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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 114/01)

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

OJ C 108, 13.4.2013

Past publications

OJ C 101, 6.4.2013

OJ C 86, 23.3.2013

OJ C 79, 16.3.2013

OJ C 71, 9.3.2013

OJ C 63, 2.3.2013

OJ C 55, 23.2.2013

These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2013/C 114/02)

On 18 March 2013, the Plenary Meeting of the General Court decided, in response to the entry into office of Judge Wetter, to amend the decisions of the General Court of 20 September 2010, ([1]) 26 October 2010, ([2]) 29 November 2010, ([3]) 20 September 2011, ([4]) 25 November 2011, ([5]) 16 May 2012, ([6]) 17 September 2012, ([7]) 9 October 2012 ([8]) and 29 November 2012 ([9]) on the assignment of Judges to Chambers.

For the period from 18 March 2013 to 31 August 2013, the assignment of Judges to Chambers is as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Azizi, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias, Ms Kancheva and Mr Buttigieg, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

(a) Mr Frimodt Nielsen and Ms Kancheva, Judges;
(b) Mr Frimodt Nielsen and Mr Buttigieg, Judges;
(c) Ms Kancheva and Mr Buttigieg, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;
Mr Dehousse, Judge;
Mr Schwarcz, Judge.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Czúcz, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias, Ms Kancheva and Mr Buttigieg, Judges.

Third Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;
Ms Labucka, Judge;
Mr Gratsias, Judge.

([1]) OJ 2010 C 288, p. 2.
([2]) OJ 2010 C 317, p. 5.
([3]) OJ 2010 C 346, p. 2.
([4]) OJ 2011 C 305, p. 2.
([5]) OJ 2011 C 370, p. 5.
([6]) OJ 2012 C 174, p. 2.
([7]) OJ 2012 C 311, p. 2.
([8]) OJ 2012 C 343, p. 2.
([9]) OJ 2013 C 9, p. 3.

Fourth Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fourth Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;
Ms Jürimäe, Judge;
Mr Van der Woude, Judge.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fifth Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber;
Mr Vadapalas, Judge;
Mr O'Higgins, Judge.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Ms Martins Ribeiro, Mr Soldevila Fragoso, Mr Popescu, Mr Berardis and Mr Wetter, Judges.

Sixth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

(a) Mr Soldevila Fragoso and Mr Berardis, Judges;
(b) Mr Soldevila Fragoso and Mr Wetter, Judges;
(c) Mr Berardis and Mr Wetter, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Seventh Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber;
Ms Wiszniewska-Białecka, Judge;
Mr Prek, Judge.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso, Mr Popescu, Mr Berardis and Mr Wetter, Judges.

Eighth Chamber, sitting with three Judges:

Mr Truchot, President of the Chamber;
Ms Martins Ribeiro, Judge;
Mr Popsecu, Judge.

For the period from 18 March 2013 until 31 August 2013:

— in the First Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the First Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Third Chamber sitting with three Judges. The latter, who shall not be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Third Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Third Chamber initially hearing an action and two Judges from the First Chamber sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Sixth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Sixth Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Eighth Chamber sitting with three Judges. The latter, who shall not be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Eighth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Eighth Chamber initially hearing an action and two Judges from the Sixth Chamber sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the First Chamber sitting with three Judges, the President of the Chamber shall sit successively with the Judges referred to in (a), (b) and (c), depending on the composition to which the Judge Rapporteur is assigned. For cases in which the President is the Judge Rapporteur, the President of the Chamber shall sit successively with the Judges of each of those compositions in the order of registration of the cases, without prejudice to the connexity of the cases;

— in the Sixth Chamber sitting with three Judges, the President of the Chamber shall sit successively with the Judges referred to in (a), (b) and (c), depending on the composition to which the Judge Rapporteur is assigned. For cases in which the President is the Judge Rapporteur, the President of the Chamber shall sit successively with the Judges of each of those compositions in the order of registration of the cases, without prejudice to the connexity of the cases.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 28 February 2013 — Inalca SpA — Industria Alimentari Carni, Cremonini SpA v European Commission

Case C-460/09 P) [1]

(Appeal — Non-contractual liability of the European Union — Finding of irregularities in the refunds for beef and veal exported to Jordan — OLAF investigation — Communication of OLAF's findings to the national authorities — Provision of guarantees — Claim for the reimbursement of the related costs — Causal link — Cross-appeal — Limitation period — Point from which time starts to run)

(2013/C 114/03)

Language of the case: Italian

Parties

Appellants: Inalca SpA — Industria Alimentari Carni, Cremonini SpA (represented by: F. Sciaudone and C. D'Andria, avvocati)

Other party to the proceedings: European Commission (represented by: V. Di Bucci and P. Rossi, Agents)

Re:

Appeal against the order of 4 September 2009 in Case T-174/06 *Inalca and Cremonini* v *Commission* by which the by which the Court of First Instance (now the General Court) (Sixth Chamber) dismissed an action seeking to establish non-contractual liability by which compensation was sought for the damage purportedly suffered by the appellants following the communication to the Italian authorities of findings which cast doubts upon the appellants in the context of an investigation conducted by the European Anti-Fraud Office (OLAF) with a view to determining the lawfulness of a number of export refunds relating to beef and veal exported to Jordan.

Operative part of the judgment

The Court:

1. *Dismisses the main appeal and the cross-appeal;*

2. *Orders Inalca SpA — Industria Alimentari Carni and Cremonini SpA to pay the costs relating to the main appeal;*

3. *Orders the European Commission to pay the costs relating to the cross-appeal.*

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[1] OJ C 24, 30.1.2010.

Judgment of the Court (First Chamber) of 28 February 2013 — European Commission v Hungary

(Case C-473/10) [1]

(Failure of a Member State to fulfil obligations — Development of the Community's railways — Allocation of railway infrastructure capacity — Levying of charges for the use of railway infrastructure — Directives 91/440/EEC and 2001/14/EC — Incomplete transposition)

(2013/C 114/04)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: H. Støvlbæk, B. Simon and A. Sipos, acting as Agents)

Defendant: Hungary (represented by: M. Fehér, G. Koós and K. Szíjjártó, acting as Agents)

Interveners in support of the defendants: Czech Republic (represented by M. Smolek, T. Müller and J. Očková, acting as Agents), Republic of Poland, (represented by M. Szpunar, B. Majczyna and M. Laszuk, acting as Agents)

Re:

Failure of a State to fulfil obligations — Failure to adopt, within the prescribed period, all the measures necessary to comply with Article 6(3) of and Annex II to Council Directive 91/440/EEC of 29 July 1991 on the development of the

Community's railways (OJ 1991 L 237, p. 25) and Articles 4(2), 6(1) and (2), 7(3), 11 and 14(2) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29)

Operative part of the judgment

The Court:

1. *Declares that, by failing, within the period prescribed, to bring into force all the laws, regulations and administrative provisions necessary to comply with Article 6(1) and (2) and Article 7(3) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, Hungary has failed to comply with its obligations under those provisions;*

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

3. *Orders the European Commission and Hungary to bear their own costs;*

4. *Orders the Czech Republic and the Republic of Poland to bear their own costs.*

([1]) OJ C 328, 4.12.2010.

Judgment of the Court (First Chamber) of 28 February 2013 — European Commission v Kingdom of Spain

(Case C-483/10) ([1])

(Failure of a Member State to fulfil obligations — Development of the Community's railways — Directive 2001/14/EC — Allocation of railway infrastructure capacity — Levying of charges — Charges — Management independence)

(2013/C 114/05)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: H. Støvlbæk and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain (represented by: S. Centeno Huerta and B. Plaza Cruz, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, J. Očková and T. Müller, acting as Agents), French Republic (represented by: G. de Bergues and M. Perrot, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 10(7) of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ 1991 L 237, p. 25) and of Articles 4(1), 11, 13(2), 14(1) and 30(1) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29) — Charges — Management independence

Operative part of the judgment

The Court:

1. *Declares that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4(1), 11, 13(2) and 14(1) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, the Kingdom of Spain has failed to fulfil its obligations under those provisions;*

2. *Orders the Kingdom of Spain to pay the costs;*

3. *Orders the Czech Republic and the French Republic to bear their own costs.*

([1]) OJ C 328, 4.12.2010.

Judgment of the Court (First Chamber) of 28 February 2013 — European Commission v Republic of Austria

(Case C-555/10) ([1])

(Failure of a Member State to fulfil obligations — Transport — Development of the Community's railways — Directive 91/440/EEC — Article 6(3) and Annex II — Directive 2001/14/EC — Articles 4(2) and 14(2) — Infrastructure manager — Organisational and decision making independence — Holding company structure — Incomplete transposition)

(2013/C 114/06)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Braun, B. Simon, R. Vidal Puig and H. Støvlbæk, acting as Agents)

Defendant: Republic of Austria (represented by: C. Pesendorfer and U. Zechner, acting as Agents)

Intervener in support of the defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato)

Re:

Failure of Member State to fulfil obligations — Failure to adopt, within the prescribed time-limit, all the measures necessary to comply with Article 6(3) of and Annex II to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ 1991 L 237, p. 25) and with Articles 4(2) and 14(2) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay the costs;*

3. *Orders the Italian Republic to bear its own costs.*

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (First Chamber) of 28 February 2013 — European Commission v Federal Republic of Germany

(Case C-556/10) ([1])

(Failure of a Member State to fulfil obligations — Transport — Development of the Community's railways — Directive 91/440/EEC — Article 6(3) and Annex II — Directive 2001/14/EC — Articles 4(2) and 14(2) — Infrastructure manager — Organisational and decision-making independence — Holding company structure — Directive 2001/14 — Articles 7(3) and 8(1) — Setting charges on the basis of direct costs — Levying of charges — Direct costs — Total costs — Directive 2001/14 — Article 6(2) — No incentive to reduce costs — Directive 91/440 — Article 10(7) — Directive 2001/14 — Article 30(4) — Regulatory body — Powers)

(2013/C 114/07)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Braun and H. Støvlbæk, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze, J. Möller and N. Graf Vitzthum, acting as Agents, and R. Van der Hout, advocaat)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, J. Očková and T. Müller, acting as Agents), Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt within the prescribed period all the necessary provisions to comply with Article 6(3) of and Annex II to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ 1991 L 237, p. 25) and Articles 2, 6(2), 7(3), 8(1), 14(2) and 30(4) of Directive 2001/14/EC of the Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay the costs;*

3. *Orders the Czech Republic and the Italian Republic to bear their own costs.*

([1]) OJ C 38, 5.2.2011.

Judgment of the Court (Grand Chamber) of 26 February 2013 (request for a preliminary ruling from the Haparanda tingsrätt — Sweden) — Åklagaren v Hans Åkerberg Fransson

(Case C-617/10) ([1])

(Charter of Fundamental Rights of the European Union — Field of application — Article 51 — Implementation of European Union law — Punishment of conduct prejudicial to own resources of the European Union — Article 50 — Ne bis in idem principle — National system involving two separate sets of proceedings, administrative and criminal, to punish the same wrongful conduct — Compatibility)

(2013/C 114/08)

Language of the case: Swedish

Referring court

Haparanda tingsrätt

Parties to the main proceedings

Prosecutor: Åklagaren

Defendant: Hans Åkerberg Fransson

Re:

Request for a preliminary ruling — Haparanda tingsrätt — Interpretation of Article 6 TEU and Article 50 of the Charter of Fundamental Rights of the European Union — National case-law requiring a clear basis in the European Convention on Human Rights or the case-law of the European Court of Human Rights in order to disapply provisions of national law liable to be contrary to the *ne bis in idem* principle — National legislation under which the same conduct contrary to tax law may be punished both administratively by a tax surcharge and criminally by a term of imprisonment — Compatibility with the *ne bis in idem* principle of a national system involving two separate sets of proceedings to punish the same wrongful conduct

Operative part of the judgment

1. *The ne bis in idem principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.*

2. *European Union law does not govern the relations between the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law.*

European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice of the European Union, whether that provision is compatible with the Charter.

(1) OJ C 72, 5.3.2011.

Judgment of the Court (Grand Chamber) of 26 February 2013 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Air France v Heinz-Gerke Folkerts, Luz-Tereza Folkerts

(Case C-11/11) (1)

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Articles 6 and 7 — Connecting flight(s) — Delay in arrival at the final destination — Delay equal to or in excess of three hours — A passenger's right to compensation)

(2013/C 114/09)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Air France

Defendants: Heinz-Gerke Folkerts, Luz-Tereza Folkerts

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 6 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 (OJ 2004 L 46, p. 1) — Intercontinental flight consisting of several stages — Situation in which the flight arrives at the final destination ten hours late, although departure was delayed for a period within the limits set out in Article 6(1) of Regulation (EC) No 261/2004 — Possible right to compensation

Operative part of the judgment

Article 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 compensation is payable, on the basis of that article, to a passenger on directly connecting flights who has been delayed at departure for a period below the limits specified in Article 6 of that regulation, but has arrived at the final destination at least three hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in Article 6 having been met.

(1) OJ C 95, 26.3.2011.

Judgment of the Court (Fourth Chamber) of 21 February 2013 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — A Oy

(Case C-123/11) [1]

(Freedom of establishment — Article 49 TFEU — Tax legislation — Merger of a parent company established in one Member State with a subsidiary established in another Member State — Deductibility by the parent company of the subsidiary's losses arising from its activity — Exclusion for non-resident subsidiaries)

(2013/C 114/10)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: A Oy

Re:

Request for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 49 TFEU and 54 TFEU — Freedom of establishment — National tax legislation — Merger with a parent company established in one Member State of a subsidiary having ceased activity in another Member State — Deductibility by the absorbing company, in the Member State in which it is established, of the consolidated losses of the absorbed company resulting from that company's activity in the other Member State

Operative part of the judgment

1. *Articles 49 TFEU and 56 TFEU do not, in the circumstances of the main proceedings, preclude national legislation under which a parent company merging with a subsidiary established in another Member State, which has ceased activity, cannot deduct from its taxable income the losses incurred by that subsidiary in respect of the tax years prior to the merger, while that national legislation allows such a possibility when the merger is with a resident subsidiary. Such national legislation is none the less incompatible with European Union law if it does not allow the parent company the possibility of showing that its non-resident subsidiary has exhausted the possibilities of taking those losses into account and that there is no possibility of their being taken into account in its State of residence in respect of future tax years either by itself or by a third party;*

2. *The rules for calculating the non-resident subsidiary's losses for the purpose of their being taken over by the resident parent company, in an operation such as that at issue in the main proceedings, must not constitute unequal treatment compared with the rules of calculation which would be applicable if the merger were with a resident subsidiary.*

[1] OJ C 145, 14.5.2011.

Judgment of the Court (Second Chamber) of 28 February 2013 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Manfred Beker, Christa Beker v Finanzamt Heilbronn

(Case C-168/11) [1]

(Free movement of capital — Income tax — Income from capital — Convention for the avoidance of double taxation — Dividends distributed by companies established in Member States and third countries — Calculation of the maximum amount of foreign withholding tax deductible against national income tax — Failure to take account of personal and lifestyle costs — Justification)

(2013/C 114/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Manfred Beker, Christa Beker

Defendant: Finanzamt Heilbronn

Re:

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 56 EC — National legislation on income tax on natural persons which allows deduction of income tax paid abroad only with regard to the share of national income tax charged on the foreign revenue — Method of determining that share of national income tax resulting in deductible expenses and extraordinary costs also being allocated proportionately to the foreign income, and thus resulting in a corresponding reduction of the maximum amount deductible with regard to taxes paid abroad

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding rules of a Member State under which, in the context of a system aimed at limiting double taxation, where persons subject to unlimited tax liability pay on foreign income, in the State where that income originates, a tax equivalent to the income tax levied by the said Member State, the offsetting of that foreign tax against the amount of income tax levied in the said Member State is carried out by multiplying the amount of the tax due in respect of taxable income in the same Member State, including foreign income, by the proportion that that foreign income bears to total income, that latter sum not taking into account special expenditure or extraordinary costs such as costs relating to lifestyle or to personal and family circumstances.

([1]) OJ C 211, 16.7.2011.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium)) — RVS Levensverzekeringen NV v Belgische Staat

(Case C-243/11) ([1])

(Direct life assurance — Annual tax on assurance transactions — Directive 2002/83/EC — Articles 1(1)(g) and 50 — Definition of 'Member State of the commitment' — Assurance undertaking established in the Netherlands — Policyholder having taken out an assurance contract in the Netherlands and transferred his habitual residence to Belgium after the contract was concluded — Freedom to provide services)

(2013/C 114/12)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Appellant: RVS Levensverzekeringen NV

Respondent: Belgische Staat

Re:

Request for a preliminary ruling — Rechtbank van eerste aanleg te Brussel — Interpretation of Article 50 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ 2002 L 345, p. 1) — National rule subjecting insurance transactions to an annual tax when the risk is situated in Belgium, either because the natural person insured is habitually resident there or because the legal person insured is established there — Assurance undertaking established in the Netherlands, without any presence in Belgium except for one of its policyholders, who moved to Belgium after the contract was concluded — Place of taxation — Article 49 and Article 56 TFEU — Restrictions

Operative part of the judgment

Article 50 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance must be interpreted as not precluding a Member State from collecting an indirect tax on life assurance premiums paid by policyholders who are natural persons having their habitual residence in that Member State, when the assurance contracts concerned were taken out in another Member State in which those policyholders had their habitual residence on the date the contracts were taken out.

([1]) OJ C 252, 27.8.2011.

Judgment of the Court (Third Chamber) of 28 February 2013 — Portuguese Republic v European Commission

(Case C-246/11 P) ([1])

(Appeal — European Regional Development Fund (ERDF) — Regulation (EEC) No 2052/88 — Article 13(3) — Regulation (EEC) No 4253/88 — Article 21(1) — Global grant for local development in Portugal — Reduction in financing)

(2013/C 114/13)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, S. Rodrigues and A. Gattini, acting as Agents)

Other party to the proceedings: European Commission (represented by: L. Flynn, A. Steiblytė and P. Guerra e Andrade, acting as Agents)

Re:

Appeal against the judgment of the General Court (Eighth Chamber) of 3 March 2011 in Case T-387/07 *Portugal* v *Commission* by which that court dismissed the application for annulment in part of Commission Decision C(2007) 3772 of 31 July 2007 reducing the final assistance granted by the European Regional Development Fund (ERDF) towards the global grant for local development in Portugal pursuant to Commission Decision C(95) 1769 of 28 July 1995

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 3 March 2011 in Case T-387/07;*

2. *Annuls Commission Decision C(2007) 3772 of 31 July 2007 reducing the final assistance granted by the European Regional Development Fund (ERDF) towards the global grant for local development in Portugal pursuant to Commission Decision C(95) 1769 of 28 July 1995;*

3. *Orders the European Commission to pay the costs at first instance and on appeal.*

([1]) OJ C 219, 23.7.2011.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia — Spain) — Concepción Salgado González v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS)

(Case C-282/11) ([1])

(Article 48 TFEU — Social security for migrant workers — Regulation (EEC) Nos 1408/71 and (EC) No 883/2004 — Old-age and survivor's insurance — Special provisions for the application of national legislation relating to old-age pensions — Calculation of benefits)

(2013/C 114/14)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Concepción Salgado González

Defendants: Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS)

Re:

Request for a preliminary ruling — Tribunal Superior de Justicia de Galicia — Interpretation of Article 48 TFEU, of Article 3 of and of Heading D (now letter g), Paragraph 4 of Annex VI to Council Regulation No 1408/71/EEC of 14 June on the application of social security schemes to employed persons, to self-employed persons and their families moving within the European Union (OJ English Special Edition 1971 (II), p. 416) and of Article 87(5) of and of paragraph 2(a) of Annex XI to 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) — Insurance relating to old age and death — Special provisions for the application of national legislation relating to old age insurance — Calculation of benefits — National legislation determining the benefit on the basis of an average contribution basis during a reference period of 15 years.

Operative part of the judgment

Article 48 TFEU, Articles 3, 46(2)(a) and 47(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, and as amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council of 5 April 2006, and Heading H, paragraph 4, of Annex VI to that regulation, must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which the theoretical amount of the retirement pension of a self-employed worker, migrant or non-migrant, is invariably calculated on contribution bases paid by that worker over a fixed reference period preceding the payment of his last contribution in that Member State, to which a fixed divisor is applied, when it is impossible for either the duration of that period or the divisor to be adapted so as to take account of the fact that the worker concerned has exercised his right to freedom of movement.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Hof van Cassatie van België — Belgium) — ProRail NV v Xpedys NV, DB Schenker Rail Nederland NV, Nationale Maatschappij der Belgische Spoorwegen NV, FAG Kugelfischer GmbH,

(Case C-332/11) ([1])

(Regulation (EC) No 1206/2001 — Cooperation in the taking of evidence in civil and commercial matters — Direct taking of evidence — Designation of an expert — Task carried out partly in the Member State of the referring court and partly in another Member State)

(2013/C 114/15)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: ProRail NV

Defendants: Xpedys NV, DB Schenker Rail Nederland NV, Nationale Maatschappij der Belgische Spoorwegen NV, FAG Kugelfischer GmbH

Re:

Request for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 1 and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1) and of Article 33(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 ('Brussels I') (OJ 2001, L 12, p. 1) — Direct taking of evidence by the requesting court — Designation of an expert and the assignment to that expert, by the courts of a Member State, of a task which must be carried out partly in the Member State of the courts in question and partly in another Member State — Whether or not the application of the mechanism provided for in Article 17 of Regulation No 1206/2001 is obligatory

Operative part of the judgment

Articles 1(1)(b) and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that the court of one Member State, which wishes the task of taking of evidence entrusted to an expert to be carried out in another Member State, is not necessarily required to use the method of taking evidence laid down by those provisions to be able to order the taking of that evidence.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Grand Chamber) of 26 February 2013 (request for a preliminary ruling from the Tribunal Constitucional Madrid — Spain) — Criminal proceedings against Stefano Melloni

(Case C-399/11) ([1])

(Police and judicial cooperation in criminal matters — European arrest warrant — Surrender procedures between Member States — Decisions rendered at the end of proceedings in which the person concerned has not appeared in person — Execution of a sentence pronounced in absentia — Possibility of review of the judgment)

(2013/C 114/16)

Language of the case: Spanish

Referring court

Tribunal Constitucional Madrid

Parties to the main proceedings

Criminal proceedings against: Stefano Melloni

Other party: Ministerio Fiscal

Re:

Request for a preliminary ruling — Tribunal Constitucional Madrid (Spain) — Interpretation of Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24) and of Articles 47, 48 and 53 of the Charter of Fundamental Rights of the European Union — Decisions handed down at the end of proceedings during which the person concerned was not present in person — Execution of a sentence handed down in absentia — Possibility for the judgment to be reviewed

Operative part of the judgment

1. *Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant issued for the purposes of executing a sentence conditional upon the conviction rendered in absentia being open to review in the issuing Member State.*

2. *Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is compatible with the requirements under Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union.*

3. *Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted in absentia conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.*

([1]) OJ C 290, 1.10.2011.

Judgment of the Court (Third Chamber) of 28 February 2013 (request for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — Katja Ettwein v Finanzamt Konstanz

(Case C-425/11) ([1])

(Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Equal treatment — Self-employed frontier workers — Nationals of a Member State of the Union — Business income received in that Member State — Transfer of residence to Switzerland — Refusal of a tax advantage in that Member State because of the transfer of residence)

(2013/C 114/17)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Katja Ettwein

Defendant: Finanzamt Konstanz

Re:

Request for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, approved in the name of the Community, by decision of the Council and the Commission of 4 April 2002 (OJ 2002 L 114, p. 6), in particular Articles 1, 2, 11, 16 and 21 and Articles 9, 13 and 15 of Annex I — Direct taxation of frontier workers — Legislation of a Member State allowing joint taxation of spouses ('Ehegattensplitting') if they live in a Member State of the European Union or the European Economic Area but not if they live in the Swiss Confederation

Operative part of the judgment

Article 1(a) of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, and Articles 9(2), 13(1) and 15(2) of Annex I to that Agreement must be interpreted as precluding legislation of a Member State which refuses the benefit of joint taxation with the use of the 'splitting' method, provided for by that legislation, to spouses who are nationals of that State and subject to income tax in that State on their entire taxable income, on the sole ground that their residence is situated in the territory of the Swiss Confederation.

([1]) OJ C 331, 12.11.2011.

Judgment of the Court (Third Chamber) of 28 February 2013 (request for a preliminary ruling from the High Court — Ireland) — Margaret Kenny and Others v Minister for Justice, Equality and Law Reform and Others

(Case C-427/11) ([1])

(Article 141 EC — Directive 75/117/EEC — Equal pay for men and women — Indirect discrimination — Objective justification — Conditions)

(2013/C 114/18)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Appellants: Margaret Kenny, Patricia Quinn, Nuala Condon, Eileen Norton, Ursula Ennis, Loretta Barrett, Joan Healy, Kathleen Coyne, Sharon Fitzpatrick, Breda Fitzpatrick, Sandra Hennelly, Marian Troy, Antoinette Fitzpatrick, Helena Gatley

Defendants: Minister for Justice, Equality and Law Reform, Minister for Finance, Commissioner of An Garda Síochána

Re:

Request for a preliminary ruling — High Court (Ireland) — Interpretation of Article 157 TFEU and Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19) (replaced by Directive 2006/54/EC) — Concept of objective justification in the context of apparent indirect discrimination between male and female workers within the civil service — Criteria

Operative part of the judgment

Article 141 EC and Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women must be interpreted as follows:

— *employees perform the same work or work to which equal value can be attributed if, taking account of a number of factors such as the nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation, which it is a matter for the national court to ascertain;*

— *in relation to indirect pay discrimination, it is for the employer to establish objective justification for the difference in pay between the workers who consider that they have been discriminated against and the comparators;*

— *the employer's justification for the difference in pay, which is evidence of a prima facie case of gender discrimination, must relate to the comparators who, on account of the fact that their situation is described by valid statistics which cover enough individuals, do not illustrate purely fortuitous or short-term phenomena, and which, in general, appear to be significant, have been taken into account by the referring court in establishing that difference, and*

— *the interests of good industrial relations may be taken into consideration by the national court as one factor among others in its assessment of whether differences between the pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex and are compatible with the principle of proportionality.*

(1) OJ C 311, 22.10.2011.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Fővárosi Törvényszék (formerly the Fővárosi Bíróság) — Hungary) — Banif Plus Bank Zrt. v Csaba Csipai, Viktória Csipai

(Case C-472/11) (1)

(Directive 93/13/EEC — Unfair terms in consumer contracts — Examination by the national court, of its own motion, as to whether a term is unfair — Obligation on the national court, once it has found, of its own motion, that a term is unfair, to invite the parties to submit their observations before drawing conclusions from that finding — Contractual terms to be taken into account in the assessment of that unfairness)

(2013/C 114/19)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék (formerly the Fővárosi Bíróság)

Parties to the main proceedings

Appellant: Banif Plus Bank Zrt.

Respondents: Csaba Csipai, Viktória Csipai

Re:

Request for a preliminary ruling — Fővárosi Bíróság — Interpretation of Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — National legislation providing that a national court is limited in its examination of the unfair nature of standard contract terms where the parties do not expressly request it to declare that a term is unfair — Option for the national court which finds a standard term of a contract before it to be unfair, in the absence of an express request to that effect, to ask the parties to the dispute to make a statement relating to that contract term so that the question of the invalidity of the contract on that ground may be examined

Operative part of the judgment

1. *Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the national court which has found of its own motion that a contractual term is unfair is not obliged, in order to be able to draw the consequences arising from that finding, to wait for the consumer, who has been informed of his rights, to submit a statement requesting that that term be declared invalid. However, the principle of audi alteram partem, as a general rule, requires the national court which has found of its own motion that a contractual term is unfair to inform the parties to the dispute of that fact and to invite each of them to set out its views on that matter, with the opportunity to challenge the views of the other party, in accordance with the formal requirements laid down in that regard by the national rules of procedure.*

2. *The national court must, in order to determine whether the contractual term on which the claim brought before it is based may be unfair, take account of all of the other terms of the contract.*

(1) OJ C 370, 17.12.2012.

Judgment of the Court (First Chamber) of 28 February 2013 (request for a preliminary ruling from the Finanzgericht Rheinland-Pfalz — Germany) — Helga Petersen, Peter Petersen v Finanzamt Ludwigshafen

(Case C-544/11) ([1])

(Freedom to provide services — Freedom of movement for workers — Legislation of a Member State allowing exemption from taxation on income received for work carried out in another State in the context of development aid — Conditions — Establishment of the employer within the national territory — Refusal where the employer is established in another Member State)

(2013/C 114/20)

Language of the case: German

Referring court

Finanzgericht Rheinland-Pfalz

Parties to the main proceedings

Applicants: Helga Petersen, Peter Petersen

Defendant: Finanzamt Ludwigshafen

Re:

Request for a preliminary ruling — Finanzgericht Rheinland-Pfalz — Interpretation of Article 56 TFEU — Restrictions on the freedom to provide services within the European Union — Legislation of a Member State allowing exemption from taxation of income received for work carried out abroad in the context of development aid — Restriction of that exemption to situations where the employer is established within the national territory

Operative part of the judgment

Article 45 TFEU must be interpreted as precluding national legislation of a Member State pursuant to which income received for employment activities by a taxpayer who is resident in that Member State and has unlimited tax liability is exempt from income tax if the employer is established in that Member State, but is not so exempt if that employer is established in another Member State.

([1]) OJ C 25, 28.1.2012.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Juzgado de lo Mercantil de Alicante — Spain) — Fédération Cynologique Internationale v Federación Canina Internacional de Perros de Pura Raza

(Case C-561/11) ([1])

(Community trade marks — Regulation (EC) No 207/2009 — Article 9(1) — Concept of 'third party' — Proprietor of a later Community trade mark)

(2013/C 114/21)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de Alicante

Parties to the main proceedings

Applicant: Fédération Cynologique Internationale

Defendant: Federación Canina Internacional de Perros de Pura Raza

Re:

Reference for a preliminary ruling — Juzgado de lo Mercantil de Alicante — Interpretation of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Infringement or threat of infringement of a Community trade mark — Exclusive right conferred by a Community trade mark — Meaning of third party

Operative part of the judgment

Article 9(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the exclusive right of the proprietor of a Community trade mark to prohibit all third parties from using, in the course of trade, signs identical with or similar to its trade mark extends to a third-party proprietor of a later registered Community trade mark, without the need for that latter mark to have been declared invalid beforehand.

([1]) OJ C 25, 28.1.2012.

Judgment of the Court (Third Chamber) of 21 February 2013 (request for a preliminary ruling from the Tribunal du travail de Bruxelles — Belgium) — Patricia Dumont de Chassart v Office national d'allocations familiales pour travailleurs salariés (ONAFTS)

(Case C-619/11) [1]

(Social security — Regulation (EEC) No 1408/71 — Articles 72, 78(2)(b) and 79(1)(a) — Family benefits for orphans — Aggregation of periods of insurance and employment — Periods completed by the surviving parent in another Member State — Not taken into account)

(2013/C 114/22)

Language of the case: French

Referring court

Tribunal du travail de Bruxelles

Parties to the main proceedings

Applicant: Patricia Dumont de Chassart

Defendant: Office national d'allocations familiales pour travailleurs salariés (ONAFTS)

Re:

Request for a preliminary ruling — Tribunal du travail de Bruxelles — Interpretation of Articles 17 EC, 39 EC and 43 EC, and of Articles 72 and 79(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971(II), p. 416) — Allowances for orphans to be paid by the State of residence — Admissibility, as regards the principles of equality and non-discrimination, of a Community provision that makes the acquisition of entitlement to allowances conditional on the deceased parent having completed certain insurance periods but not the surviving parent — More favourable national legislation which also allows the surviving parent to benefit under rules equating periods of insurance — Less favourable treatment of workers who are surviving parents and have exercised their right to freedom of movement — Discrimination

Operative part of the judgment

Article 72, Article 78(2)(b) and point (a) of the second subparagraph of Article 79(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1399/1999 of 29 April 1999, must be interpreted as meaning that, where the national legislation of a Member State provides that a right to benefits for orphans can be established by both the deceased parent and the surviving parent, provided that they have the status of employed persons, those provisions of European Union law require that periods of insurance and employment completed by the surviving parent in another Member State be taken into account in the aggregation of the periods necessary to acquire the right to benefits in the first of those Member States. In that regard, it is not relevant that the surviving parent cannot rely on any period of insurance or employment in that Member State during the reference period laid down by that national legislation for the acquisition of that right.

[1] OJ C 49, 18.2.2012.

Judgment of the Court (Second Chamber) of 21 February 2013 — Seven for all mankind LLC v Seven SpA — Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-655/11 P) [1]

(Appeal — Community trade mark — Opposition proceedings — Earlier word mark — Element 'SEVEN' — Similarity of the signs — Likelihood of confusion — Relative ground for refusal)

(2013/C 114/23)

Language of the case: English

Parties

Appellant: Seven for all mankind LLC (represented by: A. Gautier-Sauvagnac and B. Guimberteau, avocats)

Other parties to the proceedings: Seven SpA (represented by: L. Trevisan, avvocato), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, Agent)

Re:

Appeal against the judgment of the General Court (Sixth Chamber) of 6 October 2011 in Case T-176/10 SEVEN v OHIM — SEVEN FOR ALL MANKIND, by which that Court annulled Decision R 1514/2008-2 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 28 January 2010 rejecting the action against the decision annulling the decision of the Opposition Division

which rejected in part the opposition filed by the owner of the Community and international figurative marks containing the word element 'Seven' in respect of goods within Classes 3, 9, 12, 14, 15, 16, 18, 20, 25 and 28, against the registration of the word mark 'SEVEN FOR ALL MANKIND' in respect of goods within Classes 14 and 18 — Interpretation and application of Article 8(1)(b) of Regulation No 207/2009 — Factors to be taken into account when assessing the similarity of the signs

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Seven for all mankind LLC to bear its own costs and to pay those incurred by Seven SpA;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs.*

(1) OJ C 65, 3.3.2012.

Judgment of the Court (Second Chamber) of 28 February 2013 (request for a preliminary ruling from the Tribunal da Relação de Lisboa — Portugal) — Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência

(Case C-1/12) (1)

(Association of chartered accountants — Rules relating to a system of compulsory training for chartered accountants — Article 101 TFEU — Association of undertakings — Restriction of competition — Justifications — Article 106(2) TFEU)

(2013/C 114/24)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Applicant: Ordem dos Técnicos Oficiais de Contas

Defendant: Autoridade da Concorrência

Re:

Request for a preliminary ruling — Tribunal da Relação de Lisboa — Interpretation of Articles 56, 57, 58, 59, 60, 61, 62, 101 and 102 TFEU — Notion of association of undertakings — Association of chartered accountants — Creation of a mandatory training system for members of the association of chartered accountants — Training provided solely by the association of chartered accountants — Freedom of establishment and freedom to provide services.

Operative part of the judgment

1. *A regulation such as the Training Credits Regulation (Regulamento da Formação de Créditos), adopted by a professional association such as the Ordem dos Técnicos Oficiais de Contas (Order of Chartered Accountants), must be regarded as a decision of an association of undertakings within the meaning of Article 101(1) TFEU.*

   The fact that a professional association, such as the Ordem dos Técnicos Oficiais de Contas, is legally required to put into place a system of compulsory training for its members cannot remove from the scope of Article 101 TFEU the rules drawn up by that professional association, insofar as those rules are a matter for it alone.

   The fact that those rules do not have any direct effect on the economic activity of the members of that professional association does not affect the application of Article 101 TFEU, where the infringement of which that professional association is accused concerns a market on which it itself carries on an economic activity.

2. *A regulation which puts into place a system of compulsory training for chartered accountants in order to guarantee the quality of the services offered by them, such as the Training Credits Regulation, adopted by a professional association such as the Ordem dos Técnicos Oficiais de Contas, constitutes a restriction on competition prohibited by Article 101 TFEU to the extent, which it is for the referring court to ascertain, that it eliminates competition on a substantial part of the relevant market, to the benefit of that professional association, and that it imposes, on the other part of that market, discriminatory conditions to the detriment of competitors of that professional association.*

(1) OJ C 89, 24.3.2012.

Judgment of the Court (Fifth Chamber) of 21 February 2013 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Město Žamberk v Finanční ředitelství v Hradci Králové, now Odvolací finanční ředitelství

(Case C-18/12) ([1])

(Taxation — VAT — Directive 2006/112/EC — Article 132(1)(m) — Exemption — Supply of services closely linked to sport or physical education — Taking part in sporting activities of a non-organised and unsystematic nature — Municipal aquatic park)

(2013/C 114/25)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Město Žamberk

Defendant: Finanční ředitelství v Hradci Králové, now Odvolací finanční ředitelství

Re:

Request for a preliminary ruling — Nejvyšší správní soud — Interpretation of Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemptions — Supplies of services closely linked to sport or physical education — Occasional unsystematic participation in recreational sporting activities in a swimming pool complex (aquatic park) operated by the municipality and provided with facilities for those activities

Operative part of the judgment

1. *Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that non-organised and unsystematic sporting activities which are not aimed at participation in sports competitions may be categorised as taking part in sport within the meaning of that provision.*

2. *Article 132(1)(m) of Directive 2006/112 must be interpreted as meaning that access to an aquatic park offering visitors not only facilities for engaging in sporting activities but also other types of amusement or rest may constitute a supply of services closely linked to sport. It is for the referring court to determine whether, in the light of the interpretative guidance provided by the Court of Justice of the European Union in the present judgment and having regard to the specific circumstances of the case in the main proceedings, that is the position in that case.*

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Third Chamber) of 21 February 2013 (request for a preliminary ruling from the Ankenævnet for Statens Uddannelsesstøtte — Denmark) — LN v Styrelsen for Videregående Uddannelser og Uddannelsesstøtte

(Case C-46/12) ([1])

(Citizenship of the Union — Freedom of movement for workers — Principle of equal treatment — Article 45(2) TFEU — Regulation (EEC) No 1612/68 — Article 7(2) — Directive 2004/38/EC — Article 24(1) and (2) — Derogation from the principle of equal treatment for maintenance aid for studies consisting in student grants or student loans — European Union citizen studying in a host Member State — Paid employment prior to and subsequent to the start of studies — Principal objective of the person concerned at the time of entry on the territory of the host Member State — Effect on his classification as worker and on his entitlement to student grants)

(2013/C 114/26)

Language of the case: Danish

Referring court

Ankenævnet for Statens Uddannelsesstøtte

Parties to the main proceedings

Applicant: LN

Defendant: Styrelsen for Videregående Uddannelser og Uddannelsesstøtte

Re:

Request for a preliminary ruling — Ankenævnet for Uddannelsesstøtten — Interpretation of Article 7(1)(c), read in conjunction with Article 24(2), of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Equal treatment for

citizens of the Union — Legislation of a Member State providing for the possibility for citizens of the Union to receive education assistance while they are employed or self-employed workers in that Member State — Rejection of an application for a grant made by a citizen of the Union who was an employed worker in the host Member State in the case where his principal purpose in coming to that Member State was to follow a course of study there

Operative part of the judgment

Articles 7(1)(c) and 24(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a European Union citizen who pursues a course of studies in a host Member State whilst at the same time pursuing effective and genuine employment activities such as to confer on him the status of 'worker' within the meaning of Article 45 TFEU may not be refused maintenance aid for studies which is granted to the nationals of that Member State. It is for the national court to make the necessary findings of fact in order to ascertain whether the employment activities of the applicant in the main proceedings are sufficient to confer that status on him. The fact that the person entered the territory of the host Member State with the principal intention of pursuing a course of study is not relevant for determining whether he is a 'worker' within the meaning of Article 45 TFEU and, accordingly, whether he is entitled to that aid under the same terms as a national of the host Member State under Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

([1]) OJ C 109, 14.4.2012.

Judgment of the Court (Tenth Chamber) of 7 February 2013 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia)) — v Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.

(Case C-68/12) ([1])

(Agreements, decisions and concerted practices — Agreement concluded between a number of banks — Competitor allegedly operating unlawfully on the market concerned — Effect — None)

(2013/C 114/27)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Appellant: Protimonopolný úrad Slovenskej republiky

Respondent: Slovenská sporiteľňa a.s.

Re:

Reference for a preliminary ruling — Najvyšší súd Slovenskej republiky — Interpretation of Article 101(1) and (3) TFEU — Cartel — Agreement concluded between several banks with a view to cancelling agreements, and refraining from concluding new agreements, concerning current accounts with a competing undertaking established in another Member State — Effect on the classification as an unlawful agreement of the fact, not raised at the time when the agreement was entered into, that the competing undertaking was operating unlawfully on the market in question

Operative part of the judgment

1. *Article 101 TFEU must be interpreted as meaning that the fact that an undertaking that is adversely affected by an agreement whose object is the restriction of competition was allegedly operating illegally on the relevant market at the time when the agreement was concluded is of no relevance to the question whether the agreement constitutes an infringement of that provision.*

2. *Article 101(1) TFEU must be interpreted as meaning that, in order to find that an agreement is restrictive of competition, it is not necessary to demonstrate personal conduct on the part of a representative authorised under the undertaking's constitution or the personal assent, in the form of a mandate, of that representative to the conduct of an employee of the undertaking who has participated in an anti-competitive meeting.*

3. *Article 101(3) TFEU must be interpreted as meaning that it can apply to an agreement prohibited under Article 101(1) TFEU only when the undertaking which is relying on Article 101(3) TFEU has proved that the four cumulative conditions laid down therein are met.*

([1]) OJ C 165, 9.6.2012

Judgment of the Court (Eighth Chamber) of 21 February 2013 (request for a preliminary ruling from the Curtea de Apel Alba Iulia — Romania) — SC Mora IPR SRL v Direcția Generală a Finanțelor Publice Sibiu, Direcția Județeană pentru Accize și Operațiuni Vamale Sibiu

(Case C-79/12) ([1])

(Taxation — VAT — Directive 2006/112/EC — Article 211 — Deferred payment of VAT on importation)

(2013/C 114/28)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicant: SC Mora IPR SRL

Defendant: Direcția Generală a Finanțelor Publice Sibiu, Direcția Județeană pentru Accize și Operațiuni Vamale Sibiu

Re:

Request for a preliminary ruling — Curtea de Apel Alba Iulia — Interpretation of Article 211 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Interpretation of Articles 26(2), 28, 30 and 107 TFEU — Right of Member States to authorise deferment of VAT on importation — Whether it is permissible for national legislation to impose a condition for obtaining a payment deferment certificate, not provided for under the Directive — Later legislative amendments exempting only certain taxable persons from payment of VAT on importation — Discrimination — Breach of the prohibition on import duties

Operative part of the judgment

Article 211 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it does not preclude the application of legislative rules of a Member State, such as those at issue in the main proceedings, which make the deferred payment of value added tax due on imported goods conditional on obtaining a certificate that is not required under the wording of that directive, provided that the conditions for obtaining such a certificate comply with the principle of fiscal neutrality, which it is for the national court to ascertain.

([1]) OJ C 126, 28.4.2012.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Köln-Nord v Wolfram Becker

(Case C-104/12) ([1])

(Sixth VAT Directive — Article 17(2)(a) — Right to deduct input tax — Need for a direct and immediate link between an input and an output transaction — Criterion for determining that link — Services of lawyers performed in the context of criminal proceedings for corruption brought in a personal capacity against the managing director and main partner of a limited company)

(2013/C 114/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Köln-Nord

Defendant: Wolfram Becker

Re:

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 17(2)(a) and 22(3)(b) 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 (OJ 1977 L 145, p. 1) — Creation and extent of the right to deduct — Need for a direct and immediate link between the economic activity of the taxable person and the supply of a service — Services provided by lawyers in the context of criminal proceedings relating to corruption charges brought against the managing director and principal executive officer of a public limited company

Operative part of the judgment

The existence of a direct and immediate link between a given transaction and the taxable person's activity as a whole for the purposes of determining whether the goods and services were used by the latter 'for the purposes of taxable transactions' within the meaning of Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/115/EC of 20 December 2001, depends on the objective content of the goods or services acquired by that taxable person.

In this case, the supplies of lawyers' services, whose purpose is to avoid criminal penalties against natural persons, managing directors of a taxable undertaking, do not give that undertaking the right to deduct as input tax the VAT due on the services supplied.

(1) OJ C 138, 12.5.2012.

Judgment of the Court (Fifth Chamber) of 21 February 2013 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero per i beni e le attività culturali and Others v Ordine degli Ingegneri di Verona e Provincia and Others

(Case C-111/12) (1)

(Directive 85/384/EEC — Mutual recognition of qualifications in the field of architecture — Articles 10 and 11(g) — National legislation recognising equivalence of qualifications in architecture and civil engineering, but reserving work on classified heritage buildings to architects — Principle of equal treatment — Situation purely internal to a Member State)

(2013/C 114/30)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Ministero per i beni e le attività culturali, Ordine degli Ingegneri della Provincia di Venezia, Ordine degli Ingegneri della Provincia di Padova, Ordine degli Ingegneri della Provincia di Treviso, Ordine degli Ingegneri della Provincia di Vicenza, Ordine degli Ingegneri della Provincia di Verona, Ordine degli Ingegneri della Provincia di Rovigo, Ordine degli Ingegneri della Provincia di Belluno

Defendants: Ordine degli Ingegneri di Verona e Provincia, Consiglio Nazionale degli Ingegneri, Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori, Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori della Provincia di Verona, Alessandro Mosconi, Comune di San Martino Buon Albergo, Istituzione di Ricovero e di Educazione di Venezia (IRE), Ordine degli Architetti della Provincia di Venezia

Re:

Request for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 10 and 11 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15) — Mutual recognition of qualifications in the architectural sector — National legislation which reserves to architects alone the right to carry out work on buildings designated as artistic cultural assets — Examination, on a case-by-case basis, of the suitability of those holding architectural and engineering qualifications obtained in other Member States to carry out such work

Operative part of the judgment

Articles 10 and 11 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services must be interpreted as precluding a national provision in accordance with which persons holding a qualification issued by a Member State other than the host Member State enabling the holder to take up activities in the field of architecture and expressly referred to in Article 11 thereof, may exercise, in that latter Member State, activities relating to buildings of artistic interest only in so far as they show, where necessary by way of a specific examination of their professional suitability, that they have special qualifications in the field of cultural assets.

(1) OJ C 151, 26.5.2012.

Judgment of the Court (Second Chamber) of 28 February 2013 — Ellinika Nafpigia AE v European Commission

(Case C-246/12 P) (1)

(Appeal — State aid — Shipbuilding — Decision declaring aid measures incompatible with the common market — Protection of the essential interests of national security — Competition conditions in the internal market)

(2013/C 114/31)

Language of the case: Greek

Parties

Appellant: Ellinika Nafpigia AE (represented by: I. Drosos and V. Karagiannis, dikigori)

Other party to the proceedings: European Commission (represented by: C. Urraca Caviedes and M. Konstantinidis, Agents)

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 15 March 2012 in Case T-391/08 *Ellinika Nafpigia* v *Commission* dismissing an action for the partial annulment of Commission Decision C(2008) 3118 final of 2 July 2008 declaring incompatible with the common market aid granted by the Greek authorities in favour of Ellinika Nafpigia (Hellenic Shipyards 'HSY'), in the context of amendments to the initial investment plan relating to the restructuring of that shipyard (State aid C 16/2004 (ex NN 29/2004, CP 71/2002 and CP 133/2005))

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ellinika Nafpigia AE to pay the costs.*

([1]) OJ C 200, 7.7.2012.

Appeal brought on 14 May 2012 against the order of the General Court (Sixth Chamber Chamber) delivered on 2 March 2012 in Case T-594/11 H-Holding AG v European Commission

(Case C-235/12 P)

(2013/C 114/32)

Language of the case: German

Parties

Appellant: H-Holding AG (represented by: R. Závodný, advokát)

Other party to the proceedings: European Commission

The Court of Justice of the European Union (Seventh Chamber) dismissed the appeal by order of 28 February 2013 and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 5 December 2012 — BDV Hungary Trading Kft. (in voluntary liquidation) v Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

(Case C-563/12)

(2013/C 114/33)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: BDV Hungary Trading Kft. (in voluntary liquidation)

Defendant: Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

Questions referred

1. May Article 15 of the Sixth Council Directive 77/388/EEC ([1]) 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 ('old VAT Directive') and Article 146 of Council Directive 2006/112/EC ([2]) of 28 November 2006 on the common system of value added tax ('new VAT Directive') be interpreted as meaning that the transport outside Community territory of goods intended for export must take place within a defined period in order to qualify as an exempt supply of goods for export?

2. Do the conditions of supply: whether the seller, the buyer or the supplier acted in good or bad faith, with due care or negligently; the period for declaration; or the fact that the goods are actually exported after the time-limit but within the limitation period for charging the tax have any effect on the answer to question 1?

3. Is it compatible with the principles of tax neutrality, legal certainty and proportionality for the rules of a Member State to provide for additional conditions to the provisions of the Directives, and to make qualification as an exempt supply for export subject to a combination of several objective conditions that do not appear in the Directives?

4. May Article 15 of the old VAT Directive and Articles 131 and 273 of the new VAT Directive be interpreted as meaning that, in the interests of preventing tax evasion, abuse and avoidance and of the correct charging and collection of tax, the Member State may also attach the conditions that are contained in Paragraph 11(1) of Law LXXIV of 1992 on Value Added Tax and in Paragraph 98(1) of Law CXXVII of 2007 on Value Added Tax to exempt exports?

5. Is it consistent with the fundamental principles of Union law and the provisions of the Directives for the tax authority, in cases where such conditions, which do not appear

in Articles 15 and 146 of the Directives, are not met, to alter the classification of an exempt export and order the taxpayer to pay tax? If so, in what circumstances is this possible?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).
(2) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 31 December 2012 — József Dutka v Mezőgazdasági és Vidékfejlesztési Hivatal

(Case C-614/12)

(2013/C 114/34)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: József Dutka

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal

Questions referred

1. Having regard to Article 6 of the Treaty on European Union and Article 30 of the Charter of Fundamental Rights of the European Union, must it be considered that Union law is being implemented within the meaning of Article 51(1) of the Charter where domestic law provides for automatic termination of legal employment relationships or for their termination by decision?

2. If the first question is answered in the affirmative, is it appropriate to interpret Article 30 of the Charter of Fundamental Rights of the European Union as laying down a prohibition of unjustified dismissal or as doing so to the extent to which it requires that the reasons for dismissal appear clearly from the document bringing the legal relationship to an end and that the worker should be able to verify their truthfulness and relevance?

3. If that is the case, is national legislation which grants the Member State an opportunity to dismiss (lay off) the worker without giving reasons solely in legal relationships in which the State acts as employer through its State administrative organs contrary to the obligation to account for dismissals which results from Article 30 of the Charter of Fundamental Rights of the European Union?

Request for a preliminary ruling from the Szombathelyi Törvényszék (Hungary) lodged on 3 January 2013 — Ferenc Tibor Kovács v Vas Megyei Rendőr-főkapitányság

(Case C-5/13)

(2013/C 114/35)

Language of the case: Hungarian

Referring court

Szombathelyi Törvényszék

Parties to the main proceedings

Applicant: Ferenc Tibor Kovács

Defendant: Vas Megyei Rendőr-főkapitányság

Question referred

Should the law on non-discrimination, freedom of movement for workers and the right to a fair trial, be interpreted as precluding a provision of the law of a Member State such as Paragraph 25/B of Law I of 1988, according to which only vehicles that have administrative authorisation and registration plates granted by the Hungarian authorities may be used on the roads in Hungary, and the fulfilment of the requirements which allow exemption from that provision may be established only during the inspection?

Request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg (Germany) lodged on 10 January 2013 — Datenlotsen Informationssysteme GmbH v Technische Universität Hamburg-Harburg

(Case C-15/13)

(2013/C 114/36)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht Hamburg

Parties to the main proceedings

Applicant: Datenlotsen Informationssysteme GmbH

Defendant: Technische Universität Hamburg-Harburg

Intervener: Hochschul-Informations-System GmbH

Questions referred

1. Must a 'public contract' within the meaning of Article 1(2)(a) of Directive 2004/18/EC [1] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted as also meaning a contract in the case of which, although the contracting authority does not exercise over the contractor a control similar to that which it exercises over its own departments, both the contracting authority and the contractor are controlled by the same body, which is itself a public contracting authority within the meaning of Directive 2004/18 and the contracting authority and the contractor carry out the essential part of their activities with that common body (horizontal in-house transaction)?

   If the first question is answered in the affirmative:

2. Must the control similar to that which the contracting authority exercises over its own departments extend to all aspects of the contractor's activity or is it sufficient for it to be confined to the area of procurement?

[1] OJ 2004 L 134, p.114

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 15 January 2013 — Simon, Evers & Co GmbH v Hauptzollamt Hamburg-Hafen

(Case C-21/13)

(2013/C 114/37)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Simon, Evers & Co GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Question referred

Is Council Regulation (EC) No 499/2009 of 11 June 2009 extending the definitive anti-dumping duty imposed by Council 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] invalid because the Commission, by misjudging the requirements arising from Article 13 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community concerning the finding of a circumvention of anti-dumping duty measures, [2] presumed that there was a circumvention merely because the volume of exports in question from Thailand increased significantly after the imposition of the measures, although the Commission, with reference to the lack of cooperation from Thai exporters, made no further specific findings?

[1] OJ 2009 L 151, p. 1.
[2] OJ 1996 L 56, p. 1.

Appeal brought on 8 February 2013 by the Groupement des cartes bancaires (CB) against the judgment of the General Court (Seventh Chamber) delivered on 29 November 2012 in Case T-491/07 CB v Commission

(Case C-67/13 P)

(2013/C 114/38)

Language of the case: French

Parties

Appellant: Groupement des cartes bancaires (CB) (represented by: F. Pradelles, avocat, J. Ruiz Calzado, abogado)

Other parties to the proceedings: European Commission, BNP Paribas, BPCE, formerly Caisse Nationale des Caisses d'Epargne et de Prévoyance (CNCEP), Société générale

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 29 November 2012 in Case T-491/07 *CB* v *Commission*;

— refer the case back to the General Court for a new decision to be taken, unless the Court considers that it is sufficiently well informed to annul Commission Decision C(2007) 5060 final of 17 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/D1/38.606 — Groupement des cartes bancaires 'CB');

— order the Commission to pay the costs of these proceedings, including the costs incurred by the appellant before this Court and before the General Court.

Grounds of appeal and main arguments

The appellant relies on three grounds in support of its appeal.

First, the appellant claims that the General Court erred in law in the application of the concept of restriction of competition by object.

The General Court erred in law in the application of Article 101(1) TFEU concerning the content of the measures of the Groupement des cartes bancaires 'CB' ('the Groupement'). More specifically, the General Court, inter alia, erroneously interpreted the case-law on the concept of restrictive practice of competition by object in considering that the abovementioned measures constituted a restriction by object, even though they were not sufficiently injurious to competition in themselves. Furthermore, the General Court erred in law by taking into account the 'genesis' of the adoption of the measures. It misinterpreted the case-law on the concept of the decision of association of undertakings, as an expression of the intention of the Groupement, and distorted the clear sense of the evidence put before it to find an anti-competitive intention on the part of the Groupement in the adoption of the measures in question.

The General Court also erred in law in the application of Article 101(1) TFEU concerning the objectives of the measures of the Groupement. More specifically, the General Court misinterpreted the case-law in finding that the avoidance of free-riding, a legitimate objective referred to by the measures adopted by the Groupement and recognised by the General Court, could be taken into account only at the stage of Article 101(3) TFEU and not that of Article 101(1) TFEU.

The General Court also erred in law in applying Article 101(1) TFEU concerning the correct context of the Groupement's measures. More specifically, the General Court misinterpreted the case-law on the taking into account of the legal context by erring in relation to its obligation to take account of established experience. In addition, it misinterpreted, inter alia, the judgment of the Court of 20 November 2008 in Case C-209/07 *Beef Industry Development and Barry Brothers*, in wanting to apply that judgment to the present case, even though the two situations are fundamentally different. Furthermore, the General Court erred in law repeatedly in the taking into account of the economic context and the two-sided operation of the market in this case. Finally, the General Court ignored the case-law on the nature and scope of its review of complex economic assessments, by failing to carry out the minimum review for which it is responsible.

Second, the appellant submits that the General Court erred in law in the application of the concept of restriction of competition by effect. The General Court erred in law in its examination of the effect of the Groupement's measures. By not responding to the pleas in law raised by the appellant as to the alleged anti-competitive effects of the measures, it failed to comply with its obligation to state reasons.

Third, the appellant claims that the General Court infringed the principles of proportionality and legal certainty by not annulling the injunction contained in the second paragraph of Article 2 of Commission Decision C(2007) 5060 final. It infringed the principle of proportionality by maintaining the injunction imposed by the Commission, even though it was not only unnecessary to end the alleged infringement but also disproportionate with regard to the intended purpose. Furthermore, the General Court infringed the principle of legal certainty by not annulling the abovementioned injunction, even though the terms thereof are general and ambiguous, leaving the Groupement uncertain as to the measures which it may take to combat free-riding and ensure the protection of the 'CB' system.

Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 8 February 2013 — Markus Weiss v Condor Flugdienst GmbH

(Case C-68/13)

(2013/C 114/39)

Language of the case: German

Referring court

Amtsgericht Rüsselsheim

Parties to the main proceedings

Applicant: Markus Weiss

Defendant: Condor Flugdienst GmbH

Questions referred

1. Must the extraordinary circumstance within the meaning of Article 5(3) of the regulation [1] relate directly to the booked flight?

2. If the first question is to be answered in the negative, how many earlier flights involving the aircraft to be used in the scheduled flight are relevant to the existence of an extraordinary circumstance? Is there a time limit to the consideration of extraordinary circumstances which occur during earlier flights? If so, how is that time limit to be calculated?

3. If extraordinary circumstances which occur during earlier flights are also relevant to a later flight, must the reasonable measures to be taken by the operating air carrier, in accordance with Article 5(3) of the regulation, relate only to preventing the extraordinary circumstance or also to avoiding a long delay?

([1]) 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 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Arbeidshof te Brussel (Belgium) lodged on 15 February 2013 — Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others

(Case C-79/13)

(2013/C 114/40)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Federaal agentschap voor de opvang van asielzoekers

Defendants: Selver Saciri, Danijela Dordevic, Danjel Saciri (represented by: Selver Saciri and Danijela Dordevic), Sanela Saciri (represented by: Selver Saciri and Danijela Dordevic), Denis Saciri (represented by: Selver Saciri and Danijela Dordevic), Openbaar Centrum voor Maatschappelijk Welzijn van Diest

Questions referred

1. When a Member State elects, pursuant to Article 13(5) of Directive 2003/9 ([1]) of 27 January 2003 laying down minimum standards for the reception of asylum seekers, to provide the material support in the form of a financial allowance, does the Member State then still have any responsibility to ensure that the asylum applicant, in one way or another, enjoys the minimum protection measures of the Directive as contained in Articles 13(1), 13(2), 14(1), 14(3), 14(5) and 14(8) of the Directive?

2. Should the financial allowance, provided for by Article 13(5) of the Directive, be granted from the date of the application for asylum and the reception request, or from the expiry of the period provided for in Article 5(1) of the Directive, or from another date. Should the financial allowance be of such a nature that it allows the asylum seeker, in the absence of material reception facilities provided by the Member State or by an institution designated by the Member State, to provide for his own accommodation at all times, if necessary in the form of hotel accommodation, until such time as he is offered permanent accommodation or as he is able to acquire more permanent accommodation himself?

3. Is it compatible with the Directive that a Member State only grants the material reception facilities to the extent that the existing reception structures, as established by the State, are able to ensure that accommodation, and refers the asylum seeker who does not find place there for assistance which is available to all the residents of the State, without providing for the necessary statutory rules and structures so that institutions which have not been established by the State itself are effectively able to extend a dignified reception to the asylum applicants within a short period?

([1]) Council Directive 2003/9/EC (OJ 2003 L 31, p. 18).

Action brought on 15 February 2013 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-81/13)

(2013/C 114/41)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, Agent, A. Dashwood QC)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision 2012/776/EU on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey with regard to the adoption of provisions on the coordination of social security schemes ([1]);

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

Pleas in law and main arguments

1. By an action brought under Article 263 TFEU, the United Kingdom of Great Britain and Northern Ireland is seeking the annulment, pursuant to Article 264 TFEU, of Council Decision 2012/776/EU of 6 December 2012 on the position to be taken on behalf of the Union within the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey with regard to the adoption of provisions on the coordination of social security schemes.

2. The United Kingdom respectfully requests the Court:

   (i) to annul the Decision;

   (ii) to order the Council to pay the costs of the proceedings.

3. Article 48 TFEU is the substantive legal basis specified in the Decision.

4. The proposed Association Council Decision annexed to the Council Decision would repeal and replace Decision No. 3/80 of the Association Council on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families.

5. The United Kingdom contends that Article 48 TFEU cannot serve as the substantive legal basis of a measure intended to have such consequences. It is a provision designed to facilitate freedom of movement for nationals of Member States within the internal market. The correct legal basis is Article 79 (2) (b) TFEU. This confers competence for the adoption of measures concerning 'the definition of the rights of third country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States'. The Council Decision is precisely such a measure.

6. Article 79 (2) (b) TFEU is found in Title V of Part Three of the TFEU. Pursuant to Protocol 21 to the Treaties, measures adopted under Title V do not apply to the United Kingdom (or Ireland) unless it signals its willingness to 'opt into' them. By its erroneous choice of Article 48 TFEU, instead of Article 79 (2) (b) TFEU, as the substantive legal basis of the Decision, the Council refused to recognise the right of the United Kingdom not to take part in the adoption of the Decision and not to be bound by it.

7. The annulment of Council Decision 2012/776/EU is, therefore, sought on the ground that it was adopted on the wrong legal basis, with the consequence that the rights of the United Kingdom under Protocol 21 were not recognised.

8. In support of its contention the United Kingdom relies upon the express provisions of Article 48 and Article 79 (2) (b) TFEU, interpreted in their Treaty context and in the light of case law. It further relies upon the fact that Council Decision 2012/776/EU is almost identical to nine Council Decisions which have been adopted under other Association Agreements on the basis of Article 79 (2) (b).

([1]) OJ L 340, p. 19

Request for a preliminary ruling from the Arbetsdomstolen (Sweden) lodged on 19 February 2013 — Fonnship A/S, Svenska Transportarbetarförbundet v Fonnship A/S, Svenska Transportarbetarförbundet, Facket för Service och Kommunikation (SEKO)

(Case C-83/13)

(2013/C 114/42)

Language of the case: Swedish

Referring court

Arbetsdomstolen

Parties to the main proceedings

Applicants: Fonnship A/S, Svenska Transportarbetarförbundet

Defendants: Fonnship A/S, Svenska Transportarbetarförbundet, Facket för Service och Kommunikation (SEKO)

Questions referred

Is the rule in the EEA Agreement on free movement of services, maritime transport services — which rule has an equivalent in the EC Treaty — applicable to a company with its head office in an EFTA State as regards its activity in the form of transport services to an EC Member State or an EFTA State using a vessel which is registered and flagged in another country outside the EC/EEA?

Appeal brought on 22 February 2013 by 1. garantovaná a.s. against the judgment of the General Court (Third Chamber) delivered on 12 December 2012 in Case T-392/09: 1. garantovaná a.s. v European Commission

(Case C-90/13 P)

(2013/C 114/43)

Language of the case: English

Parties

Appellant: 1. garantovaná a.s. (represented by: B. Hartnett, Barrister, O. Geiss, Rechtsanwalt, P. Lasok QC, J. Holmes, Barrister)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the General Court's decision of 12 December 2012 in Case T-392/09 as it relates to the second pleas in the Appellant's Application before the General Court;

— uphold that plea as well-founded;

— reduce the level of the fine to EUR 2.1 million, representing 10 % of the Appellant's turnover in 2008 as recoded at paragraph 84 of the Contested Judgment; and

— order the Commission to pay the Appellant's costs.

Pleas in law and main arguments

The appellant submits that the General Court erred in dismissing the appellant's second plea in law.

Article 23(2) of regulation No. 1/2003 ([1]) provides: '…the fine shall not exceed 10 % of its [the undertaking in question] turnover in the preceding business year'. The 'preceding business year' is the last full business year immediately preceding the date of adoption of the Commission decision finding that there has been an infringement of the competition rules and imposing a fine.

In the present case the 'turnover in the preceding business year' was that for 2008, not the turnover taken into account by the Commission. The effect of using the turnover for 2007 was to inflate the fine imposed on Garantovaná to just under 100 % of its turnover in the business year preceding the date of adoption of the Commission decision (22 July 2009).

The appellant submits that the Commission's use of the 2007 turnover was contrary to the clear wording and purpose of article 23(2) and unlawful. As claimed in Garantovaná's second plea in law in the proceedings before the General Court, the fine should therefore be reduced either in compliance with Article 23(2) or in the exercise of the Court's unlimited jurisdiction under article 261 TFUE and article 31 of regulation nº 1/2003.

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

Appeal brought on 25 February 2013 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 13 December 2012 in Case T-103/08 Versalis SpA, formerly Polimeri Europa SpA, Eni SpA v European Commission

(Case C-93/13 P)

(2013/C 114/44)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: V. Di Bucci, G. Conte, R. Striani, Agents)

Other parties to the proceedings: Versalis SpA, formerly Polimeri Europa SpA, Eni SpA

Form of orders sought

The Commission claims that the Court should:

— set aside the judgment under appeal to the extent that it reduces to EUR 106 200 000 the fine imposed by the decision on ENI and Versalis;

— dismiss in its entirety the action brought at first instance;

— order the applicants at first instance to pay the costs incurred both at first instance and on appeal.

Pleas in law and main arguments

1. It is submitted that the General Court erred in law in finding that the Commission had acted in breach of ENI's rights of defence, applying an increase for repeated infringement to the fine imposed jointly and severally on ENI and Versalis for two past infringements committed by companies wholly owned — or almost wholly owned — by ENI, even though the two decisions establishing those infringements had not been addressed to ENI (which therefore had not received a statement of objections in relation to those infringements). Specifically, it is submitted that the General Court disregarded the fact that, with reference to the imputation of repeated infringement, the rights of the defence are guaranteed if, at the time when the Commission declares its intention of imputing repeated infringement, it gives the parties an opportunity to demonstrate that the relevant conditions have not been satisfied. It is also argued that the General Court failed to consider that, by imputing repeated infringement in the case of a subsequent infringement of the competition rules, the Commission is not retroactively penalising the first infringement, but simply drawing the proper inferences from the fact that the same undertaking (economic entity) has committed a new infringement.

2. It is submitted that the General Court exceeded its jurisdiction and acted inconsistently with the principle that the action is confined to the subject-matter as delimited in the application, as reflected in Article 21 of the Statute of the Court and Articles 44(1) and 48(2) of the Rules of Procedure of the General Court, by examining a question of law (relating to the alleged breach of the principle of equal treatment in the calculation of the fine) which had not been raised in the application initiating proceedings.

3. It is submitted that the General Court erred in law in the interpretation and application of the principle of equal treatment with regard to the 'multiplier' for deterrence purposes and proceeded on the basis of false reasoning. Specifically, it is argued that the General Court disregarded the discretion enjoyed by the Commission in the determination of fines in the light of the relevant circumstances, forcing it to carry out a purely mathematical calculation in order to establish the multiplier to be applied to ENI and Versalis. In addition, it is argued that the General Court wrongly requested the Commission to ensure that the percentage increase in the fine for deterrence purposes was in direct proportion to the respective turnovers of the undertakings, rather than that the multipliers, or the fines resulting from application of the multipliers (the multiplied fines), was in direct proportion to the undertakings' worldwide turnover.

Action brought on 27 February 2013 — European Commission v Federal Republic of Germany

(Case C-100/13)

(2013/C 114/45)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Wilms and G. Zavvos, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The European Commission claims that the Court should:

— declare that, in so far as the German authorities use the construction products lists to demand additional approvals for effective market access and the use of construction products, instead of incorporating the required assessment methods and criteria within the framework of the harmonised European standards, the defendant has failed to fulfil its obligations under Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, [1] and, in particular, under Article 4(2) and Article 6(1) thereof;

— order the defendant to pay the costs.

Pleas in law and main arguments

The defendant has failed to fulfil its obligations under Articles 4 and 6 of Directive 89/106/EEC. The use of construction products lists has the result that additional, prior approvals are demanded for effective market access and the use of construction products. Many cases do not concern possible requirements with regard to new characteristics. Rather, requirements which were already established before harmonisation, and which could have and should have been covered by incorporation of the required assessment methods and criteria within the harmonised framework, are adhered to.

[1] OJ 1989 L 40, p. 12.

GENERAL COURT

Judgment of the General Court of (Seventh Chamber, Extended Composition) of 7 March 2013 — Bilbaína de Alquitranes and Others v (ECHA)

(Case T-93/10) ([1])

(REACH — Identification of pitch, coal tar, high temperature as a substance of very high concern — Actions for annulment — Actionable measure — Regulatory act not entailing implementing measures — Direct concern — Admissibility — Equal treatment — Proportionality)

(2013/C 114/46)

Language of the case: English

Parties

Applicants: Bilbaína de Alquitranes (Luchana-Baracaldo, Spain); Cindu Chemicals BV, (Uithoorn, Netherlands); Deza, a.s., (Valašske Meziříčí, Czech Republic); Industrial Química del Nalón, SA, (Oviedo, Spain); Koppers Denmark A/S, (Nyborg, Denmark); Koppers UK Ltd, (Scunthorpe, United Kingdom); Rütgers Germany GmbH, (Castrop-Rauxel, Germany); Rütgers Belgium NV, (Zelzate, Belgium); and Rütgers Poland sp. z o.o., established in Kędzierzyn-Koźle (Poland)) (represented by: initially by K. Van Maldegem, R. Cana, lawyers, and P. Sellar, Solicitor, and subsequently by K. Van Maldegem and R. Cana)

Defendants: European Chemicals Agency (ECHA) (represented by: M. Heikkilä and W. Broere, acting as Agents, assisted by J. Stuyck, lawyer,)

Re:

Action for the partial annulment of the decision of the ECHA published on 13 January 2010 identifying pitch, coal tar, high temperature (EC No 266-028-2) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Bilbaína de Alquitranes, SA, Cindu Chemicals BV, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Rütgers Germany GmbH, Rütgers Belgium NV and Rütgers Poland sp. z o.o. to pay the costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of (Seventh Chamber, Extended Composition) of 7 March 2013 — Rütgers Germany GmbH and Others v ECHA

(Case T-94/10) ([1])

(REACH — Identification of anthracene oil as a substance of very high concern — Actions for annulment — Actionable measure — Regulatory act not entailing implementing measures — Direct concern — Admissibility — Equal treatment — Proportionality)

(2013/C 114/47)

Language of the case: English

Parties

Applicants: Rütgers Germany GmbH, (Castrop-Rauxel, Germany); Rütgers Belgium NV (Zelzate, Belgium); Deza, a.s., (Valašske Meziříčí, Czech Republic); Industrial Química del Nalón, SA (Oviedo, Spain) and Bilbaí (Castrop-Rauxel, Germany)) (represented by: initially by K. Van Maldegem, R. Cana, lawyers, and P. Sellar, Solicitor, and subsequently by K. Van Maldegem and R. Cana,)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä and W. Broere, acting as Agents, assisted by J. Stuyck, lawyer)

Re:

Action for the partial annulment of the decision of the ECHA, published on 13 January 2010, to identify anthracene oil (EC No 292-602-7) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission

Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, in accordance with Article 59 of REACH

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Rütgers Germany GmbH, Rütgers Belgium NV, Deza, a.s., Industrial Química del Nalón, SA and Bilbaína de Alquitranes, SA to pay the costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 7 March 2013 — Cindu Chemicals and Others v ECHA

(Case T-95/10) ([1])

(REACH — Identification of anthracene oil, anthracene low as a substance of very high concern — Actions for annulment — Actionable measure — Regulatory act not entailing implementing measures — Direct concern — Admissibility — Equal treatment — Proportionality)

(2013/C 114/48)

Language of the case: English

Parties

Applicants: Cindu Chemicals BV (Uithoorn, Netherlands), Deza, a.s. (Valašske Meziříčí, Czech Republic), Koppers Denmark A/S (Nyborg, Denmark) and Koppers UK Ltd (Scunthorpe, United Kingdom) (represented initially by: K. Van Maldegem, R. Cana, lawyers, and P. Sellar, Solicitor, and subsequently by K. Van Maldegem and R. Cana)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä and W. Broere, acting as Agents, assisted by J. Stuyck, lawyer)

Intervener in support of the defendant: European Commission (represented initially by: P. Oliver and G. Wilms, subsequently by P. Oliver and E. Manhaeve, acting as Agents, assisted by K. Sawyer, barrister, and thereafter by P. Oliver and E. Manhaeve)

Re:

Action for the partial annulment of the decision of the ECHA, published on 13 January 2010, to identify anthracene oil, anthracene low (EC No 292-604-8) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, in accordance with Article 59 of REACH.

Operative part of the judgment

The Court:

1. *Dismisses the action*

2. *Orders Cindu Chemicals BV, Deza, a.s., Koppers Denmark A/S and Koppers UK Ltd to pay, in addition to their own costs, the costs incurred by the European Chemicals Agency (ECHA);*

3. *Declares that the European Commission is to bear its own costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 7 March 2013 — Rütgers Germany and Others v ECHA

(Case T-96/10) ([1])

(REACH — Identification of anthracene oil (anthracene paste) as a substance of very high concern — Actions for annulment — Actionable measure — Regulatory act not entailing implementing measures — Direct concern — Admissibility — Equal treatment — Proportionality)

(2013/C 114/49)

Language of the case: English

Parties

Applicants: Rütgers Germany GmbH (Castrop-Rauxel, Germany), Rütgers Belgium NV(Zelzate, Belgium), Deza, a.s.(Valašske Meziříčí, Czech Republic), Koppers Denmark A/S(Nyborg, Denmark), Koppers UK Ltd(Scunthorpe, United Kingdom) (represented initially by: K. Van Maldegem, R. Cana, lawyers, and P. Sellar, Solicitor, and subsequently by Van Maldegem and Cana)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä and W. Broere, acting as Agents, assisted by J. Stuyck, lawyer)

Re:

Action for the partial annulment of the decision of the ECHA, published on 13 January 2010, to identify anthracene oil (anthracene paste) (EC No 292-603-2) as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, in accordance with Article 59 of REACH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rütgers Germany GmbH, Rütgers Belgium NV, Deza, a.s., Koppers Denmark A/S and Koppers UK Ltd to pay the costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 8 March 2013 — Mayer Naman v OHIM — Daniel e Mayer (David Mayer)

(Case T-498/10) ([1])

(Community trade mark — Invalidity proceedings — Community figurative mark David Mayer — Earlier national word mark DANIEL & MAYER MADE IN ITALY — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009 — Request for proof of genuine use made for the first time before the Board of Appeal — Out of time — Article 57(2) and (3) of Regulation No 207/2009)

(2013/C 114/50)

Language of the case: Italian

Parties

Applicant: David Mayer Naman (Rome, Italy) (represented initially by S. Sutti, S. Cazzaniga and V. Fedele, and subsequently by V. Fedele and M. Spolidoro, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Daniel e Mayer Srl (Milan, Italy) (represented by: M. Andreolini and A. Parini, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 July 2010 (Case R 413/2009-1) relating to invalidity proceedings between Daniel e Mayer Srl and Mr David Mayer Naman.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr David Mayer Naman to pay the costs.*

([1]) OJ C 346, 18.12.2010.

Judgment of the General Court of 7 March 2013 — Acino v Commission

(Case T-539/10) ([1])

(Medicinal products for human use — Suspension of the placing on the market and withdrawal of medicinal products containing the active ingredient Clopidogrel — Variation of the authorisation to place on the market — Prohibition from placing medicinal products on the market — Regulation (EC) No 726/2004 and Directive 2001/83/EC — Proportionality — Obligation to state reasons)

(2013/C 114/51)

Language of the case: German

Parties

Applicant: Acino AG, formerly Acino Pharma GmbH (Miesbach, Germany) (represented by: R. Buchner and E. Burk, lawyers)

Defendant: European Commission (represented by: initially by: A. Sipos, G. Wilms, B.-R. Killmann and M. Šimerdová, subsequently by: B.-R. Killmann and M. Šimerdová, acting as Agents)

Re:

Application for annulment of the Commission decisions of 29 March and 16 September 2010 relating to the suspension of the placing on the market of medicinal products for human use containing the active ingredient Clopidogrel manufactured on a certain site, to the withdrawal of batches of those medicinal products from the market, to the variation of the authorisation to place those medicinal products on the market and prohibition from placing them on the market

Operative part of the judgment

The Court:

1. *Rules that it is not necessary to give judgment on the application to the extent that it is directed against Commission Decisions C(2010) 2204 and C(2010) 2208 of 29 March 2010, and against Commission Decisions C(2010) 6429 and C(2010) 6436 of 16 September 2010;*

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

3. *Orders Acino AG to pay the costs.*

([1]) OJ C 30, 29.1.2011.

Judgment of the General Court of 7 March 2013 — Schönberger v Parliament

(Case T-186/11) ([1])

(Action for annulment — Right to petition — Petition addressed to the European Parliament — Petition declared admissible — Decision concluding the petition procedure — Measure not subject to review — Inadmissibility)

(2013/C 114/52)

Language of the case: German

Parties

Applicant: Peter Schönberger (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: European Parliament (represented by: E. Waldherr and U. Rösslein, Agents)

Re:

Application for annulment of the decision of the European Parliament's Committee on Petitions of 25 January 2011 which concluded the examination of the petition submitted by the applicant on 2 October 2010 (petition No 1188/2010), which had been declared admissible.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Mr Peter Schönberger to bear his own costs and to pay those incurred by the European Parliament.*

([1]) OJ C 145, 14.5.2011.

Judgment of the General Court of 7 March 2013 — FairWild Foundation v OHIM — Wild (FAIRWILD)

(Case T-247/11) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark FAIRWILD — Earlier Community word mark WILD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 114/53)

Language of the case: German

Parties

Applicant: FairWild Foundation (Weinfelden, Switzerland) (represented by: P. Neuwald and S. Müller, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Rudolf Wild GmbH & Co. KG (Eppelheim, Germany) (represented by: A. Franke, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 March 2011 (Case R 1014/2010-1), relating to opposition proceedings between Rudolf Wild GmbH & Co. KG and FairWild Foundation

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders FairWild Foundation to pay the costs.*

([1]) OJ C 238, 13.8.2011.

Judgment of the General Court of 7 March 2013 — Poland v Commission

(Case T-370/11) ([1])

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Transitional rules for harmonised free allocation of emission allowances from 2013 — Benchmarks to be applied to calculate the allocation of emission allowances — Equal treatment — Proportionality)

(2013/C 114/54)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, B. Majczyna, C. Herma and M. Nowacki, acting as Agents)

Defendant: European Commission (represented by: E. White, K. Herrmann and K. Mifsud-Bonnici, acting as Agents)

Re:

Application for the annulment of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 290, 1.10.2011.

Judgment of the General Court of 7 March 2013 — Di Tullio v Commission

(Case T-39/12 P) ([1])

(Appeal — Civil Service — Members of the temporary staff — Leave for national service — Article 18, first indent, of the Conditions of Employment — Temporal effects of a judgment)

(2013/C 114/55)

Language of the case: French

Parties

Appellant: Roberto di Tullio (Rovigo, Italy) (represented by: initially by S. Woog and T. Bontinck, and subsequently by T. Bontinck, lawyers)

Other party to the proceedings: European Commission (represented by: J. Currall and V. Joris, acting as Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal (Third Chamber) of 29 November 2011 in Case F-119/10 *Di Tullio* v *Commission* [2011] ECR-SC I-A-0000 and II-A-1-0000, and seeking to have that judgment set aside

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Roberto Di Tullio to bear his own costs and to pay those incurred by the European Commission in the context of the present proceedings.*

([1]) OJ C 109, 14.4.2012.

Order of the General Court of 26 February 2013 — Castiglioni v Commission

(Case T-591/10) ([1])

(Action for annulment — Action for damages — Public works contracts — Tender procedure — Construction, restructuring and maintenance of buildings and infrastructure at the Joint Research Centre's Ispra site — Selection criteria — Rejection of the tender submitted by one tenderer and a decision to award the contract to another tenderer — New pleas in law — Action in part manifestly unfounded in law and in part manifestly inadmissible)

(2013/C 114/56)

Language of the case: Italian

Parties

Applicant: Castiglioni Srl (Busto Arsizio, Italy) (represented by: G. Turri, lawyer)

Defendant: European Commission (represented initially by S. Delaude and N. Bambara, and subsequently by S. Delaude and F. Moro, Agents, and by D. Gullo, lawyer)

Re:

First, application for annulment of the Commission's decision of 29 October 2010 rejecting the tender submitted by the applicant in tendering procedure ISM/2010/C05/004/0C concerning a multiple framework agreement for works to construct, restructure and maintain buildings and infrastructure at the Commission's Joint Research Centre's Ispra site, of the decision to award the contract to another tenderer and of the contract notice and, second, an application for damages.

Operative part of the order

1. *The action is dismissed.*

2. *Castiglioni Srl is ordered to pay the costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 55, 19.2.2011.

Action brought on 29 January 2013 — Club Hotel Loutraki and Others v Commission

(Case T-57/13)

(2013/C 114/57)

Language of the case: English

Parties

Applicants: Club Hotel Loutraki (Loutraki, Greece); Vivere Entertainment AE (Athens, Greece); Theros International Gaming, Inc. (Patra, Greece); Elliniko Casino Kerkyras (Athens); Casino Rodos (Rhodes, Greece); and Porto Carras AE (Alimos, Greece) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Commission Decision COMP F3/MC/erg*2012/12.7386 dated 29 November 2012, by which the applicants' complaint lodged on 4 April 2012 concerning the alleged granting of State aid to OPAP by the Greek State was rejected;

— Order that the Commission bear the costs of the proceedings.

Pleas in law and main arguments

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

First plea in law, alleging infringement of the applicants' right to be heard as established in Article 108(2) TFEU by the Commission's failure to initiate a formal investigation procedure according to Article 4(4), 6 and 20 of Regulation No 659/1999, which constitutes a misuse of power.

— The Commission has infringed article 108(2) TFEU and Articles 4 et sec. of the Regulation, to the extent that it substantially conducted a formal investigation procedure without adhering to its formal requirements thus depriving the applicants-complainants, as well as other concerned parties, from their right to be heard.

— The applicants plead to the alternative that their rights of association with the case during the preliminary investigation procedure have been infringed.

Second plea in law, alleging infringement of the obligation to state reasons and the applicants' right to good administration pursuant to Articles 296 TFEU and 41 of the Charter of Fundamental Rights of the European Union respectively.

— By omitting all crucial economic data and figures, the contested decision fails to disclose in a clear and unequivocal fashion the reasoning followed by the Commission in such a way as to allow the applicants' to ascertain the reasons that have lead to the conclusion that the measures in question do not constitute state aid. These deficiencies cannot be justified by reference to the duty to preserve business confidentiality.

— The applicants also contest the confidential nature of the crucial economic sizes.

Third plea in law, alleging infringement of the applicants' right to effective judicial protection provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in Article 47 of the Charter of Fundamental Rights of the European Union.

— For the same reasons set forward under plea No 2, the applicants' right to effective judicial protection is being infringed. The applicants' encounter difficulties in challenging directly the substance of the contested decision, as they are unable to ascertain, by any means, the reasoning behind it, this being solely based on economic data, all of which remains non-disclose.

Fourth plea in law, alleging a manifest error in law in assessing the conformity of the VLT Agreement jointly with the Addendum and in reaching the conclusion that these do not confer an economic advantage on OPAP..

— The conferral of economic advantages, a formal requirement for the existence of state aid, must be assessed within a distinct market and not after joint consideration with other similar measures granted to the same recipient but in a different market, irrespective of whether the alter is comparable to the former. Otherwise, the protection of competition would be highly incomplete.

— At any rate, such a joint assessment may not be conducted on measures to be applied during different time periods.

Action brought on 29 January 2013 — Club Hotel Loutraki e.a. v Commission

(Case T-58/13)

(2013/C 114/58)

Language of the case: English

Parties

Applicants: Club Hotel Loutraki (Loutraki, Greece); Vivere Entertainment AE (Athens, Greece); Theros International Gaming, Inc. (Patra, Greece); Elliniko Casino Kerkyras (Athens); Casino Rodos (Rhodes, Greece); Porto Carras AE (Alimos, Greece); and Kazino Aigaiou AE (Syros, Greece) (represented by: S. Pappas, avocat)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Commission Decision C(2012) 6777 final on the case of State aid SA 33988 (2011/N) dated 3 October 2012;

— Order that the Commission bear the costs of the proceedings.

Pleas in law and main arguments

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

First plea in law, alleging infringement of the applicants' right to be heard as established in Article 108(2) TFEU by the Commission's failure to initiate a formal investigation procedure according to Article 4(4), 6 and 20 of Regulation No 659/1999, which constitutes a misuse of power.

— The Commission has infringed article 108(2) TFEU and Articles 4 et sec. of the Regulation, to the extent that it substantially conducted a formal investigation procedure without adhering to its formal requirements thus depriving the applicants-complainants, as well as other concerned parties, from their right to be heard.

Second plea in law, alleging infringement of the obligation to state reasons and the applicants' right to good administration pursuant to Articles 296 TFEU and 41 of the Charter of Fundamental Rights of the European Union respectively.

— By omitting all crucial economic data and figures, the contested decision fails to disclose in a clear and unequivocal fashion the reasoning followed by the Commission in such a way as to allow the applicants' to ascertain the reasons that have lead to the conclusion that the measures in question do not constitute state aid. These deficiencies cannot be justified by reference to the duty to preserve business confidentiality.

— The applicants also contest the confidential nature of the crucial economic sizes.

Third plea in law, alleging infringement of the applicants' right to effective judicial protection provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in Article 47 of the Charter of Fundamental Rights of the European Union.

— For the same reasons set forward under plea No 2, the applicants' right to effective judicial protection is being infringed. The applicants' encounter difficulties in challenging directly the substance of the contested decision, as they are unable to ascertain, by any means, the reasoning behind it, this being solely based on economic data, all of which remains non-disclose.

Fourth plea in law, alleging a manifest error in law in assessing the conformity of the VLT Agreement jointly with the Addendum and in reaching the conclusion that these do not confer an economic advantage on OPAP..

— The conferral of economic advantages, a formal requirement for the existence of state aid, must be assessed within a distinct market and not after joint consideration with other similar measures granted to the same recipient but in a different market, irrespective of whether the alter is comparable to the former. Otherwise, the protection of competition would be highly incomplete.

— At any rate, such a joint assessment may not be conducted on measures to be applied during different time periods.

Appeal brought on 30 January 2013 by BT against the order of the Civil Service Tribunal of 3 December 2012 in Case F-45/12 BT v Commission

(Case T-59/13 P)

(2013/C 114/59)

Language of the case: English

Parties

Appellant: BT (Bucarest, Romania) (represented by: N. Visan, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— Cancel the EU Civil Service Tribunal's Order of 3 December 2012 in case F-45/12;

— Re-judge the case and accept the application made by the applicant/appellant; and

— Make the defendant/respondent pay for the judgment costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on seven pleas in law.

1. First plea in law, alleging breaching one of the principles that governs the administrative procedure, the principle of the active role, since the Civil Service Tribunal considered that the application did not contain pleas in law, without making a verification of its own motion on the legality of the decision questioned in the first court that would not limit to the reasons mentioned by the applicant.

2. Second plea in law, alleging breaching article 6-line 1 and article 47-lines 1&2 from the Charter of Fundamental Rights of the European Union. Breach of the principle of 'access to the court' and the principle of impartiality of the Tribunal since the Civil Service Tribunal rejected the action of the appellant as manifestly inadmissible without giving her the possibility to make-right/complete the application, a right provisioned for and recognized in the legislation of any European country but also of the European courts (for example the European Court of Human Rights).

3. Third plea in law, alleging breaching the right of 'access to the court' that has also materialized by the non-acceptance by the Tribunal of the right of lodging a reply to the defendant's defense –and this while the applicant/appellant has expressly requested the second exchange of pleadings. Non-granting this right (to lodge a reply) has deprived the appellant from the chance to make right the irregularity claimed by the Tribunal — and this at a time when the appellant could no longer lodge a new action that would comply with the legal requirements since the deadline to introduce an action had expired (article 78 of the Rules of Procedure of the Civil Service Tribunal).

4. Fourth plea in law, alleging breaching the principle referring to the right to sustain the case before a court and breaching the principle of the public character of the procedure, since there has not been an open court; this principle is provided in the Rules of Procedure of the Civil Service Tribunal and by article 6-line 1/European Convention on Human Rights.

5. Fifth plea in law, alleging breaching the principle of equity of the procedure since the Civil Service Tribunal has not heard the appellant regarding the inadmissibility cause of her action (article 6-line 1/European Convention on Human Rights).

6. Sixth plea in law, alleging breaching article 21 first paragraph of the Statute of the Court of Justice and article 44 line (1) letter (c) from the Rules of Procedure of the Court of First Instance since the Civil Service Tribunal has applied in reality a 'rule of crystallizing the legal proceedings' considering that the application did not contain pleas in law.

7. Seventh plea in law, alleging that ordering the appellant to pay the judgment costs when the Tribunal has not adjudicated on the substance of the case, at a time when the appellant is at present a social case following the consequences of ending the employment contract with the European Commission infringes Article 89 point (6) of the Rules of Procedure of the Civil Service Tribunal 'where a case does not proceed to judgment, the costs shall be in the discretion of the Tribunal'.

Action brought on 11 February 2013 — InterMune UK and Others v EMA

(Case T-73/13)

(2013/C 114/60)

Language of the case: English

Parties

Applicants: InterMune UK Ltd (London, United Kingdom); InterMune, Inc. (Brisbane, United States); and InterMune International AG (Muttenz, Switzerland) (represented by: I. Dodds-Smith and A. Williams, Solicitors, T. de la Mare, Barrister, and F. Campbell, lawyer)

Defendant: European Medicines Agency

Form of order sought

The applicants claim that the Court should:

— Annul the decision communicated by the defendant to the applicants on 15 January 2013 to release certain information under Regulation (EC) No 1049/2001 ([1]), insofar as that decision concerns the release of information previously submitted by the applicants to the defendant which is not already in the public domain; and

— Order the defendant to pay the applicants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has failed properly to engage in the balancing exercise which it is required to conduct under Article 4.2 of Regulation (EC) No 1049/2001, in the sense of assessing whether there is, in fact, any public interest in disclosure of the disputed information which overrides the need to protect the applicants' commercial interests from the substantial damage which would be caused by such disclosure.

2. Second plea in law, alleging that the defendant has failed properly to take into account other important factors relevant to the balancing exercise required by law, including:

   — the requirements of specific EU legislation (notably Regulation (EC) No 726/2004 ([2]), in particular its Article 14.11);

   — the interpretative obligations placed upon all EU institutions when construing EU legislation by Article 39.3 of TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights);

   — the fundamental rights to property and to privacy, as protected by the Charter of Fundamental Rights of the European Union, assessed in light of a careful consideration of all relevant facts so as to enable a fact-sensitive proportionality analysis; and

   — the duty to follow its own published guidance and policies on the importance of protecting commercially confidential information.

3. Third plea in law, alleging that if the defendant had properly carried out the required balancing exercise, and properly considered all relevant factors, the only lawful, proportionate and/or reasonable conclusion would have been that the disputed information should not be released.

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

([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1)

Action brought on 15 February 2013 — United Kingdom v ECB

(Case T-93/13)

(2013/C 114/61)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: K. Beal, QC, and E. Jenkinson, agent)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— Partially annul the Decision of the European Central Bank of 11 December 2012 amending decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (Decision ECB/2012/31) (OJ 2013 L 13, p. 8.);

— Partially annul the Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (Guideline ECB/2012/27) (OJ 2013 L 30, p. 1);

— Order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB lacked competence to publish the contested acts, either at all or alternatively without recourse to the promulgation of a legislative instrument such as a Regulation, adopted either by the Council or alternatively by the ECB itself;

2. Second plea in law, alleging that contested acts either *de jure* or *de facto* impose a residence requirement on Central Clearing Counterparties ('CCPs') that wish to undertake clearing or settlement operations in the euro currency whose daily trades exceed a certain volume. Further or alternatively they restrict or impede the nature and/or extent of services or capital which may be supplied to CCPs located in non-euro area Member States. The contested acts infringe all or any of Articles 48, 56 and/or 63 TFEU, in that:

   — CCPs established in non-euro area Member States, such as the United Kingdom, will be obliged to relocate their centres of administration and control to Member States which are members of the Eurosystem. They will also be obliged to re-incorporate as legal persons recognised in the domestic law of another Member State;

   — In the event that such CCPs do not relocate as required, they will be precluded from access to the financial markets in the Eurosystem Member States, either on the same terms as CCPs established in those territories, or at all;

   — Such non-resident CCPs will not be entitled to facilities offered by the ECB or the National Central Banks ('NCBs') of the Eurosystem, either on the same terms or at all;

   — As a result, the ability of such CCPs to offer clearing or settlement services in the euro currency to customers in the Union will be restricted or even prohibited in its entirety.

3. Third plea in law, alleging that the contested acts infringe Articles 101 and/or 102 TFEU, read in conjunction with Article 106 TFEU and Article 13 TEU, since:

   — They effectively require all clearing operations proceeding in the euro currency exceeding a certain level to be conducted by CCPs established in a euro area Member State;

   — They effectively direct the ECB and/or euro-area and/or NCBs not to supply euro currency reserves to CCPs established in non-euro area Member States if they exceed the thresholds set in the decision.

4. Fourth plea in law, alleging that the requirement for CCPs established in non-euro area Member States to adopt a different corporate personality and domicile is direct or indirect discrimination on grounds of nationality. It also offends the general EU principle of equality, since CCPs established in different Member States are subject to disparate treatment without any objective justification for the same.

5. Fifth plea in law, alleging that the contested acts infringe relevant provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4July 2012 on OTC derivatives, central counterparties and trade repositories (OJ 2012 L 201, p. 1).

6. Sixth plea in law, alleging that contested acts infringe all or any of Articles II, XI, XVI and XVII of the General Agreement on Trade in Services (GATS).

7. Seventh plea in law, alleging that, without assuming the burden of establishing that a public interest justification for such restrictions is not available (the onus being on the ECB to advance its case for a derogation if it so chooses), the United Kingdom contends that any public policy justification advanced by the ECB would not satisfy the requirement of proportionality, since less restrictive means of ensuring control over financial institutions resident within the Union but outside the euro area are available.

Appeal brought on 17 February 2013 by Ioannis Ntouvas against the judgment of the Civil Service Tribunal of 11 December 2012 in Case F-107/11 Ntouvas v ECDC

(Case T-94/13 P)

(2013/C 114/62)

Language of the case: English

Parties

Appellant: Ioannis Ntouvas (Agios Stefanos, Greece) (represented by: V. Kolias, lawyer)

Other party to the proceedings: European Centre for Disease Prevention and Control (Stockholm, Sweden)

Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the judgment of the Civil Service Tribunal of 11 December 2012 in Case F-107/11 *Ntouvas* v *ECDC* dismissing the action for annulment of the appellant's appraisal report for 2010 and ordering him to pay all costs;

— Annul the decision contested at first instance; and

— Order the defendant to pay all costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

In support of the appeal, the appellant relies on fourteen pleas in law.

1. First plea in law, alleging infringement of a rule of law relating to burden, and administration, of proof, insofar as the Civil Service Tribunal granted the respondent's request for an extension of the time-limit for lodging its defence at first instance although the respondent had not provided evidence of the circumstances it claimed justified such extension.

2. Second plea in law, alleging substantial error in the finding of fact, insofar as the Civil Service Tribunal found that the date of service, on the respondent, of the application at first instance was 7 November 2011 and not 4 November 2011.

3. Third plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal erroneously read, and appraised, the documents in the file disproving the arguments advanced by the respondent in support of its request for an extension of the time-limit for lodging its defence at first instance.

4. Fourth plea in law, alleging erroneous legal classification of fact, insofar as the Civil Service Tribunal erroneously considered as 'exceptional' the circumstances which the respondent invoked when requesting the extension of the time-limit for lodging its defence at first instance.

5. Fifth plea in law, alleging error in the finding, subsidiarily in the legal classification of fact, insofar as the Civil Service Tribunal erroneously found that the appellant had not applied for a judgment by default, subsidiarily that his statements did not constitute an application for a judgment by default.

6. Sixth plea in law, alleging erroneous appraisal of documents on the case-file, insofar as the Civil Service Tribunal held that two positions in the respondent's services were significantly different from each other.

7. Seventh plea in law, alleging error in the establishment of the burden of proof, insofar as the Civil Service Tribunal rejected, for lack of evidence, the appellant's plea that at least one of the members of the respondent's Joint Committee for Appraisals was in conflict of interest, although said evidence consisted in documents identified in the application at first instance and readily available to the respondent; in the alternative, the Tribunal failed to observe its duty, as an administrative court of law adjudicating an employment dispute, of ordering the necessary measures of organisation of procedure in order to obtain said documents. Moreover, the Tribunal misread the legal basis of the appellant's plea and misinterpreted Article 9(6) of the Implementing rule No 20 on Appraisals ('the Implementing rule'), adopted by the director of the ECDC on 17 April 2009.

8. Eighth plea in law, alleging misinterpretation of, and failure to examine, a plea in law alleging the lack of rules of procedure for the ECDC Joint Committee for Appraisals.

9. Ninth plea in law, alleging distortion of evidence, subsidiarily legal classification of fact, insofar as the Civil Service Tribunal considered unsubstantiated the appellant's plea that the ECDC Joint Committee had failed to verify the elements it was obliged to verify under Article 9(4) of the Implementing rule.

10. Tenth plea in law, alleging erroneous appraisal, subsidiarily legal classification, of fact, insofar as the Civil Service Tribunal considered sufficient the reasoning of the opinion of the ECDC Joint Committee for Appraisals.

11. Eleventh plea in law, alleging misinterpretation of a plea in law, and error in the legal classification of fact, insofar as the Civil Service Tribunal misinterpreted the appellant's plea of insufficient reasoning of the opinion of the respondent's Joint Committee for Appraisals as being one of manifest error of assessment; and viewed said reasoning as sufficient.

12. Twelfth plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal held that the contested appraisal report was not vitiated by a manifest error of assessment as to the appellant's efficiency in terms of workload.

13. Thirteenth plea in law, alleging erroneous legal classification of fact, insofar as the Civil Service Tribunal considered proportional the criticism in the contested appraisal report, even though the respondent had not, during the appraisal period, brought to the appellant's notice the supposed problems in his conduct.

14. Fourteenth plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal viewed the appellant's workload as being less significant than it actually was.

Action brought on 20 February 2013 — Toshiba v Commission

(Case T-104/13)

(2013/C 114/63)

Language of the case: English

Parties

Applicant: Toshiba Corp. (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, J. Jourdan, A. Schulz and P. Berghe, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Article 1(2)(d) of the Commission's Decision of 5 December 2012, in Case COMP/39.437 — *TV and Computer Monitor Tubes*;

— Annul Article 1(2)(e) of the Commission's Decision of 5 December 2012, in Case COMP/39.437 — *TV and Computer Monitor Tubes*;

— Annul Article 2(2)(g) of the contested decision or alternatively reduce the fine as the General Court finds appropriate;

— Annul Article 2(2)(h) of the contested decision or alternatively annul Article 2(2)(h) in so far as Toshiba is held jointly and severally held liable or alternatively reduce the fine as the General Court finds appropriate;

— Make such other order as may be appropriate in the circumstances of the case;

— Award the applicant its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 16 May 2000 until 11 April 2002.

2. Second plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 12 April 2002 until 31 March 2003;

3. Third plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 1 April 2003 until 12 June 2006.

4. Fourth plea in law, alleging that the contested decision erred in finding Toshiba Corporation jointly and severally liable for Matsushita Toshiba Picture Display Co., Ltd. 's ('MTPD') participation in the infringement for the period 1 April 2003 until 12 June 2006.

5. Fifth plea in law, alleging, in the alternative to the fourth plea, that the contested decision erred in finding MTPD liable for participating in the infringement for the period 1 April 2003 until 12 June 2006.

6. Sixth plea in law, alleging that the contested decision erred in imposing a fine in Articles 2(2)(g) and 2(2)(h) or, in the alternative, erred in calculating these fines.

Action brought on 23 February 2013 — VTZ and Others v Council

(Case T-108/13)

(2013/C 114/64)

Language of the case: English

Parties

Applicants: Volžskij trubnyi zavod OAO (VTZ OAO) (Volzhsky, Russia); Taganrogskij metallurgičeskij zavod OAO (Tagmet OAO) (Taganrog, Russia); Sinarskij trubnyj zavod OAO (SinTZ OAO) (Kamensk-Uralsky, Russia); and Severskij trubnyj zavod OAO (STZ OAO) (Polevskoy, Russia) (represented by: J. Bellis, F. Di Gianni and G. Coppo, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Council Implementing Regulation (EU) No 1269/2012 of 21 December 2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in, inter alia, Russia, following a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 insofar as it includes the sales referred to in paragraphs 23-33 of the Contested Regulation in the scope of the review investigation;

— As a consequence of the partial annulment requested above, correct the rate of the anti-dumping duty applicable to TMK group from 28,7% to 13,6%; and

— Order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

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

With the first plea in law, the applicants submit that the Council unlawfully relied upon criteria other than those set out in the wording of the relevant customs provisions to determine the classifications of the pipes referred to in paragraphs 23-33 of the contested regulation.

With the second plea in law, the applicants submit that the specific grounds relied upon by the Council to conclude that the pipes referred to in paragraphs 23-33 of the contested regulation do not fall under CN code 7304 59 10 are flawed.

With the third plea in law, the applicants submit that, in light of the specific circumstances of the case, the mere fact that the pipes referred to in paragraphs 23-33 of the contested regulation were actually used in the manufacture of tubes and pipes with other cross-sections and wall-thickness proves that they fall under CN code 7304 59 10.

Appeal brought on 22 February 2013 by Maria Concetta Cerafogli against the judgment of the Civil Service Tribunal of 12 December 2012 in Case F-43/10 Cerafogli v ECB

(Case T-114/13 P)

(2013/C 114/65)

Language of the case: English

Parties

Appellant: Maria Concetta Cerafogli (Frankfurt am Main, Germany) (represented by: L. Levi, lawyer)

Other party to the proceedings: European Central Bank

Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the judgment under appeal;

— Consequently:

— annul the decision of the European Central Bank dated 24 November 2009 rejecting the claims of the appellant of discrimination and attempts to her dignity because of the behaviour of her management and, if necessary, the annulment of the decision dated 24 March 2010 rejecting the special appeal;

— give the appellant the benefit of her requests as stated in her administrative review and more in particular:

— stop any form of discrimination and mobbing against the applicant be it in verbal acts and in working assignments and arrangements;

— receive the written withdrawal by Mr G. of his offensive and threatening statements;

— in any case, order the compensation of the moral and material prejudice suffered evaluated *ex aequo et bono* at 50 000 EUR (moral prejudice) and at 15 000 EUR (material prejudice);

— order that the ECB provides the full internal administrative inquiry report with all its annexes, including the minutes of the hearings. Furthermore, that the ECB provides also all communication between the inquiry panel and/or lead inquirer and the Executive Board and/or the ECB President;

— order the summoning of the previous Social Counselor of the defendant as a witness.

— order the defendant to pay all the costs of both the appeal and of the first instance.

Pleas in law and main arguments

In support of the appeal, the appellant relies on five pleas in law.

1. First plea in law, alleging violation of the rights of defence, *dénaturation* of the file, violation of the principle of proportionality, violation of Article 20 of Regulation (EC) No 45/2001 ([1]) and violation of the right to an effective legal remedy. In this respect, the appellant states that the EU Civil Service Tribunal ('CST') erred in law and infringed her rights of defence by considering that she may not rely on the ECB's obligation to observe the rights of the defence. Indeed, the decision rejecting her request for assistance significantly affected the appellant's interests and, in addition, the procedure was 'initiated' against the appellant in the meaning specified by the case law (*Commission v Lisrestal*). Given the failure to allow the appellant to take cognizance of the file, the appellant was also unable to defend her rights with regard to the file in satisfactory conditions before the European judicature, with the result that her right to an effective legal remedy has also been infringed.

2. Second plea in law, alleging violation of the right to an effective legal remedy and of the duty of the judge to state reasons. In this respect, the appellant asked the CST to order the ECB to produce, pursuant to Article 55 of the CST Rules of Procedure, the file of the inquiry including the annexes to the inquiry report and the minutes of the hearings. The challenged judgment refused to take these measures of organization of the procedure in violation of the appellant's rights to an effective legal remedy and to the duty of the judge to state reasons.

3. Third plea in law, alleging violation of the mandate of the panel and of the duty of assistance, as the findings of both reviews (i.e. the inquiry and the CST) is very limited since it proved only that there were colleagues who reported the negative statements on the appellant and her work. But this missed the scope of her request of assistance — and therefore of the mandate of the panel — notably to assess the findings on the negative comments on her. Furthermore, the contested judgment ignores the unfairness of this situation, notably that the appellant was not informed of the reported negative views, thus was put in a helpless situation, whereby her reputation was damaged, and she could not defend herself.

4. Fourth plea in law, alleging violation of Article 6(5) of the Administrative Circular 1/2006 of the Executive Board of the ECB of 21 March 2006 on internal administrative inquiries as the challenged judgment wrongly considered that the communication of the inquiry report together with the whole file would only be in the communication to the person conducting the inquiry.

5. Fifth plea in law, alleging violation of the manifest error of assessment and of the duty of the judge to state reasons, as the definition of the manifest error of assessment given by the challenged judgment is not compliant with the case law of the General Court. Also, the contested judgment violated its control of the manifest error.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1)

Action brought on 22 February 2013 — Dennekamp v Parliament

(Case T-115/13)

(2013/C 114/66)

Language of the case: English

Parties

Applicant: Gert-Jan Dennekamp (Giethoorn, Netherlands) (represented by: O. Brouwer and T. Oeyen, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Parliament dated 11 December 2012 refusing to grant access to (i) all documents that show which current Members of the European Parliament (MEPs) are members of the Additional Pension Scheme (the Pension Scheme), (ii) a list of the names of MEPs who were members of the Pension Scheme after September 2005, and (iii) a list of the names of the present members of the Pension Scheme for whom Parliament pays a monthly contribution. This decision was communicated to the applicant on 12 December 2012 in a letter bearing the reference A(2012)13180; and

— Order the Parliament to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Articles 11 and 42 of the Charter of Fundamental Rights of the European Union; error of law in the application of Article 4(1)(b) Regulation (EC) No 1049/2001 [1] in conjunction with Article 8(b) Regulation (EC) No 45/2001 [2], as the contested decision unduly restricts the scope of the right to receive and impart information contained in Article 11 of the Charter of Fundamental Rights of the European Union (the Charter), and the right of access to official documents contained in the Charter's Article 42, by misapplying Article 4(1)(b) Regulation (EC) No 1049/2001, in conjunction with Article 8(b) Regulation (EC) No 45/2001, in that:

   — Firstly, the Parliament was wrong in considering that the applicant did not submit express and legitimate reasons showing the necessity for the personal data, included in the requested documents, to be transferred;

   — Secondly, the Parliament wrongly considered that the information on membership in the Pension Scheme falls into the private sphere of the MEPs concerned; and

   — Thirdly, the Parliament erred in law when considering that the legitimate interest of the MEPs concerned prevail over the necessity of the data transfer.

2. Second plea in law, alleging that the Parliament, as a result of its errors of law, did not fulfil its obligation to state sufficient and adequate reasons for the contested decision, thereby breaching the obligation to state adequate reasons under Article 296 TFEU.

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

[2] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1)

Action brought on 4 March 2013 — Italy v Commission

(Case T-125/13)

(2013/C 114/67)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri and S. Fiorentino, avvocati dello Stato)

Defendant: European Commission

Forms of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2012) 9448 final of 19 December 2012, notified on 20 December 2012, relating to the capital injections provided by SEA SpA in favour of SEA Handling SpA;

— order the Commission to pay the costs

Pleas in law and main arguments

By the present action, the Italian Republic contests the Commission decision declaring that the measures put in place by SEA SpA, the concession-holder responsible for the management of Milan Malpensa and Milan Linate airports, in favour of SEA Handling SpA, the company responsible for the operation of groundhandling services at those airports — measures which, in essence, consist in repeated capital injections to set off operating losses — constitutes State aid incompatible with the internal market.

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

1. First plea in law: breach of the principles of good administration and legal certainty.

   — It is submitted in that regard that the contested decision, which also gives rise rise to a legitimate expectation on the part of the aid recipients concerning the legality of the measures, was adopted in breach of the principles of good administration and legal certainty, both because of the excessive duration of the whole procedure, in particular the preliminary investigation, and because of the doubts arising in relation to the findings and approaches adopted by the Commission in the course of that procedure.

2. Second plea in law: breach of essential procedural requirements, in the form of breach of the right to be heard and failure to undertake adequate preliminary inquiries.

   — It is submitted in that regard that the contested decision was adopted in breach of the parties' right to be heard and the rights of the defence, as a result of the fact that the Commission extended the scope of the examination to cover a period falling outside the scope of the decision opening a formal investigation.

3. Third plea in law: infringement of Article 107 TFEU and Article 108(3) TFEU and erroneous reconstruction of the facts, as well as failure to state adequate reasons for imputing the measures at issue to the public authorities.

   — According to the Italian Republic, the contested decision errs in finding the measures at issue to be imputable to the public authorities and fails, in any event, to provide adequate evidence or sufficient reasoning on that point.

4. Third plea in law: infringement of Article 107 TFEU and Article 108(3) TFEU and erroneous reconstruction of the facts, as well as failure to state adequate reasons for imputing the measures at issue to the public authorities.

   — It is submitted in that regard that the contested decision errs in finding that SEA's conduct was not that of a prudent trader in a market economy and fails, in any event, to provide adequate evidence or sufficient reasoning on that point.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 26 February 2013 — Labiri v EESC

(Case F-124/10) [1]

(Civil Service — Duty to provide assistance — Article 12a of the Staff Regulations — Psychological harassment — Administrative inquiry)

(2013/C 114/68)

Language of the case: French

Parties

Applicant: Vassilliki Labiri (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Economic and Social Committee (represented by: M. Arsène and L. Camarena Januzec, acting as Agents, and M. Troncoso Ferrer and F.-M. Hislaire, lawyers)

Re:

Civil service — Application for annulment of the decision to terminate without further action the administrative inquiry initiated as a result of the complaint of psychological harassment lodged by the applicant.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 18 January 2010 of the Secretary General of the European Economic and Social Committee;*

2. *Orders the European Economic and Social Committee to bear its own costs and to pay those incurred by Ms Labiri.*

[1] OJ C 63, 26.2.2011, p. 34.

Judgment of the Civil Service Tribunal (First Chamber) of 26 February 2013 — Bojc Golob v Commission

(Case F-74/11) [1]

(Civil service — Member of the contract staff — Contract of indefinite duration — Termination)

(2013/C 114/69)

Language of the case: English

Parties

Applicant: Aleksandra Bojc Golob (Domžale, Slovenia) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Defendant: European Commission (represented by: G. Berscheid and D. Martin, acting as Agents)

Re:

Civil Service — Application for the annulment of the decision of the AACC terminating the applicant's contract of indefinite duration.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Aleksandra Bojc Golob must bear her own costs and orders her to pay the costs incurred by the European Commission.*

[1] OJ C 290, 1.10.2011, p. 20.

Order of the Civil Service Tribunal (First Chamber) of 21 February 2013 — Marcuccio v Commission

(Case F-113/11) [1]

(Civil service — Article 34(1) and (6) of the Rules of Procedure — Application lodged by fax within the time-limit for bringing proceedings — Lawyer's hand-written signature different from that on the original application received by post — Action lodged out of time — Manifestly inadmissible)

(2013/C 114/70)

Language of the case: Italian

Parties

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

Defendant: European Commission (represented by: C. Berardis-Kayser and J. Banquero Cruz, Agents, and A. Dala Ferro, lawyer)

Re:

Civil service — Application for annulment of the Commission's implied decision rejecting the applicant's claim for payment of arrears of remuneration owing for the month of August 2010.

Operative part of the order

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

2. *Mr Marcuccio is ordered to bear his own costs and to pay the costs incurred by the European Commission.*

(1) OJ C 25, 28.1.2012, p. 69.

Action brought on 22 January 2013 — ZZ v Commission

(Case F-7/13)

(2013/C 114/71)

Language of the case: French

Parties

Applicant: ZZ (represented by: E. Boigelot, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision rejecting the claim against the decision taken in response to the applicant's request, when he was posted to the Commission Delegation in Antananarivo, Madagascar, for compensation for the difficulties encountered when taking up residence in that city.

Form of order sought

— Annul the decision taken by the Head of Unit within the Directorate-General for Human Resources and Security, concerning the 'claim under Article 90(1) of the Staff Regulations — 0/867/11 — seeking compensation for the difficulties encountered when taking up residence in Antananarivo', under which that claim is rejected on the ground that 'the conditions required for such compensation for the non-pecuniary and psychological damage' were not met since it is apparent from the facts that 'the Delegation did all it could to resolve the problems encountered, by having additional work done in the initial accommodation and by suggesting to you, during that work, possible alternative accommodation';

— Annul the response to the applicant's claim by which the Appointing Authority rejected his claim on the grounds that (i) 'there has been no administrative error, and even less unlawful conduct, by the administration in this case', that (ii) the applicant 'has not shown even the slightest evidence of the alleged non-pecuniary and psychological damage' and that (iii) 'the contested decision dealt at length with the evidence of the administration's goodwill towards the applicant' and 'in accordance with settled case-law, a failure to state reasons can be remedied by an adequate statement of reasons supplied at the stage of the response to the claim', which is the case here;

— Order the Commission to pay, in respect of compensation for the applicant's non-pecuniary and psychological damage, provisionally assessed, reserving the right to increase or decrease it during the proceedings, at EUR 30 000;

— Order the Commission to pay the costs.

Action brought on 19 February 2013 — ZZ v Commission

(Case F-18/13)

(2013/C 114/72)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision to calculate the accrual of pension rights acquired before entry into service on the basis of the new GIP.

Form of order sought

— annulment of the decision of 17 January 2012 on the calculation of the accrual of his pension rights acquired before his entry into service at the Commission;

— where necessary, annulment of the decision to reject his complaint of 13 November 2012 seeking the application of the GIP and actuarial rates applicable at the time of his application for transfer of his pension rights;

— order the Commission to pay the costs.

Action brought on 26 February 2013 — ZZ v Commission

(Case F-20/13)

(2013/C 114/73)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision rejecting the applicant's claim for compensation for the delay in establishing his evaluation reports for 2008 and 2009.

Form of order sought

— annulment of the European Commission's decision implicitly rejecting the applicant's claim of 13 January 2012;

— where necessary, annulment of the decision of the appointing authority of 20 November 2012 rejecting the complaint submitted by the applicant on 24 July 2012;

— grant the applicant the sum fixed *ex aequo et bono* and provisionally at one euro for material loss sustained and at one euro for non-material loss sustained;

— order the European Commission to pay the costs.

Order of the Civil Service Tribunal of 27 February 2013 — Kimman v Commission

(Case F-16/12) ([1])

(2013/C 114/74)

Language of the case: French

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

([1]) OJ C 138, 12.5.2012, p. 33.

Order of the Civil Service Tribunal of 28 February 2013 — M v EMA

(Case F-47/12) ([1])

(2013/C 114/75)

Language of the case: French

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

([1]) OJ C 227, 28.7.2012, p. 37.

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