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IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2014/C 395/01)

Last publication

OJ C 388, 3.11.2014

Past publications

OJ C 380, 27.10.2014

OJ C 372, 20.10.2014

OJ C 361, 13.10.2014

OJ C 351, 6.10.2014

OJ C 339, 29.9.2014

OJ C 329, 22.9.2014

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 4 September 2014 — European Commission v Council of the European Union**(Case C-114/12) ⁽¹⁾**

(Action for annulment — External action of the European Union — International agreements — Protection of neighbouring rights of broadcasting organisations — Negotiations for a Convention of the Council of Europe — Decision of the Council and the Representatives of the Governments of the Member States authorising the joint participation of the Union and its Member States in the negotiations — Article 3(2) TFEU — Exclusive external competence of the Union)

(2014/C 395/02)

*Language of the case: English***Parties**

Applicant: European Commission (represented by: F. Castillo de la Torre, P. Hetsch, L. Gussetti and J. Samnadda, Agents)

Intervener in support of the applicant: European Parliament (represented by: R. Passos and D. Warin, Agents)

Defendant: Council of the European Union (represented by: H. Legal, J.-P. Hix, F. Florindo Gijón and M. Balta, Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, E. Ruffer, D. Hadroušek and J. Králová, Agents), Federal Republic of Germany (represented by: T. Henze, B. Beutler and N. Graf Vitzthum, Agents), Kingdom of the Netherlands (represented by: C. Wissels and J. Langer, Agents), Republic of Poland (represented by: M. Szpunar, B. Majczyna, M. Drwięcki and E. Gromnicka initially, then by B. Majczyna, M. Drwięcki and E. Gromnicka, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, acting as Agent, assisted by R. Palmer, Barrister)

Operative part

The Court:

- 1) Annuls the Decision of the Council and the Representatives of the Governments of the Member States meeting within the Council on the participation of the European Union and its Member States in negotiations for a Convention of the Council of Europe on the protection of the rights of broadcasting organisations, of 19 December 2011;
- 2) Orders the Council of the European Union to pay the costs;
- 3) Orders the Czech Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.

⁽¹⁾ OJ C 138, 12.5.2012.

Judgment of the Court (Second Chamber) of 3 September 2014 — European Commission v Kingdom of Spain**(Case C-127/12) ⁽¹⁾*****(Failure of a Member State to fulfil obligations — Free movement of capital — Articles 21 TFEU and 63 TFEU — EEA Agreement — Articles 28 and 40 — Taxation of inheritances and gifts — Distribution of powers of taxation — Discrimination as between residents and non-residents — Discrimination according to where the immovable property is situated — Burden of proof)***

(2014/C 395/03)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: W. Roels, R. Lyal and F. Jimeno Fernández, acting as Agents)

Defendant: Kingdom of Spain (represented by: A. Rubio González, Agent)

Operative part of the judgment

The Court:

- 1) declares that, by applying different tax treatment to donations and successions between beneficiaries and donees resident in Spain and those not resident in Spain, between bequeathers resident in Spain and those not resident in Spain, and between donations and similar transfers of immovable property situated within and outside of Spain, the Kingdom of Spain has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area of 2 May 1992;
- 2) dismisses the action as to the remainder;
- 3) orders the Kingdom of Spain to pay the costs.

⁽¹⁾ OJ C 126, 28.4.2012.

Judgment of the Court (Second Chamber) of 4 September 2014 — European Commission v French Republic**(Case C-237/12) ⁽¹⁾*****(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Article 5(4) — Annex II.A, points 1 to 3 and 5 — Annex III.1, points 1 to 3, and Annex III.2 — Protection of waters against pollution caused by nitrates from agricultural sources — Periods for land application — Capacity of storage vessels for livestock manure — Limitation of land application — Prohibition on land application on steeply sloping ground or on snow-covered or frozen ground — Non-compliance of national legislation)***

(2014/C 395/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Manhaeve, B. Simon and J. Hottiaux, acting as Agents)

Defendant: French Republic (represented by: G. de Bergues, S. Menez and D. Colas, acting as Agents)

Operative part of the judgment

The Court:

- 1) Declares that, by not adopting the measures necessary to ensure the full and correct implementation of all the requirements imposed on it by Article 5(4) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution by nitrates from agricultural sources, read together with Annex II.A, points 1 to 3 and 5, Annex III.1, points 1 to 3, and Annex III.2, to that directive, the French Republic failed to fulfil its obligations under that directive, in so far as, in the national legislation adopted in order to ensure the implementation of that directive:

- there is no provision for periods of prohibition on land application of type I fertilisers in respect of autumn-planted arable crops and grasslands planted for more than six months;
- the period of prohibition on land application of type I fertilisers in respect of spring-planted arable crops is limited to the months of July and August;
- the prohibition on land application of type II fertilisers in respect of autumn-planted arable crops is restricted to the period from 1 November to 15 January and the prohibition of land application of type III fertilisers for those crops is not extended after 15 January;
- the period of prohibition on land application of type II fertilisers in respect of spring-planted arable crops is not extended after 15 January;
- there is provision for a period of prohibition on land application of type II fertilisers in respect of grasslands planted for more than six months only from 15 November and the prohibition on land application of type III fertilisers in respect of those grasslands and in mountain areas is not extended until the end of February;
- until 1 July 2016 it will still be possible for the calculation of storage capacities to take account of scheduled times for prohibition on land application which are not compatible with the requirements of the directive;
- the field storage of solid straw manure is permitted for a period lasting ten months;
- the national legislation does not ensure that farmers and the monitoring authorities are in a position to calculate correctly the quantity of nitrogen which may be applied to land in order to ensure balanced fertilisation;
- as regards dairy cows, the nitrogen discharge values are established on the basis of a quantity of excreted nitrogen which does not take into account different levels of milk production and on the basis of a volatilisation coefficient of 30 %;
- as regards other cattle, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards pigs, nitrogen discharge values for solid manure are not established;
- as regards poultry, the nitrogen discharge values are established on the basis of an incorrect volatilisation coefficient of 60 %;
- as regards sheep, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards goats, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards horses, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards rabbits, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 60 %;
- the national legislation does not contain clear, precise and objective criteria, in accordance with the requirements of the principle of legal certainty, concerning the conditions for the land application of fertilisers on steeply sloping ground;
- the land application of type I and III fertilisers on frozen ground; the land application of type I fertilisers on snow-covered ground; the land application of fertilisers on ground which is only superficially frozen as a result of a 24-hour cycle of freezing and thaw, and the land application on frozen ground of solid straw manure and composts of livestock manure are permitted.

- 2) Dismisses the action as to the remainder.
- 3) Orders the French Republic to pay the costs.

⁽¹⁾ OJ C 217, 21. 7. 2012.

Judgment of the Court (Second Chamber) of 4 September 2014 — YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH v European Commission

(Case C-408/12 P) ⁽¹⁾

(Appeal — Agreements, decisions and concerted practices — Markets for zip fasteners and other fasteners and for attaching machines — Successive responsibilities — Legal upper limit of the fine — Article 23(2) of Regulation No 1/2003 — Concept of ‘undertaking’ — Personal responsibility — Principle of proportionality — Deterrence multiplier)

(2014/C 395/05)

Language of the case: English

Parties

Appellants: YKK Cor., YKK Holding Europe BV, YKK Stocko Fasteners GmbH (represented by: D. Arts, W. Devroe, E. Winter and F. Miotto, avocats)

Other party to the proceedings: European Commission (represented by: A. Bouquet and R. Sauer, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union in *YKK and Others v Commission* (EU:T:2012:322), as regards the application, for the purposes of determining the maximum amount of the fine, in the context of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles on the market for metal and plastic fasteners and attaching machines, of a 10 % upper limit calculated on the basis of the YKK group turnover in the year preceding the adoption of Commission Decision C(2007) 4257 final of 19 September 2007 relating to a proceeding under Article [81 EC] (Case COMP/39.168 — PO/Hard haberdashery: fasteners), as regards the period of the infringement for which YKK Stocko Fasteners GmbH was held to be solely responsible;
2. Dismisses the appeal for the remainder;
3. Annuls Article 2(2) of Commission Decision C(2007) 4257 final in so far as it concerns the calculation of the fine for which YKK Stocko Fasteners GmbH was held to be solely liable in the framework of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles;
4. Orders the fine imposed on YKK Stocko Fasteners GmbH for the infringement for which it is exclusively liable, in the framework of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles, to be fixed at EUR 2 792 800;
5. Orders YKK Corporation, YKK Holding Europe BV and YKK Stocko Fasteners GmbH to bear their own costs and pay three quarters of the costs of the European Commission relating both to the proceedings at first instance and to the appeal proceedings;
6. Orders the European Commission to bear one quarter of its own costs relating both to the proceedings at first instance and to the appeal.

⁽¹⁾ OJ C 343, 10.11.2012.

Judgment of the Court (Fifth Chamber) of 4 September 2014 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Schiebel Aircraft GmbH v Bundesminister für Wirtschaft, Familie und Jugend

(Case C-474/12) ⁽¹⁾

(Reference for a preliminary ruling — Freedom of establishment — Freedom of movement for workers — Non-discrimination — Article 346(1)(b) TFEU — Protection of a Member State's essential security interests — Legislation of a Member State under which the statutory representatives of a business engaged within the national territory in the trading of arms, munitions and war material must hold the nationality of that Member State)

(2014/C 395/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Schiebel Aircraft GmbH

Defendant: Bundesminister für Wirtschaft, Familie und Jugend

Operative part of the judgment

Articles 45 TFEU and 49 TFEU must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings, under which, in the case of businesses wishing to trade in military weapons and munitions and broker the sale and purchase of such goods, members of their statutory representation bodies, or their managing partner, must hold the nationality of that Member State. It is for the national court, however, to verify whether the Member State which, in order to justify that legislation, relies on the derogation allowed under Article 346(1)(b) TFEU is able to show that such derogation is necessary in order to protect its essential security interests.

⁽¹⁾ OJ C 26, 26.1.2013.

Judgment of the Court (Fifth Chamber) of 4 September 2014 — Société nationale maritime Corse-Méditerranée (SNCM) SA v Corsica Ferries France SAS, European Commission, French Republic (C-533/12 P), French Republic v Corsica Ferries France SAS, European Commission, Société nationale maritime Corse-Méditerranée (SNCM) SA (C-536/12 P)

(Joined Cases C-533/12 P and C-536/12 P) ⁽¹⁾

(Appeals — Restructuring aid — European Commission's margin of assessment — Scope of review by the General Court of the European Union — Market economy private investor test — Requirement for a sectoral and geographical analysis — Sufficiently well-established practice — Long-term economic rationale — Making of additional redundancy payments)

(2014/C 395/07)

Language of the case: French

Parties

(Case C-533/12 P)

Appellant: Société nationale maritime Corse-Méditerranée (SNCM) SA (represented by: A. Winckler and F.-C. Laprévôte, avocats)

Other parties to the proceedings: Corsica Ferries France SAS (represented by: S. Rodrigues and C. Bernard-Glanz, avocats), European Commission, French Republic (represented by: G. de Bergues, N. Rouam and J. Rossi, acting as Agents)

(Case C-536/12 P)

Appellant: French Republic (represented by: G. de Bergues, D. Colas, N. Rouam and J. Rossi, acting as Agents)

Other parties to the proceedings: Corsica Ferries France SAS (represented by: S. Rodrigues and C. Bernard-Glanz, avocats), European Commission, Société nationale maritime Corse-Méditerranée (SNCM) SA (represented by: A. Winckler and F.-C. Laprèvote, avocats)

Operative part of the judgment

The Court:

- 1) *Dismisses the appeals;*
- 2) *Orders Société nationale maritime Corse-Méditerranée (SNCM) SA and the French Republic to bear their own costs and to pay those incurred by Corsica Ferries France SAS in equal shares.*

⁽¹⁾ OJ C 32, 2.2.2013.

Judgment of the Court (First Chamber) of 4 September 2014 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Michal Zeman v Krajské riaditeľstvo Policajného zboru v Žiline

(Case C-543/12) ⁽¹⁾

(Reference for a preliminary ruling — Directive 91/477/EEC — Issuing of the European firearms pass — National legislation according to which that pass is issued only to holders of a firearms licence issued for hunting or target shooting use)

(2014/C 395/08)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Michal Zeman

Defendant: Krajské riaditeľstvo Policajného zboru v Žiline

Operative part of the judgment

Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which authorises the issue of a European firearms pass only to holders of weapons used for hunting and target shooting purposes.

⁽¹⁾ OJ C 63, 2.3.2013.

Judgment of the Court (Fourth Chamber) of 4 September 2014 (request for a preliminary ruling from the Administratīvā apgabaltiesa — Latvia) — Air Baltic Corporation AS v Valsts robežsardze

(Case C-575/12) ⁽¹⁾

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 810/2009 — Articles 24(1) and 34 — Uniform visa — Annulment or revocation of a uniform visa — Validity of a uniform visa affixed to a travel document which has been cancelled — Regulation (EC) No 562/2006 — Articles 5(1) and 13(1) — Border checks — Entry conditions — National legislation requiring a valid visa affixed to a valid travel document)

(2014/C 395/09)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: Air Baltic Corporation AS

Defendant: Valsts robežsardze

Operative part of the judgment

- 1) On a proper construction of Articles 24(1) and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), the cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.
- 2) On a proper construction of Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010, read in conjunction with Article 13(1) of Regulation No 562/2006, the entry of third-country nationals into the territory of Member States is not subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.
- 3) Article 5(1) of Regulation No 562/2006, as amended by Regulation No 265/2010, read in conjunction with Article 13(1) of Regulation No 562/2006, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the entry of third-country nationals to the territory of the Member State concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.

⁽¹⁾ OJ C 38, 9.2.2013.

Judgment of the Court (Second Chamber) of 3 September 2014 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v GMAC UK plc

(Case C-589/12) ⁽¹⁾

(Reference for a preliminary ruling — VAT — Sixth Directive 77/388/EEC — Article 11C(1), first subparagraph — Direct effect — Reduction of the taxable amount — Two transactions concerning the same goods — Supply of goods — Cars, sold on a hire purchase basis, repossessed and sold at auction — Abuse of rights)

(2014/C 395/10)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: GMAC UK plc

Operative part of the judgment

The first subparagraph of Article 11C(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, a Member State may not prevent a taxable person from invoking the direct effect of that provision in respect of one transaction by arguing that that person may rely on the provisions of national law in relation to another transaction concerning the same goods and that the cumulative application of those provisions would produce an overall fiscal result which neither national law nor Sixth Directive 77/388, applied separately to those transactions, produces or is intended to produce.

⁽¹⁾ OJ C 71, 9.3.2013.

Judgment of the Court (Second Chamber) of 4 September 2014 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Simon, Evers & Co. GmbH v Hauptzollamt Hamburg-Hafen

(Case C-21/13) ⁽¹⁾

(Reference for a preliminary ruling — Commercial policy — Anti-dumping duties — Regulation (EC) No 499/2009 — Validity — Imports of products originating in China — Imports of the same products consigned from Thailand — Circumvention — Proof — Refusal to cooperate)

(2014/C 395/11)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Simon, Evers & Co. GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Operative part of the judgment

Consideration of the question raised by the referring court has disclosed no factor of such a kind as to affect the validity of Council Regulation (EC) No 499/2009 of 11 June 2009 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China to imports of the same product consigned from Thailand, whether declared as originating in Thailand or not.

⁽¹⁾ OJ C 114, 20.4.2013.

Judgment of the Court (Third Chamber) of 4 September 2014 (reference for a preliminary ruling from the Amtsgericht Wedding — Germany) — eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy (C-119/13), Raiffeisenbank St. Georgen reg. Gen. mbH v Tetyana Bonchuk (C-120/13)

(Case C-119/13 and C-120/13) ⁽¹⁾

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 1896/2006 — European order for payment procedure — Invalid service — Effects — European order for payment declared enforceable — Opposition — Review in exceptional cases — Time-limits)

(2014/C 395/12)

Language of the case: German

Referring court

Amtsgericht Wedding

Parties to the main proceedings

Applicants: eco cosmetics GmbH & Co. KG (C-119/13), Raiffeisenbank St. Georgen reg. Gen. mbH (C-120/13)

Defendants: Virginie Laetitia Barbara Dupuy (C-119/13), Tetyana Bonchuk (C-120/13)

Operative part of the judgment

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure must be interpreted as meaning that the procedures laid down in Articles 16 to 20 thereof are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that regulation.

Where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability.

⁽¹⁾ OJ C 164, 8.6.2013.

Judgment of the Court (First Chamber) of 4 September 2014 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — Nickel & Goeldner Spedition GmbH v Kintra UAB

(Case C-157/13) ⁽¹⁾

(Request for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Article 3(1) — Concept of an ‘action related to insolvency proceedings and closely connected with those proceedings’ — Regulation (EC) No 44/2001 — Article 1(2)(b) — Concept of ‘bankruptcy’ — Action for payment of a debt brought by the insolvency administrator — Debt arising out of the international carriage of goods — Relationship between Regulations No 1346/2000 and No 44/2001 and the Convention for the International Carriage of Goods by Road (CMR))

(2014/C 395/13)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: Nickel & Goeldner Spedition GmbH

Defendant: Kintra UAB

Operative part of the judgment

1. Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for the payment of a debt based on the provision of carriage services taken by the insolvency administrator of an insolvent undertaking in the course of insolvency proceedings opened in one Member State and taken against a service recipient established in another Member State comes under the concept of ‘civil and commercial matters’ within the meaning of that provision.
2. Article 71 of Regulation No 44/2001 must be interpreted as meaning that, in a situation where a dispute falls within the scope of both that regulation and the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, a Member State may, in accordance with Article 71 (1) of that regulation, apply the rules concerning jurisdiction laid down in Article 31(1) of that convention.

⁽¹⁾ OJ C 156, 1.6.2013.

Judgment of the Court (Third Chamber) of 4 September 2014 (request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije — Slovenia) — Damijan Vnuk v Zavarovalnica Triglav d.d.

(Case C-162/13) ⁽¹⁾

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Concept of ‘use of vehicles’ — Accident caused in the courtyard of a farm by a tractor to which a trailer was attached)

(2014/C 395/14)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Damijan Vnuk

Defendant: Zavarovalnica Triglav d.d.

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability must be interpreted as meaning that the concept of ‘use of vehicles’ in that article covers any use of a vehicle that is consistent with the normal function of that vehicle. That concept may therefore cover the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn, as in the case in the main proceedings, which is a matter for the referring court to determine.

⁽¹⁾ OJ C 156, 1.6.2013.

Judgment of the Court (Fifth Chamber) of 4 September 2014 (requests for a preliminary ruling from the Tribunale Amministrativo regionale per il Lazio — Italy) — API -Anonima Petroli Italiana SpA v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico (C-184/13), ANCC-Coop — Associazione Nazionale Cooperative di Consumatori and Others v Ministero delle Infrastrutture e dei Trasporti and Others (C-185/13), Air Liquide Italia SpA and Others v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico (C-186/13), Confetra — Confederazione Generale Italiana dei Trasporti e della Logistica and Others v Ministero delle Infrastrutture e dei Trasporti — Osservatorio sulle Attività di Trasporto, Ministero dello Sviluppo economico (C-187/13), Esso Italiana Srl v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico (C-194/13), Confindustria — Confederazione generale dell’industria italiana and Others v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico (C-195/13), Autorità garante della concorrenza e del mercato v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico (C-208/13)

(Joined Cases C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13) ⁽¹⁾

(Requests for a preliminary ruling — Road transport — Amount of the minimum operating costs determined by a body representing the operators concerned — Association of undertakings — Restriction of competition — Public interest objective — Road safety — Proportionality)

(2014/C 395/15)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

(Case C-184/13)

Applicant: API — Anonima Petroli Italiana SpA

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico

Intervening parties: FEDIT — Federazione Italiana Trasportatori, Bertani Remo di Silvio Bertani e C. Srl, Transfrigoroute Italia Assotir, Confartigianato Trasporti

(Case C-185/13)

Applicants: ANCC-Coop — Associazione Nazionale Cooperative di Consumatori, ANCD — Associazione Nazionale Cooperative Dettaglianti, Sviluppo Discount SpA, Centrale Adriatica Soc. coop., Coop Consorzio Nord Ovest Soc. cons. arl, Coop Italia Consorzio Nazionale non Alimentari Soc. coop., Coop Centro Italia Soc. coop., Tirreno Logistica Srl, Unicoop Firenze Soc. coop., Conad — Consorzio Nazionale Dettaglianti Soc. coop., Conad Centro Nord Soc. coop., Commercianti Indipendenti Associati Soc. coop., Conad del Tirreno Soc. coop., Pac2000A Soc. coop., Conad Adriatico Soc. coop., Conad Sicilia Soc. coop., Sicilconad Mercurio Soc. coop.

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico, Consulta generale per l'autotrasporto e la logistica, Osservatorio sulle attività di autotrasporto, Autorità garante della concorrenza e del mercato

Intervening parties: Unatras — Unione Nazionale Associazioni Autostradato Merci, Brt SpA, Coordinamento Interprovinciale FAI, FIAP — Federazione Italiana Autotrasporti Professionali

(Case C-186/13)

Applicants: Air Liquide Italia SpA and Others, Omniatransit Srl, Rivoira SpA, SIAD — Società Italiana Acetilene e Derivati SpA

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico,

Intervening parties: TSE Group Srl

(Case C-187/13)

Applicants: Confetra — Confederazione Generale Italiana dei Trasporti e della Logistica, Fedespediti — Federazione Nazionale delle Imprese di Spedizioni Internazionali, Assologistica — Associazione Italiana Imprese di Logistica Magazzini Generali Frigoriferi Terminal Operators Portuali, FISI — Federazione Italiana Spedizionieri Industriali, Federagenti — Federazione Nazionale Agenti Raccomandatori Marittimi e Mediatori Marittimi, Assofer — Associazione Operatori Ferroviari e Intermodali, Anama — Associazione Nazionale Agenti Merci Aeree, ACA Trasporti Srl, Automerci Srl, Eurospediti Srl, Safe Watcher Srl, Sogemar SpA, Number 1 Logistic Group SpA

Defendants: Ministero delle Infrastrutture e dei Trasporti — Osservatorio sulle Attività di Trasporto, Ministero dello Sviluppo economico,

Intervening parties: Legacoop Servizi, Mancinelli Due Srl, Intertrasporti Srl, Confartigianato Trasporti

(Case C-194/13)

Applicant: Esso Italiana Srl

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico,

Intervening parties: Autosped G SpA, Transfrigoroute Italia Assotir, Confartigianato Trasporti

(Case C-195/13)

Applicants: Confindustria — Confederazione generale dell'industria italiana, Unione Petrolifera, AITEC — Associazione Italiana Tecnico Economica del Cemento, ANCE — Associazione Nazionale Costruttori Edili, ANFIA — Associazione Nazionale Filiera Industria Automobilistica, Assocarta — Associazione Italiana Fra Industriali della Carta Cartoni e Paste per Carta, Assografici — Associazione Nazionale Italiana Industrie Grafiche Cartotecniche e Trasformatrici, Assovetro — Associazione Nazionale degli Industriali del Vetro, Confederazione Italiana Armatori, Confindustria Ceramica, Federacciai — Federazione imprese siderurgiche italiane, Federalimentare — Federazione Italiana Industria Alimentare, Federchimica — Federazione Nazionale Industria Chimica, Italmopa — Associazione Industriale Mugnai d'Italia, Burgo Group SpA, Cartesar SpA, Carteria Lucchese SpA, Cartiera del Garda SpA, Cartiera Modesto Cardella SpA, Eni SpA, Polimeri Europa SpA, Reno De Medici SpA, Sca Packaging Italia SpA, Shell Italia SpA, Sicem Saga SpA, Tamoil Italia SpA, Totalerg SpA

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico,

Intervening parties: FEDIT — Federazione Italiana Trasporti, Autosped G SpA, Consorzio Trasporti Europei Genova, Transfrigoroute Italia Assotir, Coordinamento Interprovinciale FAI, FIAP — Federazione Italiana Autotrasporti Professionali, Semenzin Fabio Autotrasporti, Confrasperto, Confederazione generale italiana dell'artigianato

(Case C-208/13)

Applicant: Autorità garante della concorrenza e del mercato

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo economico,

Intervening parties: Legacoop Servizi, Mancinelli Due Srl, Intertrasporti Srl, Roquette Italia SpA, Coordinamento Interprovinciale FAI, Confrasperto, Confartigianato Trasporti, Transfrigoroute Italia Assotir, FIAP — Federazione Italiana Autotrasporti Professionali

Operative part of the judgment

Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which the price of haulage services for hire and reward may not be lower than minimum operating costs, which are fixed by a body composed mainly of representatives of the economic operators concerned.

⁽¹⁾ OJ C 207, 20.7.2013.

Judgment of the Court (First Chamber) of 4 September 2014 — Kingdom of Spain v European Commission

(Case C-192/13 P) ⁽¹⁾

(Appeal — Cohesion fund — Reduction of the financial assistance — Adoption of the decision by the European Commission — Existence of a time-limit — Failure to comply with the time-limit — Consequences)

(2014/C 395/16)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Other party to the proceedings: European Commission (represented by: S. Pardo Quintillán and D. Recchia, acting as Agents)

Operative part of the judgment

The Court:

- 1) Sets aside the judgment of the General Court of the European Union in *Spain v Commission* (T-235/11, EU:T:2013:49);
- 2) Annuls Commission Decision C(2011) 1023 final of 18 February 2011 reducing the assistance granted from the Cohesion Fund to the stages of projects entitled 'Supply and assembly of track materials on the high-speed line Madrid-Zaragoza-Barcelona-French border. Section Madrid-Lleida' (CCI 1999.ES.16.C.PT.001), 'High-speed railway line Madrid-Barcelona. Section Lleida Martorell (Platform, 1st phase)' (CCI 2000.ES.16.C.PT.001), 'High-speed line Madrid-Zaragoza-Barcelona-French border. Railway access to the new station at Zaragoza' (CCI 2000.ES.16.C.PT.003), 'High-speed line Madrid-Barcelona-French border. Section Lleida-Martorell. Subsection X-A (Olérdola-Avinyonet del Penedés)' (CCI 2001.ES.16.C.PT.007), 'New high-speed railway access to Levante. Subsection La Gineta-Albacete (Platform)' (CCI 2004.ES.16.C.PT.014);

- 3) Orders the European Commission to pay the costs of the Kingdom of Spain and to bear its own costs of both the proceedings at first instance and of the present appeal proceedings.

⁽¹⁾ OJ C 178, 22.6.2013.

Judgment of the Court (First Chamber) of 4 September 2014 — Kingdom of Spain v European Commission

(Case C-197/13 P) ⁽¹⁾

(Appeal — Cohesion fund — Reduction of the financial assistance — Adoption of the decision by the European Commission — Existence of a time-limit — Failure to comply with the time-limit — Consequences)

(2014/C 395/17)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Other party to the proceedings: European Commission (represented by: S. Pardo Quintillán and D. Recchia, acting as Agents)

Operative part of the judgment

The Court:

- 1) Sets aside the judgment of the General Court of the European Union in *Spain v Commission* (T-540/10, EU:T:2013:47);
- 2) Annuls Commission Decision C(2010) 6154 of 13 September 2010 reducing the assistance granted from the Cohesion Fund to the stages of projects entitled 'High Speed Line Madrid-Zaragoza-Barcelona-French border. Section Lleida-Martorell (Platform). Subsection IX-A' (CCI No 2001.ES.16.C.PT.005), 'High Speed Line Madrid-Zaragoza-Barcelona-French border. Section Lleida-Martorell (Platform). Subsection X-B (Avinyonet del Penedès-Sant Sadurní d'Anoia)' (CCI No 2001.ES.16.C.PT.008), 'High Speed Line Madrid-Zaragoza-Barcelona-French border. Section Lleida-Martorell (Platform). Subsections XI-A and XI-B (Sant Sadurní d'Anoia-Gelida)' (CCI No 2001.ES.16.C.PT.009), 'High Speed Line Madrid-Zaragoza-Barcelona-French border. Section Lleida-Martorell (Platform). Subsection IX-C' (CCI No 2001.ES.16.C.PT.010);
- 3) Orders the European Commission to pay the costs of the Kingdom of Spain and to bear its own costs of both the proceedings at first instance and the present appeal proceedings.

⁽¹⁾ OJ C 178, 22.6.2013.

Judgment of the Court (Third Chamber) of 4 September 2014 — European Commission v Federal Republic of Germany

(Case C-211/13) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Article 63 TFEU — Free movement of capital — Taxation of inheritances and gifts — National legislation providing for a higher tax-free allowance where the deceased, at the time of death, the donor or beneficiary resided on the territory of the Member State — Subject-matter of the action for annulment — Restriction — Justification)

(2014/C 395/18)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls and W. Roels, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and A. Wiedmann, acting as Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Operative part of the judgment

The Court:

- 1) declares that, by adopting and maintaining in force provisions under which only a low tax-free allowance is granted when inheritance and gift tax are applied to immovable property situated in Germany where the deceased, at the time of death, the donor, at the time of the gift, or the beneficiary, at the time of the taxable event, resided on the territory of another Member State, whereas a considerably higher tax-free allowance is granted where at least one of the two parties concerned resided in Germany at the relevant time, the Federal Republic of Germany has failed to fulfil its obligations under Article 63 TFEU;
- 2) orders the Federal Republic of Germany to pay the costs;
- 3) orders the Kingdom of Spain to bear its own costs.

⁽¹⁾ OJ C 171, 15.6.2013.

Judgment of the Court (Third Chamber) of 4 September 2014 (requests for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium) — Provincie Antwerpen v Belgacom NV van publiek recht (C-256/13), Mobistar NV (C-264/13)

(Joined Cases C-256/13 and C-264/13) ⁽¹⁾

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/20/EC — Article 6 — Conditions attached to the general authorisation and to the rights of use for radio frequencies and for numbers, and specific obligations — Article 13 — Fees for rights of use and rights to install facilities — Regional legislation making undertakings liable to pay a tax on places of business)

(2014/C 395/19)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Provincie Antwerpen

Respondents: Belgacom NV van publiek recht (C-256/13), Mobistar NV (C-264/13)

Operative part of the judgment

Articles 6 and 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('the Authorisation Directive') must be interpreted as not precluding operators providing electronic communications networks or services from being subject to a general tax on establishments, on account of the presence on public or private property of cellular telephone communication masts, pylons or antennae which are necessary for their activity.

⁽¹⁾ OJ C 207, 20.7.2013.

Judgment of the Court (Second Chamber) of 3 September 2014 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — proceedings brought by X

(Case C-318/13) ⁽¹⁾

(Reference for a preliminary ruling — Directive 79/7/EEC — Equal treatment for men and women in matters of social security — Accident insurance for workers — Amount of a lump-sum compensation for permanent incapacity — Actuarial calculation based on average life expectancy by sex of the recipient of that compensation — Sufficiently serious infringement of EU law)

(2014/C 395/20)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

X

Operative part of the judgment

- 1) Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding national legislation on the basis of which the different life expectancies of men and women are applied as an actuarial factor for the calculation of a statutory social benefit payable due to an accident at work, when, by applying this factor, the lump-sum compensation paid to a man is less than that which would be paid to a woman of the same age and in a similar situation.
- 2) It is for the referring court to assess whether the conditions for the Member State to be deemed liable are met. Similarly, as regards whether the national legislation at issue in the main proceedings constitutes a ‘sufficiently serious’ infringement of EU law, that court will have to take into consideration, inter alia, the fact that the Court has not yet ruled on the legality of taking into account a factor based on average life expectancy according to sex in the determination of a benefit paid under a statutory social security system and falling within the scope of Directive 79/7. The national court will also have to take into account the right granted to the Member States by the EU legislature, set out in Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, and Article 9(1)(h) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. In addition, that court should bear in mind that the Court has held, on 1 March 2011 (C-236/09, EU:C:2011:100), that the first of those provisions is invalid, since it infringes the principle of equal treatment between men and women.

⁽¹⁾ OJ C 233, 10. 8. 2013.

Judgment of the Court (First Chamber) of 4 September 2014 (request for a preliminary ruling from the Cour d’appel de Bruxelles — Belgium) — Burgo Group SpA v Illochroma SA, in liquidation, Jérôme Theetten, acting in his capacity as liquidator of Illochroma SA

(Case C-327/13) ⁽¹⁾

(Request for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Definition of ‘establishment’ — Group of companies — Establishment — Right to request the opening of secondary insolvency proceedings — Criteria — Person empowered to request the opening of secondary insolvency proceedings)

(2014/C 395/21)

Language of the case: French

Referring court

Cour d’appel de Bruxelles

Parties to the main proceedings

Applicant: Burgo Group SpA

Defendants: Illochroma SA, in liquidation, Jérôme Theetten, acting in his capacity as liquidator of Illochroma SA

Operative part of the judgment

- 1) Article 3(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that, where winding-up proceedings are opened in respect of a company in a Member State other than that in which it has its registered office, secondary insolvency proceedings may also be opened in respect of that company in the other Member State in which its registered office is situated and in which it possesses legal personality.
- 2) Article 29(b) of Regulation No 1346/2000 must be interpreted to the effect that the question as to which person or authority is empowered to seek the opening of secondary proceedings must be determined on the basis of the national law of the Member State within the territory of which the opening of such proceedings is sought. The right to seek the opening of secondary proceedings cannot, however, be restricted to creditors who have their domicile or registered office within the Member State in whose territory the relevant establishment is situated, or to creditors whose claims arise from the operation of that establishment.
- 3) Regulation No 1346/2000 must be interpreted to the effect that, where the main insolvency proceedings are winding-up proceedings, whether the court before which the action seeking the opening of secondary insolvency proceedings has been brought may take account of criteria as to appropriateness is governed by the national law of the Member State within the territory of which the opening of secondary proceedings is sought. However, when establishing the conditions for the opening of secondary proceedings, Member States must comply with EU law and, in particular, its general principles, as well as the provisions of that regulation.

⁽¹⁾ OJ C 226, 3.8.2013.

Judgment of the Court (Ninth Chamber) of 4 September 2014 — European Commission v Hellenic Republic

(Case C-351/13) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 1999/74/EC — Articles 3 and 5(2) — Rearing of laying hens — Unenriched cages — Prohibition — Rearing of laying hens in cages which do not comply with the requirements of that directive)

(2014/C 395/22)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Markoulli and B. Schima, acting as Agents)

Defendant: Hellenic Republic (represented by: I.-K. Chalkias, E. Leftheriotou and M. Tassopoulou, Agents)

Operative part of the judgment

The Court:

- 1) declares that, by failing to ensure that from 1 January 2012 laying hens are no longer reared in unenriched cage systems, the Hellenic Republic has failed to fulfil its obligations under Article 3 and Article 5(2) of Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens;
- 2) orders the Hellenic Republic to pay the costs.

⁽¹⁾ OJ C 260, 7.9.2013.

Judgment of the Court (Second Chamber) of 3 September 2014 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — ‘Baltlanta’ UAB v Lietuvos valstybė

(Case C-410/13) ⁽¹⁾

(Reference for a preliminary ruling — Structural funds — Economic, social and territorial cohesion — Regulation (EC) No 1260/1999 — Article 38 — Regulation (EC) No 2792/1999 — Article 19 — Fisheries — Court proceedings at national level — Obligation on the part of the Member State to take the measures necessary to ensure the successful implementation of the decision relating to the grant of funds following court proceedings)

(2014/C 395/23)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: ‘Baltlanta’ UAB

Defendant: Lietuvos valstybė

Intervening parties: Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos, Lietuvos Respublikos žemės ūkio ministerija, Lietuvos Respublikos finansų ministerija

Operative part of the judgment

Article 38(1)(e) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Article 19 of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, as amended by Council Regulation (EC) No 2369/2002 of 20 December 2002, and Sections 6 and 7 of the Guidelines on the closure of assistance (2000 to 2006) from the Structural Funds, adopted by Commission Decision COM(2006)3424 final of 1 August 2006, must be interpreted as neither obliging the State authorities concerned to inform the European Commission of the existence of court proceedings relating to an administrative decision on the eligibility of an application for financial assistance such as that at issue in the main proceedings, nor to take the measures necessary so that funds that have been provided are reserved for the disputed assistance until the question of the award of the assistance has been finally decided.

⁽¹⁾ OJ C 284, 28.9.2013.

Judgment of the Court (Ninth Chamber) of 4 September 2014 (request for a preliminary ruling from the Landesgericht Salzburg — Austria) — Germanwings GmbH v Ronny Henning

(Case C-452/13) ⁽¹⁾

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Articles 2, 5 and 7 — Right to compensation in the event of a long delay to a flight — Length of delay — Concept of ‘arrival time’)

(2014/C 395/24)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Appellant: Germanwings GmbH

Respondent: Ronny Henning

Operative part of the judgment

Articles 2, 5 and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that the concept of ‘arrival time’, which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

⁽¹⁾ OJ C 325, 9.11.2013.

Judgment of the Court (Second Chamber) of 4 September 2014 (request for a preliminary ruling from the Fővárosi közigazgatási és munkaügyi bíróság — Hungary) — Sofia Zoo v Országos Környezetvédelmi, Természetvédelmi és Vízügyi Főfelügyelőség

(Case C-532/13) ⁽¹⁾

(Reference for a preliminary ruling — Protection of species of wild fauna and flora — Regulation (EC) No 338/97 — Article 11 — Invalidity of an import permit restricted to the specimens of animals actually affected by the ground of invalidity)

(2014/C 395/25)

Language of the case: Hungarian

Referring court

Fővárosi közigazgatási és munkaügyi bíróság

Parties to the main proceedings

Applicant: Sofia Zoo

Defendant: Országos Környezetvédelmi, Természetvédelmi és Vízügyi Főfelügyelőség

Operative part of the judgment

Article 11(2)(a) and (b) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein must be interpreted as meaning that an import permit which does not comply with the conditions laid down in that regulation must be considered void only in respect of the specimens actually affected by the ground of invalidity of that import permit, those specimens then being the only ones which may be seized and possibly confiscated by the competent authority of the Member State where they are situated.

(¹) OJ C 15, 18.1.2014.

Decision of the Court of Justice (Review Chamber) of 9 September 2014 to review the judgment of the General Court (Appeals Chamber) delivered on 10 July 2014 in Case T-401/11 P Missir Mamachi di Lusignano v European Commission

(Case C-417/14 RX)

(2014/C 395/26)

Language of the case: Italian

Parties to the proceedings before the General Court

Applicant: Livio Missir Mamachi di Lusignano (represented by: Fabrizio di Gianni, Renato Antonini, Gabriele Coppo and Aldo Scalini, avvocati)

Other party to the proceedings: European Commission

Questions to be reviewed

The review shall concern the question whether the judgment of the General Court of the European Union in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) affects the unity or consistency of EU law in that the General Court, as the court hearing the appeal, held that it had jurisdiction to rule, as the court of first instance, on an action to establish non-contractual liability of the European Union

- alleging failure of an institution in its duty to ensure the protection of its officials,
- brought by third parties, in their capacity as heirs and successors of a deceased official and as a family member of such an official, and
- seeking compensation for the non-material harm suffered by the deceased official himself and the material and non-material harm suffered by those third parties.

The persons referred to in Article 23 of the Statute of the Court of Justice of the European Union and the parties to the proceedings before the General Court of the European Union are invited to lodge their written observations on those questions at the Court of Justice of the European Union within one month of service of the above decision.

Action brought on 25 July 2014 — European Commission v Italian Republic

(Case C-367/14)

(2014/C 395/27)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Conte, D. Grespan and B. Stromsky, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

- declare that, by failing to adopt all the measures necessary to ensure compliance with the judgment of the Court of Justice of 6 October 2011 in Case C-302/09 concerning recovery from the recipients of aid found to be unlawful and incompatible with the common market according to Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia, ⁽¹⁾ the Italian Republic has failed to fulfil its obligations under that decision and under Article 260 TFEU;
- order the Italian Republic to pay to the Commission a lump sum, the amount of which is the product of multiplying a daily sum equivalent to EUR 24 578,40 by the number of days of continued infringement from the day on which the judgment in Case C-302/09 was delivered until the date of delivery of the judgment in the present case;
- order the Italian Republic to pay the Commission a penalty on a six-monthly basis to be determined by the Commission, starting from six months after the date of delivery of the judgment in the present case, by multiplying the daily penalty of EUR 187 264 by 182,5 and by the percentage of the aid still to be recovered at the end of the six-month period on the basis of the amount of the aid to be recovered at the date on which the Court delivers judgment in the present case;
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Italian Republic has failed to adopt all the measures necessary to recover the aid declared by the decision to be unlawful and incompatible, which it was required to do by the judgment in Case C-302/09, given that, almost three years after the declaratory judgment, an amount of EUR 33 032 000 (at least) still has to be recovered from 99 recipients, amounting to approximately 70 % of the total amount to be recovered.

Despite the introduction, after the declaratory judgment, of additional regulatory measures, a large part of the aid has yet to be recovered and no significant progress has been made in that regard.

Therefore, according to the Commission, the Court should rule that the Italian Republic has failed to comply with the judgment declaring that an infringement had been committed.

⁽¹⁾ Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (notified on 10 January 2000 under document number C(1999) 4268) (Text with EEA relevance) (OJ 2000 L 150, p. 50).

Request for a preliminary ruling from the Krajský soud v Praze (Czech Republic) lodged on 7 August 2014 — Ernst Georg Radlinger, Helena Radlingerová v Finway a.s.

(Case C-377/14)

(2014/C 395/28)

Language of the case: Czech

Referring court

Krajský soud v Praze

Parties to the main proceedings

Applicants: Ernst Georg Radlinger, Helena Radlingerová

Defendant: Finway a.s.

Questions referred

1. Do Article 7(1) of Council Directive 93/13/EEC ⁽¹⁾ of 5 April 1993 on unfair terms in consumer contracts ('the Directive on Unfair Terms') and Article 22(2) of Directive 2008/48/EC ⁽²⁾ of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ('the Directive on Consumer Credit Agreements') or other provisions of EU law on consumer protection preclude:

- the concept of Law No 182/2006 on bankruptcy and the modes of its resolution (zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení) (the Law on Insolvency), as amended by Law No 185/2013 ('the Law on Insolvency'), which enables the court to examine the authenticity, amount or ranking of claims stemming from consumer relations only on the basis of an incidental application lodged by the administrator in bankruptcy, a creditor or (under the abovementioned restrictions) the debtor (consumer)?
 - provisions which, in the context of the national legislation governing insolvency proceedings, restrict the right of the debtor (consumer) to request review by the court of the registered claims of creditors (suppliers of goods or services) solely to cases in which the resolution of the consumer's bankruptcy in the form of a discharge is approved, and in this context only in relation to creditors' unsecured claims, with the objections of the debtor being further limited, in the case of enforceable claims acknowledged by a decision of the competent authority, solely to the possibility of asserting that the claim has lapsed or is time-barred, as laid down in the provisions of Paragraph 192(3) and Paragraph 410(2) and (3) of the Law on Insolvency?
2. If Question 1 is answered in the affirmative: is the court in proceedings concerning the examination of claims under a consumer credit agreement required to have regard *ex officio*, even in the absence of an objection on the part of the consumer, to the credit supplier's failure to fulfil the information requirements under Article 10(2) of the Directive on Consumer Credit Agreements and to infer the consequences provided for in national law in the form of the invalidity of the contractual arrangements?

If Question 1 or 2 is answered in the affirmative:

3. Do the provisions of the directives applied above have direct effect and is their direct application precluded by the fact that the initiation of an incidental action by the court *ex officio* (or, from the point of view of national law, the inadmissible review of a claim on the basis of an ineffective contestation by the debtor-consumer) encroaches on the horizontal relationship between the consumer and the supplier of goods or services?
4. What amount is represented by 'the total amount of credit' in accordance with Article 10(2)(d) of the Directive on Consumer Credit Agreements and what amounts are included as 'the amounts of drawdown' in the calculation of the annual percentage rate (APR) according to the formula set out in Annex I to the Directive on Consumer Credit Agreements, if the credit agreement formally promises the payment of a specific financial amount but at the same time it is agreed that, as soon as the credit is paid out, the claims of the credit supplier in terms of a fee for the provision of the credit and in terms of the first credit repayment instalment (or subsequent instalments) will to a certain extent be offset against that amount, so that the amounts thus offset are never in reality paid out to the consumer, or to his account, and remain at the creditor's disposal throughout? Does the inclusion of those amounts which are in reality not paid out affect the amount of the APR calculated?

Regardless of the answer to the preceding questions:

5. In the assessment of whether the above agreed compensation is disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, is it necessary to evaluate the cumulative effect of all the penalty clauses, as concluded, regardless of whether the creditor actually insists that they be satisfied in full and regardless of whether some of them may from the point of view of the rules of national law be considered to have been concluded invalidly, or is it necessary to take into consideration only the total amount of the penalties actually demanded and capable of being demanded?
6. In the event that the contractual penalties are found to be abusive, is it necessary to disapply all of those partial penalties which, only when considered together, led the court to conclude that the amount of compensation was disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, or only some of them (and in that case by what criteria is this to be judged)?

⁽¹⁾ OJ 1993 L 95, p. 29.

⁽²⁾ OJ 2008 L 133, p. 66.

**Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 7 August 2014 —
Bundesagentur für Arbeit — Familienkasse Sachsen v Tomislaw Trapkowski**

(Case C-378/14)

(2014/C 395/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Bundesagentur für Arbeit — Familienkasse Sachsen

Respondent: Tomislaw Trapkowski

Questions referred

1. In a case where a person residing in one Member State (Germany) has entitlement to child benefit for children who live in another Member State (abroad) with the other spouse from whom he is separated, is the second sentence of Article 60 (1) of Regulation No 987/2009 ⁽¹⁾ to be applied in such a way that the fiction that, for the purpose of applying Articles 67 and 68 of Regulation No 883/2004, ⁽²⁾ the situation of the whole family is to be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person's entitlement to claim benefits, leads to the parent residing in the other Member State (abroad) being exclusively entitled to child benefit because the national law of the first Member State (Germany) provides that where several persons are entitled to child benefit, the benefit is granted to the parent who has taken the child into his or her household?

2. If the first question is to be answered in the affirmative:

In the situation set out in paragraph 1, is the third sentence of Article 60(1) of Regulation No 987/2009 to be interpreted as meaning that the parent residing in one Member State (Germany) has the right to child benefit under domestic law because the other parent residing in the other Member State (abroad) has not made an application for child benefit?

3. If, in the situation set out in paragraph 1, the answer to the second question is that the failure of the parent residing in another EU Member State to make an application leads to the transfer of the right to child benefit to the parent residing in Germany:

After what period of time may it be presumed that a parent residing in another EU Member State is not 'exercising' his or her right to child benefit within the meaning of the third sentence of Article 60(1) of Regulation No 987/2009, so that the parent residing in Germany has the right to child benefit?

⁽¹⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

⁽²⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

**Request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on
25 August 2014 — 'Vekos trade' AD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna
praktika', Varna, pri Tsentralno Upravlenie na Natsionalnata agentsia za prihodite**

(Case C-403/14)

(2014/C 395/30)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: 'Vekos trade' AD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika', Varna, pri Tsentralno Upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. Are the principles of fiscal neutrality, proportionality and protection of legitimate expectations violated by administrative practice and case-law according to which it is for the vendor — the consignor under the transport contract — to determine the authenticity of the acquirer's signature and to establish whether it comes from a person representing the company (the acquirer), one of its employees in a corresponding position or an authorised person?
2. In a case such as the present does Article 138(1) of Council Directive 2006/112/EC ⁽¹⁾ of 28 November 2006 on the common system of value added tax have direct effect, and can the national court directly apply the provision?

⁽¹⁾ OJ 2006 L 347, p. 1.

**Appeal brought on 28 August 2014 by Intel Corporation against the judgment of the General Court
(Seventh Chamber, Extended Composition) delivered on 12 June 2014 in Case T-286/09: Intel
Corporation v European Commission**

(Case C-413/14 P)

(2014/C 395/31)

Language of the case: English

Parties

Appellant: Intel Corporation (represented by: Messrs D. M. Beard QC, A. N. Parr and R. W. Mackenzie, Solicitors)

Other parties to the proceedings: European Commission,

Association for Competitive Technology, Inc.,

Union fédérale des consommateurs — Que choisir (UFC — Que choisir)

Form of order sought

The appellant claims that the Court should:

- set aside in whole or in part the judgment under appeal;
- annul in whole or in part the contested decision;
- cancel or substantially reduce the fine imposed;
- in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice;
- order the Commission to pay the costs of these proceedings and of the proceedings before the General Court.

Pleas in law and main arguments

By the first ground of appeal, which is divided in three parts, the Appellant claims that the General Court applied the wrong legal standard to assess the legality of its conduct under Article 82 EC and Article 54 of the EEA Agreement:

The General Court erred in concluding that the conduct in question was inherently capable of restricting competition and thus may be found contrary to Article 82 EC and Article 54 of the EEA Agreement without any need to consider all of the relevant facts and circumstances surrounding it.

The General Court erred in concluding that in order to establish an infringement of Article 82 EC and Article 54 of the EEA Agreement, capability to restrict competition may be assessed on the basis of abstract considerations rather than likely or actual effects.

The General Court erred in its alternative finding that the conduct in question was capable of restricting competition, because the Court erroneously took account of factors that cannot establish that capability and disregarded a number of relevant factors that should have been considered, such as the market coverage of the practice, the duration of the alleged practices, actual market evidence of rapidly declining prices and a lack of foreclosure, and the conclusions to be properly drawn from the as-efficient competitor (AEC) test carried out by the Commission during the administrative proceeding.

By the second ground of appeal, the Appellant claims that the General Court erred in finding an infringement for the final two years of the alleged period of infringement, given that, at most, the market coverage of the conduct during those years would have affected a mere 3.5 % of the relevant market.

By the third ground of appeal, the Appellant claims that the General Court erred by classifying its conduct with HP and Lenovo as 'exclusivity rebates' when that conduct concerned only 28 % and 42 % (or less) of each customer's total purchases of the relevant product, respectively, falling well short of 'all or most' of these customers' requirements.

By the fourth ground of appeal, the Appellant claims that the General Court violated the principles of effective judicial protection and procedural fairness in relation to a five-hour interview that the Commission had with a key Dell executive on questions bearing an objective link with the substance of the investigation, and during which the key Dell executive provided very detailed explanations. The General Court erred by concluding that it was sufficient for the Commission to disclose a mere list of the topics that were discussed during the interview, rather than a record or summary of what the interviewee said in relation to these topics. The General Court also erred by concluding that the Appellant had the burden to adduce *prima facie* evidence that the Commission failed to record exculpatory evidence; properly understood, the Appellant's burden was only to show that it could not be excluded that the material might have been of use for its defence, a burden that it clearly met in this case.

By the fifth ground of appeal, which is divided in three parts, the Appellant claims that the General Court incorrectly established Community jurisdiction over Intel's agreements with Lenovo in 2006 and 2007:

The General Court erred in concluding that this conduct was 'implemented' in the EEA, because Intel did not sell any products to Lenovo in the EEA under these agreements.

The General Court erred in concluding that the 'qualified effects' test is an appropriate basis for Community jurisdiction over the conduct in question.

The General Court erred in applying the 'qualified effects' tests because it was not foreseeable that Intel's agreements with Lenovo regarding x86 CPUs for delivery in China would have an immediate and substantial effect within the EEA.

By the sixth ground of appeal, which is divided in two parts, the Appellant claims that the General Court committed various errors in calculating the fine imposed:

The fine was manifestly disproportionate.

The General Court violated fundamental principles of EU law by applying the Commission's 2006 fining guidelines to conduct that had pre-dated them.

Appeal brought on 19 September 2014 by the Hellenic Republic against the judgment delivered by the General Court (Seventh Chamber) on 16 July 2014 in Case T-52/12 Greece v Commission

(Case C-431/14 P)

(2014/C 395/32)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: I. Khalkias and A. Vasilopoulou)

Other party to the proceedings: European Commission

Form of order sought

- grant the present appeal;
- set aside the contested judgment of the General Court of the European Union in its entirety;
- in accordance with the matters that have been more specifically set out, uphold the Hellenic Republic's action;
- annul the contested decision of the Commission;
- order the Commission to pay the costs.

Pleas in law and main arguments

The first plea is based on infringement of EU law or otherwise infringement of an essential procedural requirement. More specifically, by the first part of the plea, the Hellenic Republic pleads misinterpretation and misapplication by the General Court of the concept of resources which are attributed to the State, for the purpose of Article 107(1) TFEU, or otherwise an error as to the facts in the Court's classification as such resources of the amount of the mandatory contributions which were paid by the farmers who were the recipients of the aid and insured under the Organismos Ellinikon Georgikon Asfaliseon (Greek Agricultural Insurance Organisation) (ELGA), whilst, by the second part of the plea, it pleads that the General Court's judgment was delivered in breach of an essential procedural requirement, in so far as in the judgment the General Court did not investigate, or state specific reasons, as to whether the sums which were paid as contributions by the farmers who were recipients of the State aid held to be unlawful conferred on those farmers an undue advantage under Article 107(1) TFEU, that is to say, an advantage liable to distort competition, or otherwise that the provision was misinterpreted and misapplied by reason of the implicit rejection of the submission in question.

By the second plea, it is submitted that the judgment under appeal was delivered in breach of EU law and, more specifically, that Article 107(1) TFEU was misinterpreted and misapplied by the General Court, which held that the compensation payments in 2009 constituted a selective economic advantage for the recipients which was liable to threaten to distort competition and trade between Member States, without taking into account the exceptional circumstances in which the Greek economy found itself at the material time and continues to find itself.

By the third plea, it is submitted (i) that the General Court misinterpreted and misapplied Article 107(3)(b) TFEU because it limited the scope of that provision in respect of the disputed payments in 2009 to the terms of the Communication on the temporary Community framework, despite the exceptional circumstances in which the Greek economy found itself at the material time (first part of the third plea), and (ii) that the judgment under appeal contains insufficient grounds in so far as it does not examine at all the Hellenic Republic's claim that the Commission decision is excessive in so far as it orders recovery of the aid in December 2011 (second part of the third plea).

Appeal brought on 25 September 2014 by DTS Distribuidora de Televisión Digital, S.A. against the judgment of the General Court (Third Chamber) delivered on 11 July 2014 in Case T-533/10 DTS Distribuidora de Televisión Digital v Commission

(Case C-449/14 P)

(2014/C 395/33)

Language of the case: Spanish

Parties

Appellant: DTS Distribuidora de Televisión Digital, S.A. (represented by: H. Brokelmann and M. Ganino, abogados)

Other parties to the proceedings: European Commission, Telefónica de España, S.A., Telefónica Móviles España, S.A., Kingdom of Spain and Corporación de Radio y Televisión Española, S.A. (RTVE)

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of 11 July 2014 in Case T-533/10 *DTS Distribuidora de Televisión Digital, S. A. v European Commission* and, consequently, pursuant to Article 61 of the Statute of the Court of Justice
- on the basis of the information at its disposal, uphold the form of order sought in the application initiating proceedings at first instance and annul Commission Decision 2011/1/EU ⁽¹⁾ of 20 July 2010 on the State aid scheme C38/09 (ex NN 58/09) which Spain is planning to implement for Corporación de Radio y Televisión Española (RTVE), or
- in the alternative, refer the case back to the General Court for judgment in the light of the judgment of the Court of Justice,
- order the Commission and the parties intervening in support of the Commission to pay the costs of both the appeal proceedings and the proceedings before the General Court.

Pleas in law and main arguments

1. First ground of appeal, alleging infringement of Article 107(1) TFEU on account of an incorrect interpretation of the concept of aid.

The judgment under appeal infringes Article 107(1) TFEU in that it interprets incorrectly the concept of aid and, specifically, the conditions which, according to the judgment in *Laboratoires Boiron*, ⁽²⁾ must be satisfied in order for a tax to be regarded as an integral part of an aid measure.

2. Second ground of appeal, alleging infringement of Article 107(1) TFEU in that the judgment under appeal does not carry out a comprehensive review as to the existence of aid and distorts Spanish law.

The judgment under appeal infringes Article 107(1) TFEU in that it does not carry out a comprehensive review as to whether the conditions laid down in the judgment in *Régie Networks* ⁽³⁾ in order for the tax imposed on DTS to be regarded as an integral part of the aid to RTVE are satisfied and in that it distorts Spanish law.

3. Third ground of appeal, alleging an error of law in the application of Article 106(2) TFEU.

The judgment under appeal is vitiated by an error of law in the application of Article 106(2) TFEU. It distorts DTS' arguments — directed at showing that the method by which the aid to RTVE is financed distorts competition disproportionately — interpreting them as though they concerned the effects of the aid itself and not the effects of the tax by which it is financed. As a consequence, the judgment under appeal rules *ultra petita* on matters that were not raised by DTS in the application, nor analysed by the Commission in its Decision, thereby modifying the subject-matter of the dispute and exceeding the limits of the General Court's judicial review jurisdiction.

⁽¹⁾ OJ 2011, L 1, p. 9.

⁽²⁾ C-526/04, EU:C:2006:528.

⁽³⁾ C-333/07, EU:C:2008:764.

Appeal brought on 26 September 2014 by Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis against the judgment delivered by the General Court (First Chamber) on 16 July 2014 in Case T-59/11 Isotis v Commission

(Case C-450/14 P)

(2014/C 395/34)

Language of the case: Greek

Parties

Appellant: Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis (represented by: S. Skliris, dikigoros)

Other party to the proceedings: European Commission

Form of order sought

- set aside in its entirety the judgment of the General Court of the European Union of 16 July 2014 in Case T-59/11 *Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis v European Commission*;
- uphold the company's action in its entirety;
- dismiss the Commission's counterclaim in its entirety;
- order the Commission to pay the appellant's costs.

Pleas in law and main arguments

1. Incorrect application of Article 1315 of the Belgian Civil Code regarding allocation of the burden of proof
 - Dismissal of the action does not automatically mean that the factual basis of the counterclaim is proven. The Commission bore the burden of proving the counterclaim.
2. Defective statement of reasons as regards the substantive merits of the counterclaim
 - Lack of reasoning as regards the affirmation of the substantive merits of the Commission's counterclaim.
 - Contradictory reasoning by reason of taking into account as the only piece of evidence the audit report which was disputed and constituted the matter to be proven.
3. Error of law by reason of failure to apply the international auditing standards
 - Failure to apply the international auditing standards in breach of national accounting legislation and of the obligation to interpret the contracts at issue in accordance with the common intention of the parties (Article 1156 of the Belgian Civil Code) and with the principle of good faith (third paragraph of Article 1134 of the Belgian Civil Code).
4. Incorrect interpretation of the principle of equality of arms
 - The principle of equality of arms is not the same as the *audi alteram partem* rule.
5. Incorrect interpretation and application of the principle of good faith and breach of the rights of the defence because of the language of the case
 - The correct interpretation of the principle of good faith requires the contractual provision to be interpreted in accordance with the Charter of Fundamental Rights of the European Union and the fundamental principle of EU law regarding observance of the rights of the defence.
6. Incorrect interpretation of the terms of the contracts at issue, incorrect application of Greek law and failure to take account of a material submission
 - Under Article II 19.1 of the FP6 contracts, Article II.16 of the e-Ten contracts and Article II 20.1 of the CIP contracts, the checks are to cover only the expenditure and receipts which relate to performance of the projects at issue, and not other entries.
 - Breach of the principle, laid down by case-law, that in Greek accounting and tax law financial years are independent.

- Failure to take account, and absence of judicial appraisal, of the applicant's material submission in paragraphs 61 to 64 of the application.
7. Incorrect interpretation of the terms of the contracts at issue, failure to take account of a material submission and distortion of the clear sense of documents
- Incorrect interpretation and application of the term 'overall statement of accounts', contrary to good faith and Greek law, and of the term 'receipts', contrary to the contracts' express terms.
 - Failure to take account, and absence of judicial appraisal, of the applicant's material submission regarding recording the advance payment for the Access e-Gov project in its accounts before the end of the on-the-spot check.
 - Distortion of the clear sense of Annexes A3, A6, A9, A11, A14 and A17 to the application.
8. Lack of reasoning, breach of the law applicable to the contracts at issue and distortion of the clear sense of a document
- Lack of reasoning (paragraphs 127, 129) and contradictory reasoning (paragraphs 128, 129).
 - Breach of the principle of good faith, of the international auditing standards and of Greek accounting legislation (paragraph 127).
 - Distortion of the clear sense of Annex B101 which was adduced by the Commission.
9. Taking account of a submission which was not put forward and not taking account of a submission which was put forward
- Taking account of a submission which the applicant did not put forward (paragraph 165) and absence of judicial appraisal of its submissions to the contrary (paragraphs 88, 89, 91 of the application).
-

GENERAL COURT

Judgment of the General Court of 2 October 2014 — Evropaiki Dynamiki v Commission

(Case T-340/07 RENV) ⁽¹⁾

(Arbitration clause — Contract relating to Community financial support for a project in the framework of the ‘eContent’ programme — Termination of the contract by the Commission — Reimbursement of eligible costs)

(2014/C 395/35)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: European Commission (represented initially by: E. Manhaeve and M. Wilderspin, then by M. Wilderspin, S. Delaude and L. Cappeletti and lastly by S. Delaude and L. Cappeletti, acting as Agents, and by D. Philippe and M. Gouden, lawyers)

Re:

Action on the basis of an arbitration clause, seeking an order that the Commission pay (i) the sums allegedly due to the applicant and (ii) damages, following termination of a contract relating to Community financial support for the project ‘eContent Exposure and Business Opportunities’ (Contract No EDC-53007 EEBO/27873), concluded in the framework of the multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society.

Operative part of the judgment

The Court:

1. Orders the European Commission to pay Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE the sum of EUR 8 843,10;
2. Dismisses the action as to the remainder;
3. Orders the European Commission to pay 5 % of its own costs and 5 % of the costs of Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis, and the latter to pay 95 % of its own costs and 95 % of the Commission’s costs.

⁽¹⁾ OJ C 269, 10.11.2007.

Judgment of the General Court of 26 September 2014 — Evropaiki Dynamiki v Commission

(Case T-498/11) ⁽¹⁾

(Public service contracts — Tender procedure — Renovation of a website — Rejection of a tenderer’s tender — Award of contract to another tenderer — Action for annulment — Obligation to state reasons — Award criteria — Manifest errors of assessment — Claim for damages)

(2014/C 395/36)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, M. Dermizakis and N. Theologou, lawyers)

Defendant: European Commission (represented by: S. Delaude and F. Moro, Agents, assisted by P. Wytinck and T. Ruys, lawyers)

Re:

Application (i) for annulment of the decision of the Publications Office of the European Union rejecting the tender submitted by the applicant concerning a supply of services relating to the revamping of the website of the European Anti-Fraud Office (OLAF) and of the decision to award the contract to another tenderer, and (ii) for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and to pay those incurred by the European Commission.*

⁽¹⁾ OJ C 347, 26.11.2011.

Judgment of the General Court of 26 September 2014 — Dansk Automat Brancheforening v Commission

(Case T-601/11) ⁽¹⁾

(Actions for annulment — State aid — Online gaming — Introduction in Denmark of lower taxes for online gaming than for casinos and amusement arcades — Decision declaring aid compatible with the internal market — Aid to facilitate the development of certain activities — Lack of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2014/C 395/37)

Language of the case: Danish

Parties

Applicant: Dansk Automat Brancheforening (Fredericia, Denmark) (represented by: K. Dyekjær, T. Høg and J. Flodgaard, lawyers)

Defendant: European Commission (represented by: M. Afonso and C. Barslev, and subsequently by M. Afonso and L. Grønfeldt, acting as Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented initially by C. Vang, and subsequently by M. Wolff and C. Thorning, acting as Agents, assisted by K. Lundgaard Hansen, lawyer); Republic of Malta (represented by: P. Grech and A. Buhagiar, acting as Agents); Betfair Group plc (London, United Kingdom) and Betfair International Ltd (Santa Venera, Malta) (represented by: O. Brouwer and A. Pliego Selie, lawyers); European Gaming and Betting Association (EGBA) (Brussels, Belgium) (represented by: C.-D. Ehlermann, J.C. Heithecker and J. Ylinen, lawyers)

Re:

Application for annulment of Commission Decision 2012/140/EU of 20 September 2011 in Case No C 35/2010 (ex N 302/2010) on measures which Denmark is planning to implement in the form of duties for online gaming in the Danish [Law on gaming duties] (OJ 2012, L 68, p. 3).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dansk Automat Brancheforening to bear its own costs and to pay those incurred in the main proceedings by the European Commission, Betfair Group plc, Betfair International Ltd and the European Gaming and Betting Association (EGBA);*
3. *Orders Dansk Automat Brancheforening to pay its own costs in connection with the interim proceedings and to pay those incurred by the Commission;*
4. *Orders the Kingdom of Denmark and the Republic of Malta to bear their own costs.*

⁽¹⁾ OJ C 25, 28.1.2012.

Judgment of the General Court of 26 September 2014 — Royal Scandinavian Casino Århus v Commission

(Case T-615/11) ⁽¹⁾

(Action for annulment — State aid — Online games — Introduction in Denmark of taxes lower for online games than for casinos and gaming rooms — Decision declaring the aid compatible with the internal market — Aid intended to facilitate the development of certain activities — Lack of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2014/C 395/38)

Language of the case: Danish

Parties

Applicant: Royal Scandinavian Casino Århus I/S (Aarhus, Denmark) (represented by: B. Jacobi, lawyer)

Defendant: European Commission (represented initially by M. Afonso and C. Barslev, subsequently by M. Afonso and L. Grønfeldt, acting as Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented initially by C. Vang, subsequently by V. Pasternak Jørgensen and lastly by C. Thorning, acting as Agents, and K. Lundgaard Hansen, lawyer); Republic of Malta (represented by: P. Grech and A. Buhagiar, acting as Agents); Betfair Group plc (London, United Kingdom) and Betfair International Ltd (Santa Venera, Malta) (represented by: O. Brouwer and A. Pliego Selie, lawyers); European Gaming and Betting Association (EGBA) (Brussels, Belgium) (represented by: C.-D. Ehlermann, J. C. Heithecker and J. Ylinen, lawyers)

Re:

Application for annulment of Commission Decision 2012/140/EU of 20 September 2011 on the measure C 35/10 (ex N 302/10) which Denmark is planning to implement in the form of duties for online gambling in the Danish Gaming Duties Act (OJ 2012 L 69, p. 3).

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Royal Scandinavian Casino Århus I/S, in addition to bearing its own costs, to pay those incurred by the European Commission, Betfair Group plc, Betfair International Ltd and the European Gaming and Betting Association (EGBA).*
3. *Orders the Kingdom of Denmark and the Republic of Malta to bear their own costs.*

⁽¹⁾ OJ C 32, 4.2.2012.

Judgment of the General Court of 25 September 2014 –Spirlea v Commission(Case T-669/11) ⁽¹⁾

(Access to documents — Regulation (EC) No 1049/2001 — Document emanating from Germany in the context of an EU Pilot procedure — Article 4(4) and (5) — Third indent of Article 4(2) — Refusal of access — Breach of essential procedural requirements — Obligation to carry out a concrete and individual examination — Partial access — Overriding public interest)

(2014/C 395/39)

Language of the case: German

Parties

Applicants: Darius Nicolai Spirlea and Mihaela Spirlea (Capezzano Pianore, Italy) (represented by: initially, V. Foerster and T. Pahl, and, subsequently, V. Foerster and E. George, lawyers)

Defendant: European Commission (represented by: P. Costa de Oliveira and H. Kraemer, acting as Agents)

Re:

Application for annulment of the Commission's decision of 9 November 2011 refusing to allow the applicants access to the observations submitted by the Federal Republic of Germany to the Commission on 7 July 2011 in the context of EU Pilot procedure No 2070/11/SNCO.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders each party to bear its own costs.

⁽¹⁾ OJ C 65, 3.3.2012.

Judgment of the General Court of 30 September 2014 — Scooters India v OHIM — Brandconcern (LAMBRETTA)(Case T-51/12) ⁽¹⁾

(Community trade mark — Revocation proceedings — Community word mark LAMBRETTA — Genuine use of the mark — Partial revocation — Article 51(2) of Regulation (EC) No 207/2009)

(2014/C 395/40)

Language of the case: English

Parties

Applicant: Scooters India Ltd (Lucknow, India) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Brandconcern BV (Amsterdam, Netherlands) (represented by: G. Casucci, N. Ferreti and C. Galli, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 December 2011 (Case R 2312/2010-1), relating to revocation proceedings between Brandconcern BV and Scooters India Ltd

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 1 December 2011 (Case R 2312/2010-1);
2. Orders OHIM to bear its own costs and to pay those incurred by Scooters India Ltd, including those incurred for the purposes of the proceedings before the Board of Appeal;
3. Orders Brandconcern BV to bear its own costs.

⁽¹⁾ OJ C 109, 14.4.2012.

**Judgment of the General Court of 26 September 2014 — Flying Holding and Others v Commission
(Joined Cases T-91/12 and T-280/12) ⁽¹⁾**

(Public service contracts — Tendering procedure — Provision of non-scheduled passenger transport services by air and chartered air-taxi service — Rejection of the application — Article 94(b) of the Financial Regulation — Rights of the defence — Article 134(5) of the Regulation implementing the Financial Regulation — Action for annulment — Letter in response to a question from the applicants — Act not amenable to review — Award decision — Lack of direct concern — Inadmissible — Non-contractual liability)

(2014/C 395/41)

Language of the case: French

Parties

Applicants: Flying Holding NV (Wilrijk, Belgium), Flying Group Lux SA (Luxembourg, Luxembourg), and Flying Service NV (Deurne, Belgium) (represented by: C. Doutrelepon and V. Chapoulaud, lawyers)

Defendant: European Commission (represented by: initially by S. Delaude and D. Calciu, acting as Agents, and subsequently by S. Delaude, assisted by V. Vanden Acker, lawyer)

Re:

Action for annulment of (i) the decisions contained in the letters from the Commission of 15 December 2011 and 17 January 2012 rejecting the application submitted by the applicants in the context of a restricted tendering procedure concerning the provision of non-scheduled passenger transport services by air and chartered air-taxi service (OJ 2011/S 192-312059) and (ii) the Commission's decision of 28 February 2012 awarding the contract to another company, on the one hand, and a claim for damages on the other.

Operative part of the judgment

The Court:

1. Dismisses the actions;
2. Orders Flying Holding NV, Flying Group Lux SA and Flying Service NV to pay the costs.

⁽¹⁾ OJ C 126, 28.4.2012.

Judgment of the General Court of 30 September 2014 — Scooters India v OHIM — Brandconcern (LAMBRETTA)

(Case T-132/12) ⁽¹⁾

(Community trade mark — Revocation proceedings — Community word mark LAMBRETTA — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009)

(2014/C 395/42)

Language of the case: English

Parties

Applicant: Scooters India Ltd (Lucknow, India) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Brandconcern BV (Amsterdam, Netherlands) (represented by: G. Casucci and N. Ferretti, lawyers)

Re:

Action for annulment brought against the decision of the First Board of Appeal of OHIM of 12 January 2012 (Case R 2308/2010-1), relating to revocation proceedings between Brandconcern BV and Scooters India Ltd

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 January 2012 (Case R 2308/2010-1);
2. Orders OHIM to bear its own costs and to pay those incurred by Scooters India Ltd, including those incurred for the purposes of the proceedings before the Board of Appeal;
3. Orders Brandconcern BV to bear its own costs.

⁽¹⁾ OJ C 165, 9.6.2012.

Judgment of the General Court of 25 September 2014 — Peri v OHIM (Shape of a turnbuckle)

(Case T-171/12) ⁽¹⁾

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

(2014/C 395/43)

Language of the case: German

Parties

Applicant: Peri GmbH (Weißenhorn, Germany) (represented by: J. Dönch, 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 First Board of Appeal of OHIM of 26 January 2012 (Case R 1209/2011-1), concerning an application for registration of a three-dimensional sign in the shape of a turnbuckle as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the application;*
2. *Orders Peri GmbH to pay the costs.*

⁽¹⁾ OJ C 184, 23.6.2012.

Judgment of the General Court of 2 October 2014 — Spraylat v ECHA

(Case T-177/12) ⁽¹⁾

(REACH — Fee for registration of a substance — Reduction granted to micro-, small and medium-sized enterprises — Error in declaration relating to the size of the enterprise — Decision imposing an administrative charge — Proportionality)

(2014/C 395/44)

Language of the case: German

Parties

Applicant: Spraylat GmbH (Aachen, Germany) (represented by: K. Fischer, lawyer)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, A. Iber and C. Schultheiss, Agents, and M. Kuschewsky, lawyer)

Intervener in support of the defendant: European Commission (represented initially by: D. Düsterhaus and E. Manhaeve, and subsequently by B. Eggers and M. Manhaeve, Agents)

Re:

Action for annulment of invoice No 10030371 issued by the ECHA on 21 February 2012 setting the amount of the administrative charge imposed on the applicant and a precautionary application to annul Decision SME (2012) 1445 of the ECHA of 15 February 2012 which states that the applicant does not fulfil the conditions to receive a reduction of the fee for small enterprises and imposing an administrative charge on it.

Operative part of the judgment

The Court:

1. *Annuls Decision SME (2012) 1445 of the European Chemicals Agency (ECHA) of 15 February 2012 and invoice No 10030371 issued by the ECHA on 21 February 2012;*
2. *Orders the ECHA to bear its own costs and to pay those incurred by Spraylat GmbH;*
3. *Orders the European Commission to bear its own costs.*

⁽¹⁾ OJ C 174, 16.6.2012.

Judgment of the General Court of 2 October 2014 — Euro-Link Consultants and European Profiles v Commission

(Case T-199/12) ⁽¹⁾

(Public service contracts — Tender procedure — Crimean tourism diversification and support project — Rejection of the applicants' tender — Action for annulment — Measure not amenable to review — Confirmatory measure — Partial inadmissibility — Obligation to state reasons — Award criteria — Manifest error of assessment — Misuse of powers — Equal treatment)

(2014/C 395/45)

Language of the case: English

Parties

Applicants: Euro-Link Consultants Srl (Bucharest, Romania); and European Profiles AE Meleton kai Symvoulon Epicheiriseon (Athens, Greece) (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented initially by: S. Bartelt and A. Bordes, and subsequently by S. Bartelt and M. Konstantinidis, Agents)

Re:

Application for the annulment of the decision of 28 February 2012 of the European Union Delegation to Ukraine, in the restricted tender procedure EuropeAid/131567/C/SER/UA 'Crimean tourism diversification and support project', not to award the contract to the applicants' consortium, and the subsequent decisions rejecting the applicants' complaints made on 14 March 2012 by that authority and on 2 May 2012 by the Director of the Neighbourhood Directorate of the Commission's Directorate General for Development and Co-operation — EuropeAid

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Euro-Link Consultants Srl and European Profiles AE Meleton kai Symvoulon Epicheiriseon to pay the costs.*

⁽¹⁾ OJ C 209, 14.7.2012.

Judgment of the General Court of 25 September 2014 — Spirlea v Commission

(Case T-306/12) ⁽¹⁾

(Access to documents — Regulation (EC) No 1049/2001 — Third indent of Article 4(2) — Requests for information addressed by the Commission to Germany in the context of an EU Pilot procedure — Refusal of access — Obligation to carry out a concrete and individual examination — Overriding public interest — Partial access — Duty to state reasons)

(2014/C 395/46)

Language of the case: German

Parties

Applicants: Darius Nicolai Spirlea and Mihaela Spirlea (Capezzano Pianore, Italy) (represented by: initially, V. Foerster and T. Pahl, and, subsequently, V. Foerster and E. George, lawyers)

Defendant: European Commission (represented by: P. Costa de Oliveira, acting as Agent, assisted initially by A. Krämer and R. Van der Hout, and subsequently by R. Van der Hout, lawyers)

Interveners in support of the applicants: Kingdom of Denmark (represented by: initially, V. Pasternak Jørgensen and C. Thorning, and, subsequently, C. Thorning and K. Jørgensen, acting as Agents); Republic of Finland (represented by: S. Hartikainen, acting as Agent); and Kingdom of Sweden (represented by: initially, C. Meyer-Seitz, A. Falk, C. Stege, S. Johannesson, U. Persson, K. Ahlstrand-Oxhamre and H. Karlsson, and, subsequently, C. Meyer-Seitz, A. Falk, U. Persson, L. Swedenborg, C. Hagerman and E. Karlsson, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, T. Müller and D. Hadroušek, acting as Agents); and Kingdom of Spain (represented by: initially, S. Centeno Huerta, and, subsequently, J. García-Valdecasas Dorrego, abogados del Estado)

Re:

Application for annulment of the Commission's decision of 21 June 2012 refusing to allow the applicants access to two requests for information addressed by the Commission to the Federal Republic of Germany, dated 10 May and 10 October 2011, in the context of EU Pilot procedure No 2070/11/SNCO.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders each party to bear its own costs.

⁽¹⁾ OJ C 273, 8.9.2012.

Judgment of the General Court of 26 September 2014 — Koscher + Würtz v OHIM — Kirchner & Wilhelm (KW SURGICAL INSTRUMENTS)

(Case T-445/12) ⁽¹⁾

(Community trade mark — Opposition proceedings — International registration designating the European Community — Figurative mark KW SURGICAL INSTRUMENTS — Earlier national word mark Ka We — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Appeal procedure — Scope of the examination to be carried out by the Board of Appeal — Proof of genuine use of the earlier trade mark — Application submitted to the Opposition Division — Refusal to register the trade mark applied for without prior examination of the condition of genuine use of the earlier trade mark — Error of law — Power to alter decisions)

(2014/C 395/47)

Language of the case: German

Parties

Applicant: Koscher + Würtz GmbH (Spaichingen, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt, M. Bergermann, J. Vogtmeier and A. Kramer, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Kirchner & Wilhelm GmbH + Co. (Asperg, Germany) (represented by: J. Dönch, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 August 2012 (Case R 1675/2011-4) concerning opposition proceedings between Kirchner & Wilhelm GmbH + Co. and Koscher + Würtz GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 August 2012 (Case R 1675/2011-4) concerning opposition proceedings between Kirchner & Wilhelm GmbH + Co. and Koscher + Würtz GmbH;*
2. *Dismisses the action as to the remainder;*
3. *Orders OHIM to bear its own costs and to pay half of the costs incurred by Koscher + Würtz in the proceedings before the Board of Appeal and the General Court;*
4. *Orders Koscher + Würtz to bear half of the costs it has incurred in the proceedings before the Board of Appeal and the General Court.*

⁽¹⁾ OJ C 379, 8.12.2012.

Judgment of the General Court of 25 September 2014 — Giorgis v OHIM — Comigel (Shape of two packaged goblets)

(Case T-474/12) ⁽¹⁾

(Community trade mark — Invalidity proceedings — Three-dimensional Community trade mark — Shape of two packaged goblets — Absolute ground for refusal — Lack of distinctive character — Lack of distinctive character acquired through use — Article 7(1)(b) and 7(3) of Regulation (EC) No 207/2009)

(2014/C 395/48)

Language of the case: English

Parties

Applicant: Giorgio Giorgis (Milan, Italy) (represented by: I. Prado and A. Tornato, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Comigel SAS (Saint-Julien-lès-Metz, France) (represented by: S. Guerlain, J. Armengaud and C. Mateu, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 July 2012 (Case R 1301/2011-1) concerning invalidity proceedings between Comigel SAS and Mr Giorgio Giorgis.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Mr Giorgio Giorgis to pay the costs.*

⁽¹⁾ OJ C 9, 12.1.2013.

Judgment of the General Court of 25 September 2014 — CEWE Stiftung v OHIM (SMILECARD)(Case T-484/12) ⁽¹⁾**(Community trade mark — Application for Community word mark SMILECARD — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)**

(2014/C 395/49)

Language of the case: German

Parties

Applicant: CEWE Stiftung & Co. KGaA, formerly CeWe Color AG & Co. OHG (Oldenburg, Germany) (represented by: U. Sander, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 September 2012 (Case R 2279/2011-4) concerning an application for registration of the word sign SMILECARD as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders CEWE Stiftung & Co. KGaA to pay the costs.

⁽¹⁾ OJ C 26, 26.1.2013.

Judgment of the General Court of 26 September 2014 — Arnoldo Mondadori Editore v OHIM — Grazia Equity (GRAZIA)(Case T-490/12) ⁽¹⁾**(Community trade mark — Opposition proceedings — Application for Community word mark GRAZIA — Earlier national figurative mark GRAZIA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Lack of similarity between the goods — Article 8(5) of Regulation No 207/2009 — Reputation — No link between the marks at issue)**

(2014/C 395/50)

Language of the case: English

Parties

Applicant: Arnoldo Mondadori Editore SpA (Milan, Italy) (represented by: G. Dragotti, R. Valenti and S. Balice, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening between the General Court: Grazia Equity GmbH (Stuttgart, Germany) (represented by: M. Müller, lawyer)

Re:

Action for annulment of the decision of the Fourth Board of Appeal of OHIM of 6 September 2012 (Case R 1958/2010-4) relating to opposition proceedings between Arnoldo Mondadori Editore SpA and Grazia Equity GmbH.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Arnoldo Mondadori Editore SpA to pay the costs.

⁽¹⁾ OJ C 26, 26.1.2013.

Judgment of the General Court of 25 September 2014 — Ted-Invest v OHIM — Scandia Down (sensi scandia)

(Case T-516/12) ⁽¹⁾

(Community trade mark — Invalidity proceedings — Community figurative mark *sensi scandia* — Earlier Community word mark SCANDIA HOME — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2014/C 395/51)

Language of the case: English

Parties

Applicant: Ted-Invest EOOD (Plovdiv, Bulgaria) (represented by: A. Ivanova, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Scandia Down LLC (Weehawken, New Jersey, United States) (represented by: G. Farrington, solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 September 2012 (Case R 2247/2011-1), relating to invalidity proceedings between Scandia Down LLC and Ted-Invest EOOD

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ted-Invest EOOD to pay the costs.

⁽¹⁾ OJ C 32, 2.2.2013.

Judgment of the General Court of 25 September 2014 — Grazyte v Commission**(Case T-86/13 P) ⁽¹⁾*****(Appeal — Civil Service — Temporary agents — Remuneration — Expatriation allowance — Condition set out in Article 4(1)(b) of Annex VII to the Staff Regulations — Ten-year reference period — Duties in the service of an international organisation)***

(2014/C 395/52)

*Language of the case: Italian***Parties***Applicant:* Diana Grazyte (Utena, Lithuania) (represented by: R. Guarino, lawyer)*Other party to the proceedings:* European Commission (represented initially by V. Joris and subsequently by J. Currall and G. Gattinara, acting as Agents, assisted by A. Dal Ferro, lawyer)**Re**

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 5 December 2012 in Case F-76/11 *Grazyte v Commission*, ECR-SC, EU:F:2012:173, seeking to have that judgment set aside.

Operative part

- 1) *The appeal is dismissed.*
- 2) *Ms Diana Grazyte shall bear her own costs and pay those incurred by the European Commission in the present appeal proceedings.*

⁽¹⁾ OJ C 101, 6.4.2013.

Judgment of the General Court of 26 September 2014 — B&S Europe v Commission**(Case T-222/13) ⁽¹⁾*****(Public service contracts — Call for tenders — Short-term services in the exclusive interest of third countries benefiting from European Union external aid — Rejection of the application — Selection criteria — Contracts divided into tranches — Reference project — Duty to state reasons — Principle of sound administration — Legitimate expectations — Principle of impartiality — Audi alteram partem rule)***

(2014/C 395/53)

*Language of the case: French***Parties***Applicant:* Business and Strategies in Europe (B&S Europe) SA (Brussels, Belgium) (represented by: L. Bihain and S. Pâques, lawyers)*Defendant:* European Commission (represented initially by A. Bordes and R. Tricot, and subsequently by R. Tricot, acting as Agents, assisted by A.-M. Vandromme and J. Stuyck, lawyers)**Re:**

Application for annulment of the Commission decision, set out in its letters of 15 February and 2 April 2013, informing the applicant that it had not been included on the list of candidates invited to participate in the restricted call for tenders concerning lot 7 of the multiple framework contract for the provision of short-term services in the exclusive interest of third countries benefiting from European Union external aid (OJ 2012/S 105-174077).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Business and Strategies in Europe (B&S Europe) SA to pay the costs.

⁽¹⁾ OJ C 164 of 8.6.2014.

Judgment of the General Court of 1 October 2014 — Italy v Commission

(Case T-256/13) ⁽¹⁾

(Social policy — Community action programmes in the field of youth — Partial reimbursement of the funding paid — Ineligibility of certain sums — Exceeding of the upper limit provided for in respect of a category of actions — Implementation by the national agencies of procedures to recover the sums wrongly used from the final beneficiaries)

(2014/C 395/54)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by W. Ferrante, lawyer)

Defendant: European Commission (represented by: C. Cattabriga, acting as Agent)

Re:

Application for annulment, first, of the letter of the Commission Ares (2013) 237719 of 22 February 2013, addressed to the Agenzia nazionale per i giovani (National Youth Agency, Italy), which announces the issue of a debit note in respect of a total amount of EUR 1 486 485.90, in so far as that figure includes an amount of EUR 52 036.24 for expenses borne in respect of training activities relating to the European Voluntary Service and an amount of EUR 183 729,72, in respect of sums not recovered by the Agenzia nazionale per i giovani from the final beneficiaries as regards the period from 2000 to 2004, and, secondly, of the letter of the Commission Ares (2013) 267064 of 28 February 2013, addressed to the Dipartimento della gioventù e del servizio civile nazionale (Department for Youth and the national civil service, Italy), communicating the final evaluation conclusions from the declaration of assurance and the conclusions on the annual report of that agency in respect of 2011.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the Italian Republic to pay the costs.

⁽¹⁾ OJ C 178, 22.6.2013.

Judgment of the General Court of 1 October 2014 — Lausitzer Fruchteverarbeitung v OHIM — Rivella International (holzmittel)

(Case T-263/13) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for the Community figurative mark holzmittel — Earlier international figurative marks Michel and Michel POWER — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 395/55)

Language of the case: German

Parties

Applicant: Lausitzer Fruchteverarbeitung GmbH (Sohland an der Spree, Germany) (represented by: A. Weiß, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Rivella International AG (Rothrist, Switzerland) (represented by: C. Spintig, S. Pietzcker and A. Coordes, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 February 2013 (Case R 1968/2011-1), relating to opposition proceedings between Rivella International AG and Lausitzer Fruchteverarbeitung GmbH

Operative part of the judgment

The Court:

1. *dismisses the action;*
2. *orders Lausitzer Fruchteverarbeitung GmbH to pay the costs.*

⁽¹⁾ OJ C 207, 20.7.2013.

Judgment of the General Court of 26 September 2014 — Brainlab v OHIM (Curve)

(Case T-266/13) ⁽¹⁾

(Community trade mark — Application for Community word mark Curve — Absolute ground for refusal — Trade mark contrary to public policy or to accepted principles of morality — Article 7(1)(f) of Regulation (EC) No 207/2009)

(2014/C 395/56)

Language of the case: German

Parties

Applicant: Brainlab AB (Feldkirchen, Germany) (represented by: J. Bauer, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 March 2013 (Case R 2073/2012-4), concerning an application for registration of the word mark Curve as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Brainlab AG to pay the costs.

⁽¹⁾ OJ C 215, 27.7.2013.

Judgment of the General Court of 25 September 2014 — Alma-The Soul of Italian Wine v OHIM — Miguel Torres (SOTTO IL SOLE ITALIANO SOTTO il SOLE)

(Case T-605/13) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community figurative mark SOTTO IL SOLE ITALIANO SOTTO il SOLE — Earlier Community word mark VIÑA SOL — Relative ground for refusal — Article 75 of Regulation (EC) No 207/2009 — Duty to state reasons)

(2014/C 395/57)

Language of the case: English

Parties

Applicant: Alma-The Soul of Italian Wine LLLP (Bal Harbor, Florida, United States) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Miguel Torres, SA (Vilafranca del Penedès, Spain) (represented by: J. Güell Serra, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 September 2013 (Case R 18/2013-2), concerning opposition proceedings between Miguel Torres, SA, and Alma-The Soul of Italian Wine LLLP.

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 10 September 2013 (Case R 18/2013-2);
2. Orders OHIM to bear its own costs and to pay the costs incurred by Alma-The Soul of Italian Wine LLLP;
3. Orders Miguel Torres, SA, to bear its own costs.

⁽¹⁾ OJ C 24, 25.1.2014.

Judgment of the General Court of 26 September 2014 — Romonta v Commission(Case T-614/13) ⁽¹⁾

(Environment — Directive 2003/87/EC — System of exchange of greenhouse gas emission allowances — Transitional rules concerning the free allocation of greenhouse gas emission allowances from 2013 — Decision 2011/278/EU — National implementing measures submitted by Germany — Hardship clause — Freedom to choose an occupation and to conduct a business — Property rights — Proportionality)

(2014/C 395/58)

Language of the case: German

Parties

Applicant: Romonta GmbH (Seegebiet Mansfelder Land, Germany) (represented by: I. Zenke, M.-Y. Vollmer, C. Telschow and A. Schulze, lawyers)

Defendant: European Commission (represented by: E. White, C. Hermes and K. Herrmann, acting as Agents)

Re:

Application for annulment of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27), in so far as Article 1(1) of that decision refuses to grant the applicant the supplementary quotas requested for the third trading period of the 2013 to 2020 emissions trading on the basis of the hardship clause under Paragraph 9(5) of the Treibhausgas-Emissionshandelsgesetz (German Law on greenhouse gas emissions trading) of 21 July 2011.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Romonta GmbH to pay the costs of the main proceedings and the interim proceedings.

⁽¹⁾ OJ C 31, 1.2.2014.

Judgment of the General Court of 26 September 2014 — Molda v Commission(Case T-629/13) ⁽¹⁾

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Transitional rules for harmonised free allocation of emission allowances from 2013 — Decision 2011/278/EU — National implementation measures presented by Germany — Clause relating to extremely difficult cases — Freedom to a professional activity and to conduct a business — Right to property — Proportionality)

(2014/C 395/59)

Language of the case: German

Parties

Applicant: Molda AG (Dahlenburg, Germany) (represented by: I. Zenke, M. Y. Vollmer, C. Telschow and A. Schulze, lawyers)

Defendant: European Commission (represented by: E. White, C. Hermes and K. Herrmann, acting as Agents)

Re:

Application for annulment of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27) in so far as Article 1(1) thereof rejects granting the applicant the supplementary quotas requested for the third trading period of the 2013 to 2020 emissions trading on the basis of the hardship clause under Paragraph 9(5) of the Treibhausgas-Emissionshandelsgesetz (German Law on Greenhouse Gas Emissions Trading) of 21 July 2011.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Molda AG to pay the costs.

(¹) OJ C 31, 1.2.2014.

Judgment of the General Court of 26 September 2014 — DK Recycling und Roheisen v Commission

(Case T-630/13) (¹)

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Transitional rules for harmonised free allocation of emission allowances from 2013 — Decision 2011/278/EU — National implementation measures presented by Germany — Clause relating to extremely difficult cases — Freedom to conduct a business — Right to property — Proportionality)

(2014/C 395/60)

Language of the case: German

Parties

Applicant: DK Recycling und Roheisen GmbH (Duisburg, Germany) (represented by: S. Altenschmidt, lawyer)

Defendant: European Commission (represented by: E. White, C. Hermes and K. Herrmann, acting as Agents)

Re:

Application for annulment of Article 1(1) of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27) in so far as Article 1(1) thereof, read in conjunction with Annex I, Point A thereto, rejects the inscription of the installation with the identification codes DE0000000000001320 and DE-new-14220-0045 on the list of installations provided for in Article 11(1) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), and the preliminary total annual amounts of emission allowances to be allocated for free to those installations.

Operative part of the judgment

The Court:

1. Annuls Article 1(1) of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council in so far as it rejects the free allocation of emission allowances for the installations listed in Annex I, Point D to that decision on the basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes;

2. Dismisses the remainder of the action;
3. Orders each party to bear its own costs.

⁽¹⁾ OJ C 31, 1.2.2014.

Judgment of the General Court of 26 September 2014 — Raffinerie Heide v Commission

(Case T-631/13) ⁽¹⁾

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Transitional rules for harmonised free allocation of emission allowances from 2013 — Decision 2011/278/EU — National implementation measures presented by Germany — Clause relating to extremely difficult cases — Freedom to conduct a business — Right to property — Proportionality)

(2014/C 395/61)

Language of the case: German

Parties

Applicant: Raffinerie Heide GmbH (Hemmingstedt, Germany) (represented by: U. Karpenstein, lawyer)

Defendant: European Commission (represented by: E. White, C. Hermes and K. Herrmann, acting as Agents)

Re:

Application for annulment of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27) in so far as Article 1(1) thereof, read in conjunction with Annex I, Point A thereto, rejects the inscription of the installation with the identification code DE000000000000010 on the list of installations provided for in Article 11(1) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), and the preliminary total annual amounts of emission allowances to be allocated for free to that installation

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Raffinerie Heide GmbH to pay the costs.

⁽¹⁾ OJ C 31, 1.2.2014.

Judgment of the General Court of 26 September 2014 — Arctic Paper Mochenwangen v Commission

(Case T-634/13) ⁽¹⁾

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Transitional rules concerning the harmonised allocation of emission allowances free of charge as from 2013 — Decision 2011/278/EU — National implementation measures submitted by Germany — Clause on cases with undue hardship — Freedom to conduct a business — Right to property — Proportionality)

(2014/C 395/62)

Language of the case: German

Parties

Applicant: Arctic Paper Mochenwangen GmbH (Wolpertswende, Germany) (represented by: S. Kobes, lawyer)

Defendant: European Commission (represented by: E. White, C. Hermes and K. Herrmann, Agents)

Re:

Application to annul Article 1(1) of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27), in so far as it rejects the inscription of the installation with identification code DE000000000000563 on the list of installations provided for in Article 11(1) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), and the preliminary total annual amounts of emission allowances allocated free of charge to that installation.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Arctic Paper Mochenwangen GmbH to pay the costs.*

⁽¹⁾ OJ C 31, 1.2.2014.

Action brought on 26 June 2014 — Green Source Poland v Commission

(Case T-512/14)

(2014/C 395/63)

Language of the case: English

Parties

Applicant: Green Source Poland sp. z o.o. (Warsaw, Poland) (represented by: M. Merola and L. Armati, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of Commission Decision C(2014) 2289 final of 7 April 2014 whereby the Commission refuse to grant a financial contribution from the European Regional Development Fund to the proposed major project 'Purchase and implementation of innovative manufacturing technology of biocomponents to produce biofuels', forming part of the operational programme 'Innovative Economy' for structural assistance under the convergence objective in Poland.

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

1. First plea in law, alleging that the Commission exceeded its power under Article 41 of Regulation No 1083/2006 ⁽¹⁾ and breached the principles of legal certainty and proportionality in attributing de facto binding effect to a directive proposal not yet approved, i.e. the ILUC Directive proposal ⁽²⁾. The applicant submits that the refusal is in reality based not on the fact that the project lacked a high degree of innovativeness as a first generation production facility for production of biofuels from food-crops, but on the fact that the project was inconsistent with the ILUC Directive proposal, which promote second generation biofuels produced from crops other than food-crops. The Commission thus relied on future legislation to deny a contribution from the European Regional Development Fund.

2. Second plea in law, alleging breach of the duty to state reasons and manifest error of assessment in considering that the ILUC Directive proposal undermines the viability of the proposed plant. The applicant submits that the Commission erred in finding that the long-term economic viability of the plant would be questionable as from 2020 based on speculations that after 2020 only biofuels produced from crops other than food-crops will receive financial support.
3. Third plea in law, alleging abuse of procedure and breach of the principle of proportionality due to the inconsistent and artificial grounds successively invoked by the Commission to deny the contribution from the European Regional Development Fund.
4. Fourth plea in law, alleging infringement of Article 41 of the Regulation No 1083/2006 as the Commission, in its assessment, went beyond the criteria set out in the relevant operational programme thereby concluding that only 'state of the art solutions' and 'the most innovative and newest solutions' should be supported. However the operational programme only refers to new and modern solutions, which should be interpreted in light of the current degree of industrial and commercial development in Poland and of the overall objective to foster development of the region concerned.
5. Fifth plea in law, alleging infringement of Article 41 of Regulation No 1083/2006 and breach of the principle of sound administration and due diligence and of the duty to state reasons.
6. Sixth plea in law, alleging abuse of procedure and breach of the principles of reasonable delay and good administration, as well as infringement of Article 41(2) of Regulation No 1083/2006 laying down a three month time-limit for the adoption of decisions on major projects. The applicant contends that the Commission continuously invited Poland to withdraw its request and repeated the same questions or added new and unrelated questions dragging the proceedings on for over one year and a half, thereby lowering the chances of the proposed project to be implemented.

(¹) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

(²) Proposal COM(2012) 595 final for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

Action brought on 30 July 2014 — EEB v Commission

(Case T-565/14)

(2014/C 395/64)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: S. Podskalská, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the contested Commission decision of 12 June 2014 (Ares (2014)1915757);
- annul the second contested Commission Decision 2014/804/EU of 17 February 2014;
- order the Commission to pay the costs of the proceeding.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the Commission's decision of 12 June 2014 (Ares (2014) 1915757) dismissing as inadmissible the applicant's request for internal review regarding Commission Decision C(2014) 804 final of 17 February 2014 on the notification by the Republic of Poland of a transitional national plan referred to in Article 32 of Directive 2010/75/EU (¹) of the European Parliament and of the Council on industrial emissions. The applicant further seeks the annulment of Commission Decision C(2014) 804 final of 17 February 2014.

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

1. First plea in law concerning the decision Ares (2014) 1915757, alleging infringement of Regulation No 1367/2006 ⁽²⁾ and Directive No 2010/75:
 - as the decision on the transitional national plan is a measure of individual scope and therefore an administrative act under Regulation No 1367/2006. According to the applicant the Commission should thus have declared the request for internal review admissible;
 - as the Commission should have interpreted Article 10 of Regulation No 1367/2006 in accordance with the Aarhus Convention and found Article 2(1)(g) of Regulation No 1367/2006 illegal;
 - as the Commission's argumentation is based on an incorrect interpretation of the relevant provisions of Directive 2010/75/EU.
2. Second plea in law concerning the Decision C(2014) 804 final, alleging infringement of Article 17 TEU, Directive 2010/75/EU, Commission Implementing Decision 2012/115/EU ⁽³⁾, the Aarhus Convention, Directive 2001/42/EC ⁽⁴⁾ and Directive 2008/50/EC ⁽⁵⁾.

⁽¹⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

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

⁽³⁾ Commission Implementing Decision 2012/115/EU of 10 February 2012 laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (notified under document C(2012) 612) (OJ 2012 L 52, p. 12).

⁽⁴⁾ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

⁽⁵⁾ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Action brought on 28 July 2014 — Larymnis Larko v Commission

(Case T-575/14)

(2014/C 395/65)

Language of the case: Greek

Parties

Applicant: Elliniki Metalleftiki kai Metallourgiki Larymnis Larko SA (Kallithea Attikis, Greece) (represented by: V. Koulouris, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul and set aside the Commission Decision of 27 March 2014 addressed to the Hellenic Republic [SG–Grefe (2014) D/4621/28/03/2014] in relation to the State aid implemented by the Hellenic Republic for the limited company named 'General Mining and Metallurgical Company NEA LARKO' [NEW LARKO], Case No SA.34572 (2013/C) (ex 2013NN), in so far as concerns the measures 2, 3, 4 and 6, which measures according to the contested decision constitute State aid incompatible with the internal market;
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant, in the first place, maintains that it has a clear legal interest to seek the annulment of the contested decision, since the decision affects the applicant directly and distinguishes it individually just as in the case of the person addressed, and, in the second place, puts forward three pleas in law in support of annulment.

1. The first plea in law is based on the infringement of the obligation to state reasons, under Article 296 TFEU.

- The applicant maintains that: (a) as is apparent from the contested decision itself, the Commission arrived at its conclusions in relation to all the examined actions/measures of the Greek State without being in possession of adequate information on them. More specifically, as regards the measures 2, 4 and 6 (State guarantees corresponding to the years 2008, 2010 and 2011), the contested decision plainly states that the Commission did not have information that those guarantees had been triggered. In addition, as regards measure 3 (the 2009 share capital increase), the Commission accepts that it does not know when a substantial part of the share capital increase took place; (b) the contested decision also lacks any statement of reasons and therefore fails to define the relevant product market in order to determine whether there was created an advantage for NEW LARKO and a competitive disadvantage for others, and (c) in reality, in relation to measures 4 and 6, it was only the Greek State which acquired an advantage in this case, since instead of making a payment to NEW LARKO for the purpose of refund of taxes (income tax and VAT) the Greek State granted to it guarantees, at a premium.
2. The second plea in law is based on the erroneous assessment of the facts (error of fact), together with misinterpretation and misapplication of Article 296(2) and Article 107(1) TFEU.
- The applicant maintains that: (a) the Greek State, both in the cases of the abovementioned guarantees (measures 2, 4 and 6) and in the case of measure 3 (the 2009 share capital increase in NEW LARKO with the payment of cash), acted 'as a reasonable market investor'. Any reasonable, rational investor would provide a guarantee to a company in which it had its own interests (as applies to NEW LARKO in this case in relation to the Greek State) for amounts which are covered by its own corresponding obligations to its own undertaking (the obligation of the Greek State to repay income tax and VAT to NEW LARKO). *A fortiori* in this case where the Greek State expected to profit through the sale of NEW LARKO. It must be emphasised that the guarantees concerned were not triggered and (b) the contested decision did not examine the size of the undertaking under consideration and whether by reason of its size and its general position in the product's overall market sector it would be able to affect the internal market for the 'product'. It must be noted that the size of NEW LARKO is such that the State aid under consideration would not be able to have any influence on the internal market.
3. The third plea in law is based on the infringement of the principle of proportionality.
- The applicant maintains that even if it were accepted that the abovementioned guarantees constitute prohibited State aid, the contested decision should be annulled, because it infringes the principle of proportionality in respect of the determination of the amount of the guarantee to be recovered. More specifically, as regards the determination of the amount of the guarantees to be recovered (such as the measures 2, 4 and 6), the Commission failed to take into account that the guarantees concerned were not triggered and, consequently, it cannot be admitted under law or under good business practice that NEW LARKO (or the third party successor undertaking) should be called upon to pay back exactly the same amount in respect of guarantees which were not triggered, since that amount had been covered by the guarantee from the Greek State, which very largely provided the guarantees concerned while covered by its own obligations to the borrower NEW LARKO.

Action brought on 28 July 2014 — Larymnis Larko v Commission

(Case T-576/14)

(2014/C 395/66)

Language of the case: Greek

Parties

Applicant: Ellininiki Metalleftiki kai Metallourgiki Larymnis Larko SA (Kallithea Attikis, Greece) (represented by: V. Koulouris, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul and set aside the Commission Decision of 27 March 2014 [SG–Grefe (2014) D/4628/28/03/2014] in connection with the sale of certain assets of the limited company named 'General Mining and Metallurgical Company Larko' [NEW LARKO], Case number SA.37954 (2013/N) (OJ 23/05/2014, C 156) and
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action the applicant, in the first place, maintains that it has a clear legal interest to seek the annulment of the contested decision, since the decision affects it directly and distinguishes the applicant individually just as in the case of the person addressed, and, in the second place, puts forward three pleas in law in support of annulment.

1. The first plea in law is based on the infringement of Article 108(2) TFEU, and Article 14 of Regulation No 659/1999.⁽¹⁾ The applicant maintains that the Commission decided by the contested act that the sale notified by the Hellenic Republic of assets of NEW LARKO described in the decision will not lead to economic continuity between it and the owner(s) of the assets which will be sold. First, the Commission erroneously considers that the assets being sold represent only a part of the activities of NEW LARKO, whereas the truth is that those assets represent the main part of its activities and that those which remain in the possession of the transferor are economically worthless for the most part and that it is impossible for any productive use to be made of them in isolation. Thus, the plant at Larymna (for sale in connection with the proposed privatisation) is its principal asset, mainly because it is there that all the ore extracted at the sites of NEW LARKO in the whole of Greece is brought and there alone that smelting takes place. Second, the contested decision also erred in accepting the information that the assets which will be auctioned will not belong to NEW LARKO but to the Greek State, whereas the truth is that the ore-smelting plant at Larymna, both the general ore-smelting installations and the smelter support installations, will never fall into the ownership of the Greek State but will remain even after the possible expiry of the contract for the lease of mining rights in the ownership of NEW LARKO, because those rights are entirely owned by it. As a direct consequence of the above consideration the business of NEW LARKO will be continued by the new entity/purchaser, so that it is inadmissible that the latter should be relieved of the obligation to pay to the applicant the amounts which the transferring NEW LARKO owes to it.
2. The second plea in law is based on the infringement of Article 296(2) TFEU. The applicant maintains that the reasons stated in the contested decision are inadequate, since there is no examination whatsoever of whether the transfer of assets at issue on the basis of the proposed privatisation which was reviewed by the Commission distorts or threatens to distort competition. The Commission failed to examine the product market, and moreover failed to identify that market and the sector of production. The Commission was satisfied with statements from the Greek State, which it in no way investigated as it ought to have done. It did not make even the most rudimentary enquiry to obtain the opinion of NEW LARKO, although it is directly affected by the Commission's decision, thereby infringing NEW LARKO's fundamental rights, such as the right to equal treatment vis-à-vis the Greek State, the principle of legitimate expectations as to the conduct of EU institutions, and its right to be heard, before issuing a decision which affects it.
3. The second plea in law is based on the argument that the contested decision contains contradictory statements the result of which is that the decision is unjustified and should be annulled. Specifically, the applicant maintains that, while the Commission in the contested decision accepts that all the assets to be sold should be viewed as the whole, since the Commission connects the termination of the lease of mining rights as part of the proposed privatisation with the parallel auctioning and application of the ['shoot-out'] clause, the Commission then decides that the important value is book value, in order to arrive at the conclusion that, since the ratio of the sold assets to the remaining assets, erroneously, is in the proportion of 1 to 3 in terms of book value, for that reason there is no continuity of economic activity. Further, the Commission gives no reasons all in the decision for its taking the view that the employment contracts of the staff of NEW LARKO are not transferred to the acquiring entity, fundamentally disregarding the 'Union acquis' on that subject.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Action brought on 22 August 2014 — DEI v Commission

(Case T-639/14)

(2014/C 395/67)

Language of the case: Greek

Parties

Applicant: Dimosia Epikhirisi Ilektrismou A.E. (DEI) (Athens, Greece) (represented by: E. Bourtzalas, D. Waelbroeck, A. Ikonomidou, K. Sinodinos and E. Salaka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the Commission decisions which are contained in the defendant's letter of 12 June 2014 to the applicant and relate respectively to the two complaints which the applicant submitted in turn to the defendant challenging the unlawful State aid which resulted, initially, from the application of decision No 346/2012 of the Greek regulatory authority for energy and, subsequently, from the award of the special arbitration tribunal in the context of the permanent arbitration of the abovementioned regulatory authority for energy — both of which obliged the applicant to supply electricity to the company Alouminion A.E. at below cost price — and, specifically, the Commission's express decision not to investigate further the second of the abovementioned complaints from the applicant, on the ground that no infringement of the State aid rules was established, and its implicit decision not to investigate further the first of the abovementioned complaints;
- order the defendant to pay its costs.

Pleas in law and main arguments

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

1. The first plea alleges infringement of an essential procedural requirement, as the defendant did not comply with the procedural requirements that are laid down for the adoption of the contested measure.
2. The second plea alleges a manifest error of assessment as regards the law and the facts in interpreting and applying Articles 107 TFEU and 108 TFEU, relating to the defendant's conclusion that the measure complained of cannot be imputed to the State.
3. The third plea alleges a manifest error of assessment as regards the law and the facts in interpreting and applying Articles 107 TFEU and 108 TFEU, relating to the defendant's conclusion that the measure complained of does not result in the grant of an unfair advantage to the company Alouminion A.E.
4. The fourth plea alleges infringement of the obligation to state sufficient reasons and to examine all the relevant matters of fact and law and infringement of the principle of sound administration, in particular in the light of the defendant's failure to set out sufficiently all the reasons for which the matters of fact and law that the applicant placed before it did not establish the existence of the alleged unlawful State aid and to state full reasons for the substantial change to the position which the defendant itself had adopted in previous cases, as regards fulfilment of the criterion of imputability to the State and the calculation of the price for the supply of electricity to a consumer such as the company Alouminion A. E., and in the light of the defendant's failure to carry out any substantive investigation relating to the two abovementioned complaints from the applicant.

Action brought on 29 August 2014 — NTS Energie- und Transportsysteme v OHIM — Schütz (X-Windwerk)

(Case T-649/14)

(2014/C 395/68)

Language in which the application was lodged: German

Parties

Applicant: NTS Energie- und Transportsysteme GmbH (Berlin, Germany) (represented by: S. Mach, lawyer)

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

Other party to the proceedings before the Board of Appeal: Schütz GmbH & Co. KGaA (Selters, Germany)

Form of order sought

The applicant claims that the Court should annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 May 2014 in Case R 978/2013-1

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'X-Windwerk' for services in Classes 39, 40 and 42 — Community trade mark application No 10 719 466

Proprietor of the mark or sign cited in the opposition proceedings: the other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: the word mark 'Wind Werk' for goods and services in Classes 7, 9, 37 and 42

Decision of the Opposition Division: the opposition was rejected

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

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

Action brought on 11 September 2014 — Republic of Latvia v European Commission

(Case T-661/14)

(2014/C 395/69)

Language of the case: Latvian

Parties

Applicant: Republic of Latvia (represented by: Inguss Kalniņš and Dace Pelše)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Commission Implementing Decision C(2014) 4479 ⁽¹⁾ of 9 July 2014 in so far as it affects the Republic of Latvia and in so far as it excludes from Union financing expenditure in the amount of EUR 739 393,95, incurred by the accredited paying agency of Latvia in the financial years 2009 to 2012, in relation to the establishment of cross compliance requirements;
- order the Commission to pay the costs of the Republic of Latvia.

Pleas in law and main arguments

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

1. By its first plea in law, the applicant claims that the Commission erred in the interpretation of Article 5(1) of Regulation No 1782/2003 ⁽²⁾ and of Article 6(1) of Regulation No 73/2009, ⁽³⁾ in that:

- It follows from Article 5 of Regulation No 1782/2003 and from the case-law of the Court of Justice that Member States, when taking into account the specific characteristics of the areas concerned, have a measure of discretion in establishing the requirements relating to good agricultural and environmental condition.
- The problems referred to in the annex to Regulation No 1782/2003 can be resolved by examining each problem and imposing the most appropriate (effective) standards from amongst those established in that regulation on the basis of the national context.
- Taking into account the principle of proportionality, that is to say, if the introduction of a requirement affects small agricultural holdings only and thereby creates administrative burdens and costs significantly greater than the benefits, Member States may introduce essential requirements, provided that these are such as to enable the objectives laid down in Regulation No 1782/2003 to be achieved.

- The Commission did not adopt a consistent approach with regard to the mandatory and essential nature of the requirements listed in Annex III to Regulation No 1782/2003; in addition, there was a breach of the principle of the protection of legitimate expectations because of the Commission's failure to act until the autumn of 2009.
2. By its second plea in law, the applicant claims that the Commission erred in its application of Regulation No 1290/2005 ⁽¹⁾ and Guidelines No VI/5330/97 (Guidelines for the calculation of financial consequences within the framework of the clearance of the accounts of the EAGGF Guarantee) when it calculated the financial correction for the Republic of Latvia because:
- It failed to apply the principle of proportionality, in that it did not indicate what was the risk occasioned to the funds and did not take into account the calculations submitted by the Republic of Latvia, on the basis of which the risk occasioned was smaller.
 - It infringed the Guidelines, under which the criterion of the flat-rate correction is only to be used when it is not possible, on the basis of the information available, to calculate the losses, despite the fact that the Republic of Latvia sent the Commission precise information which made it possible to calculate the risk occasioned to the funds.

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- ⁽¹⁾ Commission Implementing Decision 2014/458/EU of 9 July 2014 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 2014 L 205, p. 62).
- ⁽²⁾ Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).
- ⁽³⁾ Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).
- ⁽⁴⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 10 September 2014 — International Gaming Projects v OHIM (BIG BINGO)

(Case T-663/14)

(2014/C 395/70)

Language of the case: Spanish

Parties

Applicant: International Gaming Projects Ltd (Valletta, Malta) (represented by: M.D. Garayalde Niño, lawyer)

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

Form of order sought

The applicant claims that the General Court should:

- annul the decision of the First Board of Appeal of OHIM of 11 June 2014 in Case R 755/2014-1;
- approve for registration the Community trade mark application No 12 120 325 'BIG BINGO' in Classes 9, 28 and 41;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark applied for: The figurative mark with the word elements 'BIG BINGO' for goods and services in Classes 9, 28 and 41 — Community trade mark application No 12 120 325

Decision of the Examiner: Refusal of the mark applied for

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

- Infringement of Article 7(1)(c) of Regulation No 207/2009;
- Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 12 September 2014 — Slovenia v Commission

(Case T-667/14)

(2014/C 395/71)

Language of the case: Slovene

Parties

Applicant: Republic of Slovenia (represented by L. Bembič, legal representative of the State)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission implementing decision 2014/459/EU 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) (notified under document C(2014) 4479) (OJ L 205 of 12.7.2014, p. 62), insofar as it refers to the Republic of Slovenia, in particular as it relates to:
 - weakness in the verification of small parcels as regards conformity with the definition of agricultural parcels, for which reason a flat-rate correction of 5 % of direct payments was made in the sum of EUR 85 780,08 for the financial year 2010, of EUR 115 956,46 for the financial year 2011 and of EUR 131 269,23 for the financial year 2012;
 - non-extrapolation of control results when the difference was less than 3 %, for which reason an ad hoc correction of direct payments was made in the sum of EUR 1 771,90 for the financial year 2010, of EUR 6 376,67 for the financial year 2011 and of EUR 6 506,76 for the financial year 2012;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of its action, the applicant raises two pleas in law.

1. First plea, alleging a manifest error of assessment, failure to state reasons for the decision and breach of the principle of legality with regard to the Commission's findings as to weaknesses in checking small parcels and in defining agricultural parcels.

The applicant claims that the Commission erred in finding that the Slovene system allows farmers to add, in their declarations of parcels of land, the long thin strips of meadows that surround arable crops, in particular, so that the areas shown in the graphs of the parcels of agricultural land of a holding [grafične enote rabe zemljišča kmetijskega gospodarstva (GERK)] become eligible, which could give rise to inaccuracy in measurements and so to the acceptance of parcels of less than the minimum size for an agricultural parcel in accordance with Article 14(4) of Regulation No 796/2004 ⁽¹⁾ and Article 13(9) of Regulation No 1122/2009. ⁽²⁾

2. Second plea, alleging failure to state the reasons for the decision and breach of the principle of legality, with reference to the Commission's findings relating to failure to fulfil the obligation to extrapolate.

According to the applicant, the Commission erred when it found that, in the Republic of Slovenia, the agricultural parcels selected for checks were chosen at random, and to the extent of at least 50 %, that the method of selecting GERKS did not make it possible to achieve representativity or reliability as required by Regulation No 1122/2009, and that there had been a breach of the obligation to extrapolate for the purpose of recital 44 in the preamble to that regulation.

-
- (¹) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).
- (²) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65).

Action brought on 19 September 2014 — Biogaran v Commission

(Case T-677/14)

(2014/C 395/72)

Language of the case: French

Parties

Applicant: Biogaran (Colombes, France) (represented by: T. Reymond, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Articles 1, 7 and 8 of Commission Decision C(2014) 4955 final of 9 July 2014 relating to a proceeding under Articles 101 and 102 of the Treaty on the Functioning of the European Union (AT.39612-Perindopril (SERVIER)) so far as they relate to Biogaran;
- in the alternative, make use of its unlimited jurisdiction in order to reduce very substantially the fine imposed on Biogaran by Article 7 of that decision;
- grant Biogaran the benefit of any annulment, in whole or in part, of Commission Decision C(2014) 4955 final of 9 July 2014 in the action brought by the companies Servier S.A.S, Les Laboratoires Servier and Servier Laboratories Limited, and draw all appropriate conclusions therefrom in the exercise of its unlimited jurisdiction;
- order the European Commission to pay all the costs.

Pleas in law and arguments

The applicant puts forward three pleas in law in support of its action.

1. First plea, alleging an error of law in the contested decision, in that it does not show that the applicant participated in any infringement whatever of the competition rules.

The applicant claims that it did not commit in person any anti-competitive acts and could not be held liable for an amicable settlement agreement relating to patents concluded by its parent company, to which it was not party and of the content of which it was unaware.

2. Second plea, alleging a distortion of the facts, in that the contested decision wrongly concluded that the licence and supply agreement which the applicant had concluded with the company Niche constituted a further incentive for that company to conclude the amicable settlement agreement relating to patents with the applicant's parent company.
3. Third plea, alleging, in the alternative, an error of law, in that a fine was imposed on the applicant even though the infringement held to have occurred was novel in nature.

Action brought on 22 September 2014 — Italy v Commission

(Case T-686/14)

(2014/C 395/73)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul, in so far as it is contested in the present action and in so far as it was imposed against Italy, Implementing Decision C (2014) 4479 of the European Commission of 9 July 2014, notified on 10 July 2014, excluding from Community 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);
- revoke the flat-rate financial correction relating to tomato processing aid for the 2008 financial year, totalling EUR 1 399 293,78;
- revoke the one-off financial correction for the irregularity 'Lack of information on the undertaken recovery actions', totalling EUR 2 362 005,73;
- revoke the one-off financial correction for the irregularity 'Non-reporting in Annex III', totalling EUR 1 460 976,88.

Pleas in law and main arguments

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

1. First plea in law: (i) failure to comply with essential procedural requirements (Article 253 EC) owing to a failure to state adequate reasons and (ii) breach of the principle of proportionality.

- It is submitted that the flat-rate financial correction relating to tomato processing aid for the 2008 financial year is contrary to: (i) Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) and (ii) Articles 28 and 31 of Commission Regulation (EC) No 1535/2003 of 29 August 2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables (OJ 2003 L 218, p. 14). By that plea, the applicant challenges the application of the financial corrections imposed by the contested decision, corresponding to 5 % of the expenditure incurred, maintaining that those corrections were imposed despite evidence that there had been no appreciable financial damage.
 - The applicant also disputes the quantification of that correction, since the actual amount set is disproportionate and clearly illogical, being significantly higher than any damage potentially resulting from the conduct imputed to the Italian authorities.
2. Second plea in law: (i) misrepresentation of the facts and (ii) failure to comply with essential procedural requirements (Article 253 EC) owing to a failure to state adequate reasons.
- This plea concerns the financial correction, amounting in total to EUR 1 460 976,88, imposed because the Italian State supposedly failed to indicate an alleged irregularity in the table set out in Annex III to Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD. The Italian Government submits in that regard that it had been documented that the aid granted was not irregular, and there was therefore no need to add any notes to the table set out in Annex III.
3. Third plea in law: breach of the principle of proportionality.
- In that regard, the applicant submits that the financial correction for the irregularity 'Non-reporting in Annex III', relating to the entirety of the aid, based on a failure to send documents, is significantly higher than any damage potentially resulting from the conduct imputed to the Italian authorities.
4. Fourth plea in law: (i) infringement of Article 6(3) of the Treaty on European Union; (ii) breach of the principle of *res judicata*; (iii) infringement of Article 32(8)(b) of Regulation (EC) No 1290/2005 and (iv) breach of the principle of proportionality.
- This plea concerns the financial correction, amounting in total to EUR 2 362 005,73, imposed because the Italian State had not provided information on the recovery actions undertaken. The applicant claims in that regard that the Commission decided without reason that it was able to overrule a final judicial decision establishing that the aid had been legitimately allocated. Moreover, the Italian Government noted the delivery of a criminal court judgment absolving the aid recipient. Those facts showed that there was no reason for taking steps to recover that aid and, accordingly, that all the necessary information had been provided. In addition, that correction, which relates to the entirety of the aid, is significantly higher than any damage potentially resulting from the conduct imputed to the Italian authorities.

Action brought on 21 September 2014 — Hamas v Council

(Case T-702/14)

(2014/C 395/74)

Language of the case: French

Parties

Applicant: Hamas (Damascus, Syria) (represented by: L. Glock, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2014/483/CFSP of 22 July 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/72/CFSP, in so far as it concerns Hamas (including Hamas-Izz-al-Din-al-Quassem);
- annul Council Implementing Regulation (EU) No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism, and repealing Implementing Regulation (EU) No 125/2014, in so far as it concerns Hamas (including Hamas-Izz-al-Din-al-Quassem);
- order the Council to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law which are essentially identical or similar to those relied on in Case T-531/11, *Hamas v Council*. ⁽¹⁾

⁽¹⁾ OJ 2012, C 126, p. 18.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 17 September 2014 — CQ v Parliament

(Case F-12/13) ⁽¹⁾

(Civil Service — Temporary staff — Contract conference interpreters (AIC) — Article 90 of the CEOS — Psychological harassment — Article 12a of the Staff Regulations — Internal rules concerning the Advisory committee dealing with harassment and its prevention at the workplace — Confidentiality of the work of that committee — Manifest errors of assessment)

(2014/C 395/75)

Language of the case: English

Parties

Applicant: CQ (represented by: C. Bernard-Glanz, lawyer)

Defendant: European Parliament (represented by: M. Dean and E. Taneva, acting as Agents)

Re:

Application to annul the decision of the Secretary General of the European Parliament rejecting the complaint of psychological harassment brought by the applicant.

Operative part of the judgment

The Tribunal:

1. Dismisses the action;
2. Orders CQ to bear her own costs and to pay those incurred by the European Parliament.

⁽¹⁾ OJ C 108, 13.4.2013, p. 40.

Judgment of the Civil Service Tribunal (3rd Chamber) of 1 October 2014 — DF v Commission

(Case F-91/13) ⁽¹⁾

(Civil service — Remuneration — Expatriation allowance — Travel expenses — Secondment of the applicant in a country of which he is a national — Condition set out in Article 4(1)(b) of Annex VII to the Staff Regulations)

(2014/C 395/76)

Language of the case: English

Parties

Applicant: DF (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission (represented initially by J. Currall and V. Joris, acting as Agents, and subsequently by J. Currall, acting as Agent)

Re:

An application for annulment of the decision to request from the applicant the reimbursement of the expatriation allowance and the travel expenses which he received during his posting in Germany, between 1 September 2009 and 31 August 2012, and an application for reimbursement of the sums already deducted and for the grant of damages.

Operative part of the judgment

The Tribunal:

1. *Orders the European Commission to pay DF the sum of EUR 1 500 in compensation for non-material harm suffered by him;*
2. *Dismisses the action as to the remainder;*
3. *Declares that the European Commission is to bear its own costs and orders it to pay one quarter of the costs incurred by DF;*
4. *Declares that DF is to bear three quarters of his own costs.*

⁽¹⁾ OJ C 367, 14/12/2013, p. 40.

Judgment of the Civil Service Tribunal (3rd Chamber) of 25 September 2014 –Julien-Malvy and Others v EEAS

(Case F-100/13) ⁽¹⁾

(Civil service — Remuneration — Staff of the EEAS assigned to a third country — Decision of the appointing authority amending the list of third countries in respect of which the living conditions are equivalent to those normally obtaining in the European Union — Measure of general application — Admissibility of the action — Annual assessment of the allowance for living conditions — Abolition)

(2014/C 395/77)

Language of the case: English

Parties

Applicant: Bruno Julien-Malvy (Tokyo, Japan) and Others (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European External Action Service (EEAS) (represented by: S. Marquardt and M. Silva, acting as Agents)

Re:

Application for annulment of the decision of the EEAS no longer to grant, as of 1 January 2014, the allowance for living conditions to officials assigned to Argentina, Chile, China (Hong Kong), Japan, Malaysia, Singapore and Taiwan

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*
2. *Declares that Mr Julien-Malvy and the other applicants whose names are set out in the annex shall bear their own costs;*
3. *Declares that the European External Action Service shall bear its own costs.*

⁽¹⁾ OJ C 45, 15/2/2014, p. 46.

**Judgment of the Civil Service Tribunal (Third Chamber) of 25 September 2014 — Osorio and Others
v EEAS**

(Case F-101/13) ⁽¹⁾

(Civil Service — Remuneration — Staff of the EEAS employed in a third country — Decision of the Appointing Authority amending the list of third countries for which the living conditions are equivalent to those normal in the European Union — Act of general application — Admissibility of the action — Annual assessment of the living conditions allowance — Withdrawal)

(2014/C 395/78)

Language of the case: French

Parties

Applicants: Carla Osorio (Pointe aux Canonniers, Mauritius) and others (represented by: S. Orlandi, lawyer)

Defendant: European External Action Service (represented by: S. Marquardt and M. Silva, acting as Agents)

Re:

Application for annulment of the decision of the Appointing Authority of 19 December 2012, taking effect on 1 July 2013, no longer to grant the living conditions allowance provided for in Article 10 of Annex X to the Staff Regulations to officials employed in the Republic of Mauritius.

Operative part of the judgment

The Tribunal:

1. Dismisses the action;
2. Orders Ms Osorio and the other applicants whose names appear in annexe to bear their own costs;
3. Orders the European External Action Service to bear its own costs.

⁽¹⁾ OJ C 367, 14.12.2013, p. 41.

Judgment of the Civil Service Tribunal (3rd Chamber) of 17 September 2014 — Wahlström v Frontex

(Case F-117/13) ⁽¹⁾

(Civil service — Frontex staff — Temporary staff — Non-renewal of a fixed term contract — Renewal procedure — Article 41(2)(a) of the Charter of Fundamental Rights of the European Union — Right to be heard — Infringement — Influence on the content of the decision)

(2014/C 395/79)

Language of the case: English

Parties

Applicant: Kari Wahlström (Espoo, Finland) (represented by: S. Pappas, lawyer)

Defendant: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (represented by: S. Vuorensola and H. Caniard, acting as Agents, assisted by D. Waelbroeck and A. Duron, lawyers)

Re:

Application for annulment of the decision not to renew the applicant's contract as a member of the temporary staff after the annulment, by the Civil Service Tribunal in Case F-87/11, of the first decision of non-renewal of his contract.

Operative part of the judgment

The Tribunal:

1. Annuls the decision of the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, of 19 February 2013, not to renew Mr Wahlström's contract as a member of the temporary staff;
2. Dismisses the action as to the remainder;
3. Declares that the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union is to bear its own costs and orders it to pay Mr Wahlström's costs.

⁽¹⁾ OJ C 31, 1/2/2014, p. 23.

Judgment of the Civil Service Tribunal (3rd Chamber) of 10 September 2014 — KE (*) v ERA

(Case F-120/13) ⁽¹⁾

(Civil Service — Member of the temporary staff — Non-renewal of a fixed-term contract — Agency staff — Reduction of staff — ERA multiannual financial framework — Abolition of two posts from the establishment plan — Compliance with the essential formalities — Right to a fair hearing — Internal guidelines — Interests of the service)

(2014/C 395/80)

Language of the case: French

Parties

Applicant: KE (*) (represented by: S. A. Pappas, lawyer)

Defendant: European Railway Agency (represented by: G. Stärkle, acting as Agent, B. Wägenbaur, lawyer)

Re:

Application to annul the decision not to renew the applicant's contract as a member of the temporary staff.

Operative part of the judgment

The Tribunal:

1. Dismisses the action;
2. Orders the European Railway Agency to bear its own costs and to pay half of the costs incurred by KE (*).
3. Orders KE (*) to bear half of her own costs.

⁽¹⁾ OJ C 45, 15/02/2014, p. 47.

Order of the Civil Service Tribunal (3rd Chamber) of 18 September 2014 — Marcuccio v Commission

(Case F-149/12) ⁽¹⁾

(Civil service — Invalidity — Invalidity allowance — Amounts withheld from the invalidity allowance)

(2014/C 395/81)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

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

Re:

Application for annulment of the monthly recovery of EUR 500, withheld from the applicant's invalidity allowance for the months of April to June 2012.

Operative part of the order

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly unfounded.*
2. *Mr Marcuccio is to bear his own costs and is ordered to pay the costs incurred by the European Commission.*

⁽¹⁾ OJ C 108 of 13/04/2013, p. 38.

Order of the Civil Service Tribunal (3rd Chamber) of 4 September 2014 — Prigent v Commission
(Case F-111/13) ⁽¹⁾

(Civil service — Open competition — Notice of open competitions EPSO/AD/230/12 (AD 5) and EPSO/AD/231/12 (AD 7) — Professional experience eligibility condition of Competition EPSO/AD/231/12 (AD 7) not fulfilled — Reassignment to Competition EPSO/AD/230/12 (AD 5) — Interest in bringing proceedings — Lateness of complaint — Successive requests for reconsideration)

(2014/C 395/82)

Language of the case: French

Parties

Applicant: Oliver Prigent (Fentange, Luxembourg) (represented by: F. Moyse, lawyer)

Defendant: European Commission (represented by: J. Currall and G. Gattinara, lawyers)

Re:

Application for annulment, first, of the EPSO decision not to admit the applicant to the selection phase of Competition EPSO/AD/231/12 (AD 7) and to reclassify him in Competition EPSO/AD/230/12 (AD 5) and, secondly, of the decision to include him on the reserve list for the abovementioned AD 5 competition, as well as damages for material and non-pecuniary damage allegedly suffered.

Operative part of the order

1. *The action is dismissed as being, in part, clearly inadmissible and, in part, clearly unfounded.*
2. *Mr Prigent is to bear his own costs and shall pay the costs incurred by the European Commission.*

⁽¹⁾ OJ C 31, 01/02/2014, p. 22.

Order of the Civil Service Tribunal (3rd Chamber) of 30 September 2014 — Ojamaa v Parliament(Case F-37/14) ⁽¹⁾**(Civil service — Officials — Appointing authority — Act adversely affecting an official — Manifest inadmissibility)**

(2014/C 395/83)

*Language of the case: French***Parties***Applicant:* Priit Ojamaa (Brussels, Belgium) (represented by: M. Casado García-Hirschfeld, lawyer)*Defendant:* European Parliament (represented by: M. Ecker and N. Chemai, Agents)**Re:**

Application for annulment of the Parliament's decision not to allow 16 days of leave not taken in 2012 to be carried over to 2013, after the applicant had been on long-term sick leave for a serious illness.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*
2. *Mr Ojamaa is to bear his own costs and is ordered to pay the costs incurred by the European Parliament.*

⁽¹⁾ OJ C 184 of 16/06/2014, p. 47.

Action brought on 7 August 2014 — ZZ v Council

(Case F-77/14)

(2014/C 395/84)

*Language of the case: French***Parties***Applicant:* ZZ (represented by: S. Pappas, lawyer)*Defendant:* Council of the European Union**Subject-matter and description of the proceedings**

Declaration of the inapplicability of Article 8 of Annex VII to the Staff Regulations of Officials, as amended by Article 1(67) (d) of Regulation No 1023/2013, in that it establishes a link between the grant of the benefits provided for in that article and expatriate status, and the annulment of the General Implementing Provisions relating to the travel expenses between the place of employment and the place of origin adopted by the Council on 1 January 2014 applying the same link.

Form of order sought

- Declare that, by virtue of Article 277 TFEU, Article 1(67)(d) of Regulation No 1023/2013 must be disapplied in that it links the reimbursement of annual travel expenses provided for in Article 7 of Annex VII to the Staff Regulations to expatriate status;

-
- Annul Article 1 of the GIPs of 1 January 2014 in that it links the reimbursement of annual travel expenses provided for in Article 7 of Annex VII to the Staff Regulations to expatriate status;
 - Order the Council to pay the costs.

Order of the Civil Service Tribunal of 22 September 2014 — Loescher v Council

(Case F-108/13) ⁽¹⁾

(2014/C 395/85)

Language of the case: French

The President of the 3rd Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 24, 25/1/2014, p. 41.

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