of the non-material damage allegedly suffered.

Form of order sought

— Annul the decision dated 19 December 2014 to terminate the applicant's contract of employment;

— order the European Parliament to compensate the applicant for the non-material damage suffered, assessed provisionally on an *ex aequo et bono* basis at EUR 20 000;

— order the defendant to pay the costs

Action brought on 17 November 2015 — ZZ v Parliament

(Case F-142/15)

(2016/C 027/101)

Language of the case: French

Parties

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

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the Parliament's decision not to act upon the request for assistance submitted by the applicant and an application for damages in respect of the non-material harm allegedly incurred.

Form of order sought

The applicant claims that the Tribunal should:

— annul the implied decision which became effective on 11 April 2015 rejecting the applicant's request for assistance of 11 December 2014;

— annul the decision dated 20 August 2015, received on 24 August 2015, rejecting the applicant's complaint of 24 April 2015;

— order the defendant to pay damages, assessed on equitable principles at EUR 50 000, to compensate the applicant for the non-material harm incurred;

— order the European Parliament to pay all the costs.

Order of the Civil Service Tribunal of 3 December 2015 — Macchia v Commission

(Case F-37/13) ([1])

(2016/C 027/102)

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. 59.

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