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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 141/01)

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

OJ C 129, 4.5.2013

Past publications

OJ C 123, 27.4.2013

OJ C 114, 20.4.2013

OJ C 108, 13.4.2013

OJ C 101, 6.4.2013

OJ C 86, 23.3.2013

OJ C 79, 16.3.2013

These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by a new Member of the General Court

(2013/C 141/02)

Following his appointment as Judge at the General Court for the period from 9 March 2013 to 31 August 2013 by decision of the Representatives of the Governments of the Member States of the European Union of 6 March 2013, [1] Mr Wetter took the oath before the Court of Justice on 18 March 2013.

[1] OJ L 65 of 8.3.2013, p. 22

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 14 March 2013 (request for a preliminary ruling from the Magyar Köztársaság Legfelsőbb Bírósága — Hungary) — Allianz Hungária Biztosító Zrt, Generali-Providencia Biztosító Zrt, Gépjármű Márkakereskedők Országos Szövetsége, Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft, Paragon-Alkusz Zrt., the legal successor of the Magyar Opelkereskedők Bróker Kft v Gazdasági Versenyhivatal

(Case C-32/11) ([1])

(Competition — Article 101(1) TFEU — Application of similar national regulations — Jurisdiction of the Court — Bilateral agreements between an insurance company and car repairers relating to hourly repair charges — Charges paid depending on the number of insurance contracts concluded for the insurance company by those repairers in their capacity as brokers — Concept of 'agreement having as its object the restriction of competition')

(2013/C 141/03)

Language of the case: Hungarian

Referring court

Magyar Köztársaság Legfelsőbb Bírósága

Parties to the main proceedings

Applicants: Allianz Hungária Biztosító Zrt, Generali-Providencia Biztosító Zrt, Gépjármű Márkakereskedők Országos Szövetsége, Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft, Paragon-Alkusz Zrt., the legal successor of the Magyar Opelkereskedők Bróker Kft

Defendant: Gazdasági Versenyhivatal

Re:

Request for a preliminary ruling — Magyar Köztársaság Legfelsőbb Bírósága — Interpretation of Article 101(1) TFEU — Bilateral agreements between an insurance company and certain car repairers under which the hourly repair charge paid by the insurance company to those repairers depends on the number and scale of insurance policies taken out with the insurance company by the repairer, as the insurance broker for the insurance company in question — National legislation relying on a concept analogous to a concept of Union law — Concept of 'agreements which have as their object the prevention, restriction or distortion of competition'

Operative part of the judgment

Article 101(1) TFEU must be interpreted as meaning that agreements whereby car insurance companies come to bilateral arrangements, either with car dealers acting as car repair shops or with an association representing those dealers, concerning the hourly charge to be paid by the insurance company for repairs to vehicles insured by it, stipulating that that charge depends, inter alia, on the number and percentage of insurance contracts that the dealer has sold as intermediary for that company, can be considered to be a restriction of competition 'by object' within the meaning of that provision, where, following a concrete and individual examination of the wording and aim of those agreements and of the economic and legal context of which they form a part, it is apparent that they are, by their very nature, injurious to the proper functioning of normal competition on one of the two markets concerned.

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (Tenth Chamber) of 14 March 2013 — European Commission v Ireland

(Case C-108/11) ([1])

(Failure of a Member State to fulfil obligations — VAT — Reduced rate — Supply of greyhounds and horses not intended for the preparation or production of foodstuffs for human or animal consumption, hire of horses and insemination services — Directive 2006/112/EC — Infringement of Articles 96, 98, read in conjunction with Annex III, and 110)

(2013/C 141/04)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal and C. Soulay, Agents)

Defendant: Ireland (represented by: E. Creedon, D. O'Hagan, M. Collins and N. Travers, Agents)

Intervener in support of the defendant: French Republic (represented by: G. de Bergues and J.S. Pilczer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 96, 98 (in conjunction with Annex III) and Article 110 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation applying a reduced VAT rate to supplies of greyhounds and horses not normally intended for the preparation of foodstuffs, to the hire of horses and to certain insemination services

Operative part of the judgment

The Court:

1. *Declares that, in applying a reduced rate of value added tax of 4.8% to supplies of greyhounds and horses not intended for the preparation of foodstuffs, to the hire of horses and certain insemination services, Ireland has failed to fulfil its obligations under Articles 96, 98, read in conjunction with Annex III, and 110 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

2. *Orders Ireland to pay the costs;*

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

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (Fourth Chamber) of 14 March 2013 — European Commission v French Republic

(Case C-216/11) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/12/EEC — Excise duties — Tobacco products acquired in one Member State and transported to another Member State — Purely quantitative assessment criteria — Article 34 TFEU — Quantitative restrictions on imports)

(2013/C 141/05)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Article 34 TFEU and of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), in particular Articles 8 and 9 thereof — National legislation imposing financial sanctions, above certain thresholds, in relation to the holding, for private purposes, of tobacco products acquired in one Member State and transported to another — Purely quantitative assessment criteria — Quantitative restrictions on imports

Operative part of the judgment

The Court:

1. *Declares that by using a purely quantitative criterion to assess whether the holding by private individuals of manufactured tobacco from another Member State is of a commercial nature and by applying that criterion per individual vehicle (and not per person), and in respect of all of the tobacco products in aggregate, the French Republic has failed to fulfil its obligations under Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and, specifically, under Articles 8 and 9 thereof;*

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

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

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Tenth Chamber) of 14 March 2013 — Viega GmbH & Co. KG v European Commission

(Case C-276/11 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Copper and copper alloy fittings sector — End-feed fittings and press fittings — Taking and assessment of the evidence — Right to be heard before a court — Obligation to state reasons — Principle of proportionality)

(2013/C 141/06)

Language of the case: German

Parties

Appellant Viega GmbH & Co. KG (represented by: J. Burrichter, T. Mäger and M. Röhrig, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: V. Bottka, R. Sauer, Agents, and A. Böhlke, Rechtsanwalt)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-375/06 *Viega GmbH & Co. KG* v *Commission*, by which the General Court dismissed the applicant's action seeking the annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 of the Treaty establishing the European Community and Article 53 of the EEA Agreement concerning a cartel in the copper and copper alloy fittings sector or, in the alternative, the reduction of the fine imposed on the applicant — Infringement of the right to be heard before a court, of the principle of proportionality and of the obligation to state reasons — Infringement of the principles of the investigation procedure — Infringement of Article 81(1) EC and Article 23(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Viega GmbH & Co. KG to pay the costs.*

([1]) OJ C 238, 13.8.2011.

Judgment of the Court (First Chamber) of 14 March 2013 (request for a preliminary ruling from the Juzgado de lo Mercantil No 3 de Barcelona — Spain) — Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

(Case C-415/11) ([1])

(Directive 93/13/EEC — Consumer contracts — Mortgage loan agreement — Mortgage enforcement proceedings — Powers of the court hearing the declaratory proceedings — Unfair terms — Assessment criteria)

(2013/C 141/07)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 3 de Barcelona

Parties to the main proceedings

Applicant: Mohamed Aziz

Defendant: Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

Re:

Request for a preliminary ruling — Juzgado de lo Mercantil — Interpretation of points 1(a) and (q) of the Annex to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Terms with the object or effect of requiring a consumer in breach of his obligations to pay a disproportionately high amount in compensation — Mortgage loan agreement — Provisions of national procedural law relating to the procedure for enforcement in respect of mortgaged or pledged property restricting the grounds of objection which can be raised by the consumer subject to enforcement.

Operative part of the judgment

1. *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, while not providing in mortgage enforcement proceedings for grounds of objection based on the unfairness of a contractual term on which the right to seek enforcement is based, does not allow the court before which declaratory proceedings have been brought, which does have jurisdiction to assess whether such a term is unfair, to grant interim relief, including, in particular, the staying of those enforcement proceedings, where the grant of such relief is necessary to guarantee the full effectiveness of its final decision.*

2. *Article 3(1) of Directive 93/13 must be interpreted as meaning that:*

   — *the concept of 'significant imbalance' to the detriment of the consumer must be assessed in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether, and if so to what extent, the contract places the consumer in a less favourable legal situation than that provided for by the national law in force. To that end, an assessment of the legal situation of that consumer having regard to the means at his disposal, under national law, to prevent continued use of unfair terms, should also be carried out;*

   — *in order to assess whether the imbalance arises 'contrary to the requirement of good faith', it must be determined whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to the term concerned in individual contract negotiations.*

   Article 3(3) of Directive 93/13 must be interpreted as meaning that the annex to which that provision refers contains only an indicative and non-exhaustive list of terms which may be regarded as unfair.

([1]) OJ C 331, 12.11.2011.

Judgment of the Court (First Chamber) of 14 March 2013 (request for a preliminary ruling from the Městský soud v Praze — Czech Republic) — Česká spořitelna, a.s. v Gerald Feichter

(Case C-419/11) [1]

(Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Articles 5(1)(a) and 15(1) — Concepts of 'matters relating to a contract' and 'contract concluded by a consumer' — Promissory note — Aval — Guarantee provided for a credit contract)

(2013/C 141/08)

Language of the case: Czech

Referring court

Městský soud v Praze

Parties to the main proceedings

Applicant: Česká spořitelna, a.s.

Defendant: Gerald Feichter

Re:

Request for a preliminary ruling — Městský soud v Praze — Interpretation of Articles 5(1)(a) and 15(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 (OJ 2001 L 12, p. 1) — Concepts of 'matters relating to a contract' and 'contract concluded by a consumer' — Jurisdiction in a dispute relating to an obligation of a manager of a company having given the aval to a blank promissory note issued by that company in favour of a bank to guarantee a credit agreement — Determination of the place of performance of the obligation where the promissory note did not originally indicate the place of payment

Operative part of the judgment

1. *Article 15(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a natural person with close professional links to a company, such as its managing director or majority shareholder, cannot be considered to be a consumer within the meaning of that provision when he gives an aval on a promissory note issued in order to guarantee the obligations of that company under a contract for the grant of credit. Therefore, that provision does not apply for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.*

2. *Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.*

[1] OJ C 311, 22.10.2011.

Judgment of the Court (Fourth Chamber) of 14 March 2013 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Jutta Leth v Republik Österreich, Land Niederösterreich

(Case C-420/11) [1]

(Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Consent for such a project without an appropriate assessment — Objectives of that assessment — Conditions to which the existence of a right to compensation are subject — Whether protection of individuals against pecuniary damage is included)

(2013/C 141/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Jutta Leth

Defendants: Republik Österreich, Land Niederösterreich

Re:

Request for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) — Authorisation of a project without an appropriate assessment of its impact on the environment — Action brought by an individual for compensation for the loss in value which the project causes to his immovable property — Objectives of the assessment of the impacts of certain public and private projects on the environment — Whether or not they include the protection of individuals against damage to their assets

Operative part of the judgment

Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that the environmental impact assessment, as provided for in that article, does not include the assessment of the effects which the project under examination has on the value of material assets. However, pecuniary damage, in so far as it is the direct economic consequence of the effects on the environment of a public or private project, is covered by the objective of protection pursued by Directive 85/337.

The fact that an environmental impact assessment has not been carried out, in breach of the requirements of that directive, does not, in principle, by itself, according to European Union law, and without prejudice to rules of national law which are less restrictive as regards State liability, confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of the environmental effects of that project. However, it is for the national court to determine whether the requirements of European Union law applicable to the right to compensation, including the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.

([1]) OJ C 319, 29.10.2011.

Judgment of the Court (Second Chamber) of 14 March 2013 (request for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Valsts ieņēmumu dienests v Ablessio SIA

(Case C-527/11) ([1])

(VAT — Directive 2006/112/EC — Articles 213, 214 and 273 — Identification of taxable persons subject to VAT — Refusal to assign a VAT identification number on the ground that the taxable person is not in possession of the material, technical and financial resources to carry out the declared economic activity — Legality — Countering tax evasion — Principle of proportionality)

(2013/C 141/10)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Valsts ieņēmumu dienests

Defendant: Ablessio SIA

Re:

Request for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 214 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), read in conjunction with Article 273 of that directive — National legislation providing the possibility to refuse registration on the register of taxable persons identified for VAT purposes if the taxable person does not provide information or provides false information concerning his material, technical and financial capacity to carry out the declared economic activity — Refusal to register a company on the register of taxable persons identified for VAT purposes on the ground that it is not able to carry out the declared economic activity.

Operative part of the judgment

Articles 213, 214 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the tax authority of a Member State may not refuse to assign a value added tax identification number to a company solely on the ground that, in the opinion of that authority, the company does not have at its disposal the material, technical and financial resources to carry out the economic activity declared, and that the owner of the shares in that company has already obtained, on various occasions, such an identification number for companies which never carried out any real economic activity, and the shares of which were transferred immediately after obtaining the individual number, where the tax authority concerned has not established, on the basis of objective factors, that there is sound evidence leading to the suspicion that the value added tax identification number assigned will be used fraudulently. It is for the referring court to assess whether that tax authority provided serious evidence of the existence of a risk of tax evasion in the case in the main proceedings.

([1]) OJ C 6, 7.1.2012.

Judgment of the Court (Fourth Chamber) of 14 March 2013 (request for a preliminary ruling from the Verwaltungsgericht Frankfurt (Oder) — Germany) — Agrargenossenschaft Neuzelle eG v Landrat des Landkreises Oder-Spree

(Case C-545/11) ([1])

(Common agricultural policy — Regulation (EC) No 73/2009 — Article 7(1) and (2) — Modulation of direct payments granted to farmers — Further reduction in the amount of direct payments — Validity — Principle of the protection of legitimate expectations — Principle of non-discrimination)

(2013/C 141/11)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt (Oder)

Parties to the main proceedings

Applicant: Agrargenossenschaft Neuzelle eG

Defendant: Landrat des Landkreises Oder-Spree

Re:

Request for a preliminary ruling — Verwaltungsgericht Frankfurt (Oder) — Validity of Article 7(1) and (2) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006 and (EC) No 378/2007, and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16) — Greater reduction of the amount of direct payments for the years 2009 to 2012 than that provided for in Regulation (EC) No 1782/2003 — Principle of legitimate expectations

Operative part of the judgment

1. *Consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Article 7(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 in the light of the principle of protection of legitimate expectations.*

2. *Consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Article 7(2) of Regulation No 73/2009 in the light of the principle of non-discrimination.*

([1]) OJ C 25, 28.1.2012.

Appeal brought on 8 June 2012 by Zdeněk Altner against the order of the General Court (Sixth Chamber) delivered on 23 March 2012 in Case T-535/11 Altner v Commission

(Case C-289/12 P)

(2013/C 141/12)

Language of the case: Czech

Parties

Appellant: Zdeněk Altner (represented by: J. Čapek, advokát)

Other party to the proceedings: European Commission

By order of 7 March 2013 the Court of Justice (Tenth Chamber) dismissed the appeal and ordered Zdeněk Altner to bear his own costs.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Łodzi (Poland) lodged on 22 January 2013 — Marcin Jagiełło v Dyrektor Izby Skarbowej w Łodzi

(Case C-33/13)

(2013/C 141/13)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Łodzi

Parties to the main proceedings

Applicant: Marcin Jagiełło

Defendant: Dyrektor Izby Skarbowej w Łodzi

Questions referred

1. Must Article 4(1) and (2) 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, ([1]) in conjunction with Article 5(1) thereof, be interpreted as meaning that a sale effected by a trader who, with the authorisation of another person, used the company name of that person to conceal its economic activity cannot be regarded as a supply of goods?

2. Must Article 17 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 be interpreted as meaning that tax cannot be deducted from an invoice issued by a person who merely acted as a front for the sale of goods effected by another trader, without it being demonstrated that the acquirer was aware, or on the basis of objective factors could have foreseen, that the transaction in which he was participating was connected with fraud or other irregularities committed by the issuer of the invoice or a trader working with him?

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

Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 23 January 2013 — Monika Kušionová v SMART Capital, a.s.

(Case C-34/13)

(2013/C 141/14)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Appellant: Monika Kušionová

Defendant: SMART Capital, a.s.

Questions referred

1. Are Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts and Directive 2005/29/EC ([2]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), in the light of Article 38 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding legislation of a Member State, such as Paragraph 151j(1) of the Občiansky zákonník (Civil Code) in conjunction with other provisions of the legislation at issue in the present case, which enables a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court, despite there being a dispute regarding the issue as to whether a contract term is unfair?

2. Does the European Union legislation set out in question 1 preclude the use of a national rule such as Paragraph 151j(1) of the Občiansky zákonník in conjunction with other provisions of the legislation at issue in the present case, which enables a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court, despite there being a dispute regarding the issue as to whether a contract term is unfair?

3. Must the judgment of the Court of Justice of the European Union of 9 March 1978 in Case C-106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* ([3]) be interpreted as precluding, in the interests of meeting the objective of the Directives set out in question 1 in the light of Article 38 of the Charter of Fundamental Rights of the European Union, the national court from applying national provisions, such as Paragraph 151j(1) of the Občiansky zákonník in conjunction with other provisions of the legislation at issue in the present case, which enable a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court and also, despite there being a dispute, to circumvent the review by a court of its own motion of the contract terms?

4. Is Article 4 of Council Directive 93/13/EEC on unfair terms in consumer contracts to be interpreted as meaning that a contract term in a consumer contract, concluded by the consumer without representation by a lawyer, which enables a creditor to enforce a lien by out-of-court means and without review by a court, is a circumvention of the important principle of European Union law that contract terms are to be reviewed by courts of their own motion and for that reason is unfair, even in the situation where the wording of such a contract term is based on national legislation?

([1]) OJ 1993 L 95, p. 29.
([2]) OJ 2005 L 149, p. 22.
([3]) OJ 1978 p. 22.

Request for a preliminary ruling from the Sąd Rejonowy w Białymstoku (Poland) lodged on 25 January 2013 — Małgorzata Nierodzik v Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy

(Case C-38/13)

(2013/C 141/15)

Language of the case: Polish

Referring court

Sąd Rejonowy w Białymstoku

Parties to the main proceedings

Applicant: Małgorzata Nierodzik

Defendant: Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy

Question referred

Must Article 1 of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, [1] clause 1 of the annex to Directive 1999/70/EC, clause 4 of the annex to Directive 1999/70/EC and the general principle of European Union law prohibiting discrimination based on the type of employment contract be construed as meaning that they preclude provisions of national law establishing rules for determining the length of the notice period for the termination of fixed-term employment contracts concluded for a period exceeding six months which are different (less favourable for workers employed on fixed-term contracts) from the rules determining the length of the notice period for the termination of open-ended employment contracts; more specifically, do they preclude provisions of national law (Article 33 of the Law relating to the Labour Code of 26 June 1974 — Dz. U. 1998, No 21, Position 94, as subsequently amended) which, irrespective of a worker's length of service, establish a fixed two-week notice period for the termination of fixed-term contracts concluded for a period exceeding six months, whereas the length of the notice period for the termination of open-ended contracts is dependent on the worker's length of service and may range from two weeks to up to three months (Article 36(1) of the Law relating to the Labour Code)?

[1] OJ 1999 L 175, p. 43.

Request for a preliminary ruling from the Úřad průmyslového vlastnictví (Czech Republic) lodged on 29 January 2013 — MF 7 a.s. v MAFRA a.s.

(Case C-49/13)

(2013/C 141/16)

Language of the case: Czech

Referring court

Úřad průmyslového vlastnictví

Parties to the main proceedings

Applicant: MF 7 a.s.

Defendant: MAFRA a.s.

Questions referred

1. Is Article 3(2)(d) of … Directive [2008/95/EC] [1] to be interpreted as meaning that, for the assessment of whether a trade mark applicant acted in good faith, only circumstances apparent before the date or on the date of the submission of the trade mark application are relevant, or can circumstances which occurred after the application was submitted also be used as supporting evidence of the fact that the applicant acted in good faith?

2. Is it necessary to apply the judgment in Joined Cases C-414/99 to C-416/99 [2] generally to all cases where it is being assessed whether a trade mark proprietor agreed to conduct which may result in weakening or limitation of his exclusive rights ?

3. Is it possible to infer good faith on the part of an applicant for a later trade mark from the situation in which the proprietor of an earlier trade mark concluded agreements with it, on the basis of which that proprietor consented to the publication of periodical printed material whose designation was similar to mark applied for by the later trade mark applicant, agreed with the registration of that printed material by the applicant for a later trade mark and offered that applicant support in its publication, but the agreements concerned nevertheless did not expressly regulate the issue of the intellectual property right?

4. In so far as circumstances occurring after a trade mark application was submitted may also be relevant for the purposes of the assessment of whether the trade mark applicant acted in good faith, is it possible, in the alternative, to infer the fact that the applicant acted in good faith from the situation in which the proprietor of the earlier trade mark knowingly tolerated the existence of the contested trade mark for a period of at least ten years?

[1] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

[2] ECR I-08691.

Request for a preliminary ruling from the Rechtbank Rotterdam (Netherlands) lodged on 31 January 2013 — Nationale-Nederlanden Levensverzekering Mij NV v Hubertus Wilhelmus Van Leeuwen

(Case C-51/13)

(2013/C 141/17)

Language of the case: Dutch

Referring court

Rechtbank Rotterdam

Parties to the main proceedings

Applicant: Nationale-Nederlanden Levensverzekering Mij NV

Defendant: Hubertus Wilhelmus Van Leeuwen

Questions referred

1. Does European Union law, and in particular Article 31(3) of the Third Life Assurance Directive, [1] preclude an obligation on the part of a life assurance provider on the basis of the 'open' and/or unwritten rules of Netherlands law — such as the reasonableness and fairness which govern the (pre-)contractual relationship between a life assurance provider and a prospective policyholder, and/or a general and/or specific duty of care — to provide policyholders with more information on costs and risk premiums of the insurance than was prescribed in 1999 by the provisions of Netherlands law by which the Third Life Assurance Directive was implemented (in particular, Article 12(2)(q) and (r) of the RIAV [(Netherlands Regulation regarding the provision of information to policyholders)] 1998)?

2. Are the consequences, or possible consequences, under Netherlands law, of a failure to provide that information relevant for the purposes of answering question 1?

(1) Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (OJ 1992 L 360, p. 1).

Request for a preliminary ruling from the Krajský soud v Ostravě (Czech Republic) lodged on 30 January 2013 — Strojírny Prostějov, a.s. v Odvolací finanční ředitelství

(Case C-53/13)

(2013/C 141/18)

Language of the case: Czech

Referring court

Krajský soud v Ostravě

Parties to the main proceedings

Applicant: Strojírny Prostějov, a.s.

Defendant: Odvolací finanční ředitelství

Question referred

Do Articles 56 and 57 of the Treaty on the Functioning of the European Union preclude the application of national legislation which, where an undertaking supplying workers to another undertaking (the supplier) has its seat in the territory of another Member State, imposes on the undertaking using the workers the obligation to deduct income tax in respect of those workers and pay it into the State budget, whereas if the supplier has its seat in the territory of the Czech Republic that obligation is on the supplier?

Action brought on 4 February 2013 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-60/13)

(2013/C 141/19)

Language of the case: English

Parties

Applicant: European Commission (represented by: A. Caeiros, L. Flynn, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by refusing to make available the sum of £ 20 061 462,11 in relation to duties on imports of fresh garlic covered by erroneous binding tariff information, the United Kingdom of Great Britain and Northern Ireland has failed to fulfill its obligations under Article 4(3) of the Treaty on European Union, Article 8 of Decision 2000/597/EC (1) and Articles 2, 6, 9, 10 and 11 of Regulation (EC) No 1150/2000 (2).;

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

By its application, the Commission claims that the United Kingdom authorities caused a loss of traditional own resources by issuing Binding Tariff Information documents without due care which allowed imports of fresh Chinese garlic outside quota. The Commission considers that, where there has been an administrative error and consequently own resources were unduly not established, the EU must be credited with the equivalent of the amount of own resources lost. Accordingly, the United Kingdom authorities should have made available to the Commission the total amount of customs duties involved, which is estimated at £ 20 061 462,11, as well as the interest due on late payments under Article 11 of Regulation No 1150/2000.

(1) 2000/597/EC, Euratom: Council Decision of 29 September 2000 on the system of the European Communities' own resources OJ L 253, p. 42

(2) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources OJ L 130, p. 1

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 7 February 2013 — Alba Forni v Ministero dell'Istruzione, dell'Università e della Ricerca

(Case C-61/13)

(2013/C 141/20)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Alba Forni

Defendant: Ministero dell'Istruzione, dell'Università e della Ricerca

Questions referred

1. Does the regulatory framework for the schools sector [which allows for a succession of fixed-term contracts, without interruption of continuity, with the same teacher for an indeterminate number of times, including in order to address permanent staffing needs] constitute an equivalent measure within the meaning of Clause 5 of [the framework agreement set out in the annex to] Directive 1999/70/EC? ([1])

2. When is an employment relationship to be regarded as being for the public service of the 'State', for the purposes of Clause 5 of [the framework agreement set out in the annex to] Directive 1999/70/EC and, in particular, within the meaning of the expression 'specific sectors and/or categories of workers', and thus capable of justifying results that are different from those which ensue from employment relationships in the private sector?

3. Having regard to the explanations contained in Article 3(1)(c) of Directive 2000/78/EC ([2]) and in Article 14(1)(c) of Directive 2006/54/EC, ([3]) does the notion of employment conditions contained in Clause 4 of [the framework agreement set out in the annex to] Directive 1999/70/EC also include the consequences of the unlawful interruption of an employment relationship? If the answer to the preceding question is in the affirmative, is the difference between the consequences normally provided for in national law for the unlawful interruption of fixed-term employment relationships and for the unlawful interruption of employment relationships of indefinite duration justifiable under Clause 4?

4. By virtue of the principle of sincere cooperation, is a State precluded from presenting to the Court of Justice of the European Union in a request for a preliminary ruling a deliberately untrue description of a national legislative framework and are the national courts obliged, in the absence of any alternative interpretation of national law that also satisfies the obligations deriving from membership of the European Union to the same degree, to interpret, where possible, national law in accordance with the interpretation given by the State?

5. Is a statement of the circumstances in which a fixed-term employment contract may be converted into a permanent contract one of the conditions applicable to the contract or employment relationship contemplated by Directive 91/533/EEC, ([4]) in particular by Article 2(1) and (2)(e) thereof?

6. If the answer to the preceding question is in the affirmative, is a retroactive amendment to the legislative framework which does not guarantee that employees can claim the rights conferred on them by the directive, that is to say, that the conditions of employment specified in the document under which they were recruited will be observed, contrary to Article 8(1) of Directive 91/533/EEC and to the objectives of that directive, in particular those mentioned in the second recital of the preamble thereto?

7. Must the general principles of [European Union] law presently in force concerning legal certainty, the protection of legitimate expectations, procedural equality, effective judicial protection, the right to an independent court or tribunal and, more generally, the right to due process, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1.8 of the Treaty of Lisbon and as referred to by Article 46 TEU), read in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, as incorporated in the Treaty of Lisbon, be interpreted as precluding, within the scope of Directive 1999/70/EC, the adoption by the Italian State, after a significant period of time (three and a half years), of a legislative provision such as Article 9 of Decree-Law No 70 of 13 May 2011, converted by way of Law No 106 of 12 July 2011, [which] added to Article 10 of Legislative Decree No 368/01 a paragraph 4a which is liable to alter the consequences of ongoing proceedings by directly placing at a disadvantage the worker and benefiting the State in its capacity as employer, and by eliminating the possibility conferred by the national legal system of penalising the abusive repeated renewal of fixed-term contracts?

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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

([3]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

([4]) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 7 February 2013 — Immacolata Racca v Ministero dell'Istruzione, dell'Università e della Ricerca

(Case C-62/13)

(2013/C 141/21)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Immacolata Racca

Defendants: Ministero dell'Istruzione, dell'Università e della Ricerca

Questions referred

1. Does the regulatory framework for the schools sector [which allows for a succession of fixed-term contracts, without interruption of continuity, with the same teacher for an indeterminate number of times, including in order to address permanent staffing needs] constitute an equivalent measure within the meaning of Clause 5 of [the framework agreement set out in the annex to] Directive 1999/70/EC? ([1])

2. When is an employment relationship to be regarded as being for the public service of the 'State', for the purposes of Clause 5 of [the framework agreement set out in the annex to] Directive 1999/70/EC and, in particular, within the meaning of the expression 'specific sectors and/or categories of workers', and thus capable of justifying results that are different from those which ensue from employment relationships in the private sector?

3. Having regard to the explanations contained in Article 3(1)(c) of Directive 2000/78/EC ([2]) and in Article 14(1)(c) of Directive 2006/54/EC, ([3]) does the notion of employment conditions contained in Clause 4 of [the framework agreement set out in the annex to] Directive 1999/70/EC also include the consequences of the unlawful interruption of an employment relationship? If the answer to the preceding question is in the affirmative, is the difference between the consequences normally provided for in national law for the unlawful interruption of fixed-term employment relationships and for the unlawful interruption of employment relationships of indefinite duration justifiable under Clause 4?

4. By virtue of the principle of sincere cooperation, is a State precluded from presenting to the Court of Justice of the European Union in a request for a preliminary ruling a deliberately untrue description of a national legislative framework and are the national courts obliged, in the absence of any alternative interpretation of national law that also satisfies the obligations deriving from membership of the European Union to the same degree, to interpret, where possible, national law in accordance with the interpretation given by the State?

5. Is a statement of the circumstances in which a fixed-term employment contract may be converted into a permanent contract one of the conditions applicable to the contract or employment relationship contemplated by Directive 91/533/EEC, ([4]) in particular, by Article 2(1) and (2)(e) thereof?

6. If the answer to the preceding question is in the affirmative, is a retroactive amendment to the legislative framework which does not guarantee that employees can claim the rights conferred on them by the directive, that is to say, that the conditions of employment specified in the document under which they were recruited will be observed, contrary to Article 8(1) of Directive 91/533/EEC and to the objectives of that directive, in particular those mentioned in the second recital of the preamble thereto?

7. Must the general principles of [European Union] law presently in force concerning legal certainty, the protection of legitimate expectations, procedural equality, effective judicial protection, the right to an independent court or tribunal and, more generally, the right to due process, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1.8 of the Treaty of Lisbon and as referred to by Article 46 TEU), read in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, as incorporated in the Treaty of Lisbon, be interpreted as precluding, within the scope of Directive 1999/70/EC, the adoption by the Italian State, after a significant period of time (three and a half years), of a legislative provision such as Article 9 of Decree-Law No 70 of 13 May 2011, converted by way of Law No 106 of 12 July 2011, [which] added to Article 10 of Legislative Decree No 368/01 a paragraph 4a which is liable to alter the consequences of ongoing proceedings by directly placing at a disadvantage the worker and benefiting the State in its capacity as employer, and by eliminating the possibility conferred by the national legal system of penalising the abusive repeated renewal of fixed-term contracts?

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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

([3]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

([4]) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 7 February 2013 — Fortuna Russo v Comune di Napoli

(Case C-63/13)

(2013/C 141/22)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Fortuna Russo

Defendant: Comune di Napoli

Questions referred

1. When is an employment relationship to be regarded as being for the public service of the 'State', for the purposes of Clause 5 of [the framework agreement set out in the annex to] Directive 1999/70/EC ([1]) and, in particular, within the meaning of the expression 'specific sectors and/or categories of workers', and thus capable of justifying results that are different from those which ensue from employment relationships in the private sector?

2. Having regard to the explanations contained in Article 3(1)(c) of Directive 2000/78/EC [2] and in Article 14(1)(c) of Directive 2006/54/EC, [3] does the notion of employment conditions contained in Clause 4 of [the framework agreement set out in the annex to] Directive 1999/70/EC also include the consequences of the unlawful interruption of an employment relationship? If the answer to the preceding question is affirmative, is the difference between the consequences normally provided for in national law for the unlawful interruption of fixed-term employment relationships and for the unlawful interruption of employment relationships of indefinite duration justifiable under Clause 4?

3. By virtue of the principle of sincere cooperation, is a State precluded from presenting to the Court of Justice of the European Union in a request for a preliminary ruling a deliberately untrue description of a national legislative framework and are the national courts obliged, in the absence of any alternative interpretation of national law that also satisfies the obligations deriving from membership of the European Union to the same degree, to interpret, where possible, national law in accordance with the interpretation given by the State?

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[1] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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

[3] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 11 February 2013 — Gmina Wrocław v Minister Finansów

(Case C-72/13)

(2013/C 141/23)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Gmina Wrocław

Respondent: Minister Finansów

Question referred

Do the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] preclude the imposition of VAT on the activities of a municipality consisting in the sale or the contribution to commercial companies of property, including immovable property, acquired by operation of law or without consideration, in particular by inheritance or gift?

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[1] OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 21 February 2013 — Staatssecretaris van Financiën, Other party: X

(Case C-87/13)

(2013/C 141/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Other party: X

Questions referred

1. Does EU law, in particular the rules on freedom of establishment and on free movement of capital, preclude a resident of Belgium who, at his request, is taxed in the Netherlands as a resident and who has incurred costs in respect of a castle, used by him as his own home, which is located in Belgium and is designated there as a legally protected monument and village conservation area, from deducting those costs in the Netherlands for income tax purposes on the grounds that the castle is not registered as a protected monument in the Netherlands?

2. To what extent is it important in that regard whether the person concerned may deduct those costs for income tax purposes in his country of residence, Belgium, from his current or future investment income by opting for a system of graduated taxation of that income?

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 28 February 2013 — Guy Kleynen v Council of Ministers

(Case C-99/13)

(2013/C 141/25)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicant: Guy Kleynen

Defendant: Council of Ministers

Question referred

Must Articles 56 and 63 of the Treaty on the Functioning of the European Union and Articles 36 and 41 of the Agreement on the European Economic Area be interpreted as precluding a Member State from introducing and maintaining a system of higher taxation of the interest paid by non-resident banks through the application of a tax exemption or a lower tax rate solely to the interest paid by Belgian banks?

Request for a preliminary ruling from the Tribunale di Tivoli (Italy) lodged on 4 March 2013 — Francesco Fierro and Fabiana Marmorale v Edoardo Ronchi and Cosimo Scocozza

(Case C-106/13)

(2013/C 141/26)

Language of the case: Italian

Referring court

Tribunale di Tivoli

Parties to the main proceedings

Applicants: Francesco Fierro and Fabiana Marmorale

Defendants: Edoardo Ronchi and Cosimo Scocozza

Question referred

Does the national legislation of the Italian Republic — in particular, Article 33 of Law No 1150/42, which allows the municipalities to regulate the urban development of land and/or building works on that land within the boundaries of each municipality in accordance with the general principles laid down in that Law, in Article 1 of Law No 10/77 and in various laws adopted by the individual regions, read in conjunction with Article 2 of Presidential Decree No. 380 of 6 June 2001 'consolidating the legislative and regulatory provisions on building' and with lower-ranking local rules (general land use plans, implementing rules) and Article 46 of Presidential Decree No 380/2001, which renders sales transactions void in the event of alterations to immovable property being made without proper authorisation — constitute a disproportionate and unreasonable encroachment on the right to property, albeit regulated by law, contrary to Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights, read in conjunction with Article 6 [TEU] and Articles 17 and 52(3) of the [Charter of fundamental rights of the European Union]?

Request for a preliminary ruling from the Conseil d'État (France) lodged on 6 March 2013 — Société Mac GmbH v Ministère de l'agriculture, de l'agroalimentaire et de la forêt

(Case C-108/13)

(2013/C 141/27)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société Mac GmbH

Defendant: Ministère de l'agriculture, de l'agroalimentaire et de la forêt

Question referred

Do Articles 34 and 36 of the Treaty on the Functioning of the European Union preclude national legislation which makes, inter alia, the grant of a parallel import marketing authorisation for a plant protection product subject to the condition that the product in question have, in the exporting State, a marketing authorisation granted in accordance with Directive 91/414/EEC, [1] and which consequently does not permit the grant of a parallel import marketing authorisation for a product which has, in the exporting State, a parallel import marketing authorisation and which is identical to a product authorised in the importing State?

[1] Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

Request for a preliminary ruling from the Tribunale Ordinario di Firenze (Italy) lodged on 15 March 2013 — Paola C. v Presidenza del Consiglio dei Ministri

(Case C-122/13)

(2013/C 141/28)

Language of the case: Italian

Referring court

Tribunale Ordinario di Firenze

Parties to the main proceedings

Applicant: Paola C.

Defendant: Presidenza del Consiglio dei Ministri

Question referred

Must Article 12 of Directive 2004/80/EC ([1]) be interpreted as permitting Member States to make provision for compensation only for the victims of certain categories of violent or intentional crime or, instead, as imposing an obligation on Member States, for the purposes of the implementation of the directive, to adopt a compensation scheme for victims of all violent or intentional crime?

([1]) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 18 March 2013 — Raytek GmbH, Fluke Europe BV v Commissioners for Her Majesty's Revenue and Customs

(Case C-134/13)

(2013/C 141/29)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Raytek GmbH, Fluke Europe BV

Defendant: Commissioners for Her Majesty's Revenue and Customs

Question referred

Is Commission Regulation (EU) No 314/2011 of 30 March 2011 concerning the classification of certain goods in the Combined Nomenclature ([1]) valid in so far as it classifies infrared thermal cameras under CN code 9025 19 20?

([1]) OJ L 86, p. 57

Appeal brought on 20 March 2013 by Reber Holding GmbH & Co. KG against the judgment of the General Court (Fifth Chamber) delivered on 17 January 2013 in Case T-355/09 Reber Holding GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-141/13 P)

(2013/C 141/30)

Language of the case: German

Parties

Appellant: Reber Holding GmbH & Co. KG (represented by: O. Spuhler and M. Geitz, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Wedl & Hofmann GmbH

Form of order sought

I. Set aside the judgment of 17 January 2013 in Case T-355/09 and the decision of the Fourth Board of Appeal of the respondent of 9 July 2009 in Case R 623/2008-4;

II. in the alternative,

set aside the judgment referred to at I above and refer the case back to the General Court;

III. order the respondent to pay the costs of the proceedings.

Pleas in law and main arguments

The General Court interprets the element of 'genuine use' in the first sentence of Article 42(2) in conjunction with Article 42(3) of the Community Trade Mark Regulation as being dependent on the level of turnover and the number of sales outlets. This is incorrect for the simple reason that, according to the relevant case-law of the Court of Justice, there is no need at all for a particular level of turnover to be achieved in order for use to be genuine.

Even if the General Court had established that, in the present case, the mark cited in opposition, 'Walzertraum', had not been used for chocolate goods in such a way as to preserve the rights attached to it, the General Court should not simply have broken off its assessment.

The General Court ought to have moved on in its assessment to focus on handmade chocolates, taking into consideration the principles of the judgment of the Court of Justice of 19 June 2012 in Case C-307/10 (not yet published). Next it ought to have assessed whether the evidence of use submitted was sufficient to demonstrate use such as to preserve the rights attached to the mark cited in opposition, 'Walzertraum', in respect of handmade chocolates. That is clearly the case. The General Court failed, however, to proceed with that assessment.

Furthermore the contested decision also represents a breach of the general principle of equal treatment. The unequal treatment stems, in particular, from the fact that the General Court focused in relation to the mark cited in opposition also on chocolate goods generally, even though the mark cited in opposition is used for handmade chocolates. By using chocolate goods as a point of reference, the standards for use such as to preserve rights applied to the appellant are necessarily the same as those applied to a multinational corporation. That is contrary to the general principle of equal treatment.

The appeal should therefore be allowed in its entirety.

GENERAL COURT

Order of the General Court of 20 February 2013 — Kappa Filter Systems v OHIM

(Case T-422/12) [1]

(Action for annulment — Period allowed for bringing proceedings — Out of time — No unforeseeable circumstances — Manifest inadmissibility)

(2013/C 141/31)

Language of the case: German

Parties

Applicant: Kappa Filter Systems GmbH (Steyr-Gleink, Austria) (represented by: C. Hadeyer, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 10 July 2012 (Case R 817/2012-4), relating to registration of the word mark THE FUTURE HAS ZERO EMISSIONS.

Operative part of the order

1. *The action is dismissed.*

2. *The applicant shall bear its own costs.*

[1] OJ C 355, 17.11.2012.

Order of the President of the General Court of 11 March 2013 — Pilkington Group v Commission

(Case T-462/12 R)

(Interim relief — Competition — Publication of a decision finding an infringement of Article 81 EC — Rejection of request for confidential treatment of information allegedly covered by business secrecy — Application for interim measures — Urgency — Prima facie case — Weighing up of interests)

(2013/C 141/32)

Language of the case: English

Parties

Applicant: Pilkington Group Ltd (St Helens, Merseyside, United Kingdom) (represented by: J. Scott, S. Wisking and K. Fountoukakos-Kyriakakos, Solicitors)

Defendant: European Commission (represented by: M. Kellerbauer, P. Van Nuffel and G. Meeßen, Agents)

Re:

Application for suspension of operation of Commission Decision C(2012) 5718 final of 6 August 2012 on the rejection of a request for confidential treatment submitted by Pilkington Group Ltd pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (Case COMP/39.125 — Car glass), and application for interim measures seeking the continuation of the confidential treatment accorded to certain information relating to the applicant in respect of Commission Decision C(2008) 6815 final of 12 November 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.125 — Car glass)

Operative part of the order

1. *The applications of HUK-Coburg, LVM, VHV and Württembergische Gemeinde-Versicherung for leave to intervene are dismissed.*

2. *Operation of Commission Decision C(2012) 5718 final of 6 August 2012 on the rejection of a request for confidential treatment submitted by Pilkington Group Ltd pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (Case COMP/39.125 — Car glass) is suspended in relation to two categories of information, as referred to in point 6 of Decision C(2012) 5718 final, concerning, first, customer names, product names or descriptions of products, as well as any other information which might identify individual customers and, second, the number of parts supplied by Pilkington Group, the share of the business of a particular car manufacturer, pricing calculations, price changes etc.*

3. *The Commission is ordered to refrain from publishing a version of its Decision C(2008) 6815 final of 12 November 2008 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39.125 — Car glass) which is more complete, in relation to the information in the two categories referred to in point 2 above, than that published in February 2010 on the Commission's website.*

4. *The application for interim relief is dismissed as to the remainder.*

5. *The costs are reserved.*

Order of the President of the General Court of 11 March 2013 — North Drilling v Council

(Case T-552/12 R)

(Interim relief — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds and economic resources — Application for interim measures — Lack of urgency — Weighing up of interests)

(2013/C 141/33)

Language of the case: Spanish

Parties

Applicant: North Drilling Co. (Tehran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop and A. De Elera, Agents)

Re:

Application for a stay in the enforcement, first, of Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58), in so far as the applicant's name was entered in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), and, secondly, of Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16), in so far as that regulation concerns the applicant.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 11 March 2013 — Communicaid Group v Commission

(Case T-4/13 R)

(Interim measures — Public services contracts — Tendering procedure — Language training services — Rejection of tender submitted by a tenderer — Application for suspension of operation and interim measures — Loss of opportunity — Lack of serious and irreparable damage — Lack of urgency)

(2013/C 141/34)

Language of the case: English

Parties

Applicant: Communicaid Group Ltd (London, United Kingdom) (represented by: C. Brennan, Solicitor, F. Randolph QC and M. Gray, Barrister)

Defendant: European Commission (represented by: S. Delaude and S. Lejeune, Agents, and by P. Wytinck, lawyer)

Re:

Application for suspension of operation of decisions of the Commission rejecting the tenders submitted by the applicant in respect of several lots in a call for tenders relating to framework contracts for the provision of language training to staff of the institutions, bodies and agencies of the European Union in Brussels (Belgium) and, further, for an order prohibiting the Commission from entering into contracts for the lots at issue with the successful tenderer.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 20 February 2013 — CMT v OHIM — Camomilla (Camomilla)

(Case T-98/13)

(2013/C 141/35)

Language in which the application was lodged: Italian

Parties

Applicant: CMT Compagnia manifatture tessili Srl (CMT Srl) (Naples, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal: Camomilla SpA (Buccinasco, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 November 2012 in Case R 1615/2011 1 by finding that the absolute ground for invalidity under Article 52(1)(b) of Regulation No 207/2009 — based on the bad faith of the proprietor of the Community trade mark at the time when the application was filed — and the relative ground for invalidity under Article 53(1)(a), in conjunction with Articles 8(1)(b) and 8(5) of the regulation, are made out;

— In the alternative, and only in the event that the Court should consider the documents produced at the time of the appeal before the Board of Appeal inadmissible and should consider those documents essential for the purposes of granting the appeal, annul the contested decision on the ground of failure to have regard to the right to be heard and infringement of the rights of the defence and refer the case back to the Cancellation Division for a decision on the substance;

— In any event, call upon OHIM to adopt the measures necessary to comply with the judgment of the General Court;

— Order OHIM to pay the costs of the present proceedings and the trade mark proprietor to pay the costs of the proceedings before the Cancellation Division and the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: figurative mark containing the word element 'Camomilla' for goods in Classes 16, 18 and 24 — Community trade mark No 269 241

Proprietor of the Community trade mark: Camomilla SpA

Applicant for the declaration of invalidity of the Community trade mark: the applicant

Grounds for the application for a declaration of invalidity: National figurative mark containing the word element 'CAMOMILLA' for goods in Class 25

Decision of the Cancellation Division: application rejected

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Article 52(1)(b) and Article 53(1)(a), in conjunction with Article 8(1)(b), of Regulation No 207/2009

Action brought on 20 February 2013 — CMT v OHIM — Camomilla (Camomilla)

(Case T-99/13)

(2013/C 141/36)

Language in which the application was lodged: Italian

Parties

Applicant: CMT Compagnia manifatture tessili Srl (CMT Srl) (Naples, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal: Camomilla SpA (Buccinasco, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 November 2012 in Case R 1617/2011-1 by finding that the absolute ground for invalidity under Article 52(1)(b) of Regulation No 207/2009 — based on the bad faith of the proprietor of the Community trade mark at the time when the application was filed — and the relative ground for invalidity under Article 53(1)(a), in conjunction with Articles 8(1)(b) and 8(5) of the regulation, are made out;

— In the alternative, and only in the event that the Court should consider the documents produced at the time of the appeal before the Board of Appeal inadmissible and should consider those documents essential for the purposes of granting the appeal, annul the contested decision on the ground of failure to have regard to the right to be heard and infringement of the rights of the defence and refer the case back to the Cancellation Division for a decision on the substance;

— In any event, call upon OHIM to adopt the measures necessary to comply with the judgment of the General Court;

— Order OHIM to pay the costs of the present proceedings and the trade mark proprietor to pay the costs of the proceedings before the Cancellation Division and the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: figurative mark containing the word element 'Camomilla' for goods in Classes 3, 9, 14, 16, 21, 24 and 28 — Community trade mark No 3 158 196

Proprietor of the Community trade mark: Camomilla SpA

Applicant for the declaration of invalidity of the Community trade mark: the applicant

Grounds for the application for a declaration of invalidity: National figurative mark containing the word element 'CAMOMILLA' for goods in Class 25

Decision of the Cancellation Division: Application rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 52(1)(b) and Article 53(1)(a), in conjunction with Article 8(1)(b), of Regulation No 207/2009

Action brought on 20 February 2013 — CMT v OHIM — Camomilla (CAMOMILLA)

(Case T-100/13)

(2013/C 141/37)

Language in which the application was lodged: Italian

Parties

Applicant: CMT Compagnia manifatture tessili Srl (CMT Srl) (Naples, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal: Camomilla SpA (Buccinasco, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 November 2012 in Case R 1616/2011-1 by finding that the absolute ground for invalidity under Article 52(1)(b) of Regulation No 207/2009 — based on the bad faith of the proprietor of the Community trade mark at the time when the application was filed — and the relative ground for invalidity under Article 53(1)(a), in conjunction with Articles 8(1)(b) and 8(5) of the regulation, are made out;

— In the alternative, and only in the event that the Court should consider the documents produced at the time of the appeal before the Board of Appeal inadmissible and should consider those documents essential for the purposes of granting the appeal, annul the contested decision on the ground of failure to have regard to the right to be heard and infringement of the rights of the defence and refer the case back to the Cancellation Division for a decision on the substance;

— In any event, call upon OHIM to adopt the measures necessary to comply with the judgment of the General Court;

— Order OHIM to pay the costs of the present proceedings and the trade mark proprietor to pay the costs of the proceedings before the Cancellation Division and the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark 'CAMOMILLA' for goods in Classes 3, 9, 11, 14, 16, 18, 20, 21, 24, 25, 27, 28, 30 and 33 — Community trade mark No 7 077 55

Proprietor of the Community trade mark: Camomilla SpA

Applicant for the declaration of invalidity of the Community trade mark: the applicant

Grounds for the application for a declaration of invalidity: National figurative mark containing the word element 'CAMOMILLA' for goods in Class 25

Decision of the Cancellation Division: application rejected

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Article 52(1)(b) and Article 53(1)(a), in conjunction with Article 8(1)(b), of Regulation No 207/2009

Action brought on 20 February 2013 — Synergy Hellas v Commission

(Case T-106/13)

(2013/C 141/38)

Language of the case: Greek

Parties

Applicant: d.d. Synergy Hellas Anonimi Emporiki Etairia Parokhis Ipiresion Pliroforikis (Athens, Greece) (represented by: M. Angelopoulos and K. Damis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the company's exclusion by the European Commission from participation in the ARTreat programme constitutes a breach of the Commission's contractual obligations in the light of the principles of proportionality and the protection of legitimate expectations, and order the Commission to pay to the applicant the sum of three hundred and forty-three thousand eight hundred and twenty-eight euro and eighty-eight cent (EUR 343 828,88) in respect of the payments which are owed by the Commission for the ARTreat project, together with interest from the date on which the present action is lodged;

— order the Commission to pay to the applicant the sum of eighty-nine thousand nine hundred and thirty-three euro (EUR 89 933,16) as compensation for the financial damage and the harm to its professional reputation that the applicant has suffered because of misuse of the Commission's powers and breach of confidentiality, together with compensatory interest from 14 June 2012 until delivery of judgment in the present case and interest for late payment from delivery of judgment in the present case until settlement in full;

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

Pleas in law and main arguments

By the present action, the applicant brings together two actions.

First, an action, pursuant to Article 272 TFEU, in respect of liability of the Commission under Contract FP7-224297 concerning the carrying out of the project 'Multi-level patient-specific artery and artherogenesis model for outcome prediction, decision support treatment, and virtual hand-on training (ARTreat)'. In particular, the applicant submits that, although it duly performed its contractual obligations in full, the Commission, without being so entitled and in breach of the contract and of the principles of the protection of legitimate expectations and of proportionality, suspended payment to it.

Second, an action to establish non-contractual liability of the Commission, pursuant to the second paragraph of Article 340 TFEU. In particular, the applicant submits that the Commission, by reason of its unlawful conduct, has harmed the applicant's professional reputation.

Action brought on 20 February 2013 — Whirlpool Europe v Commission

(Case T-118/13)

(2013/C 141/39)

Language of the case: English

Parties

Applicant: Whirlpool Europe BV (Breda, Netherlands) (represented by: F. Wijckmans and H. Burez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the Commission of 25 July 2012 relating to the State aid of France to the benefit of the FagorBrandt company [SA.23839 nº C44/2007];

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

Pleas in law and main arguments

The applicant seeks the annulment of the Commission decision of 25 July 2012 relating to State aid of France to the benefit of the FagorBrandt company [SA.23839 nº C44/2007].

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

1. First plea in law, alleging that the decision infringes Article 107(3)(c) TFEU and the Community guidelines on State aid for rescuing and restructuring firms in difficulty. The applicant submits that the holding of the decision is incorrect as a matter of law on account of the fact that one or more of the (cumulative) conditions of the above-mentioned guidelines is not met or that, in any event, the Commission has failed to ascertain to the requisite legal standard that each of such conditions is met. The arguments advanced to underscore this plea relate to the failure to comply with (i) the duty to assess one or more of the conditions of the aforementioned guidelines as at the date of the decision; (ii) the 'one time, last time' condition; (iii) the condition that restructuring aid may not serve to keep firms artificially alive; (iv) the conditions as to the assessment of previous unlawful aid; (v) the condition that the beneficiary of the aid must be a firm in difficulty; (vi) the condition that the beneficiary of the aid should not be a newly created firm; (vii) the condition that the restructuring plan must restore the long-term viability of the beneficiary; (viii) the condition of imposing compensatory measures to avoid undue distortions resulting from the restructuring aid; and (ix) the condition that the aid must be limited to the minimum and that a real contribution (free of aid) must be made by the business group.

2. Second plea in law, alleging that the decision infringes the duty to state reasons laid down in Article 296 TFEU on several items. The applicant in particular submits that the decision fails to state adequate reasons with respect to (i) the condition of imposing compensatory measures to avoid undue distortions resulting from the restructuring aid, and (ii) the repayment obligation of previous unlawful aid.

Action brought on 4 March 2013 — Alpiq RomIndustries and Alpiq RomEnergie v Commission

(Case T-129/13)

(2013/C 141/40)

Language of the case: German

Parties

Applicants: Alpiq RomIndustries Srl (Bucharest, Romania) and Alpiq RomEnergie Srl (Bucharest) (represented by: H. Wollmann and F. Urlesberger, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2012) 2542 final of 25 April 2012 (SA.33451; 2012/C; ex 2012/NN) pursuant to Article 264 TFEU, in so far as it concerns the applicants;

— order the Commission to pay the applicants' costs pursuant to Article 87(2) of the Rules of Procedure.

Pleas in law and main arguments

In support of the action, the applicants submit, in essence, that the Commission lacks competence. In the applicants' view, the alleged aid does not fall within the scope *ratione temporis* of Articles 107 TFEU and 108 TFEU. Under Annex V to Romania's Act of Accession, the Commission is competent to examine aid measures put into effect prior to the date of Romania's accession only if those measures are still applicable after that date. The applicants submit in that context, inter alia, that Hidroelectrica's liabilities vis-à-vis the alleged recipients were already established so clearly in the power supply contracts concluded prior to accession that a subsequent expansion of Hidroelectrica's supply obligation that might have resulted in additional advantages had to be ruled out.

Action brought on 1 March 2013 — Lardini v OHIM (Representation of a flower)

(Case T-131/13)

(2013/C 141/41)

Language of the case: Italian

Parties

Applicant: Lardini Srl (Filottrano, Italy) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of OHIM of 13 December 2012 in Case R 2578/2011-1; and

— order OHIM to pay the costs of the proceedings in their entirety, including the costs incurred during the appeal procedure in Case R 2578/2011-1

Pleas in law and main arguments

Community trade mark concerned: Position mark in the form of a flower for goods in Class 25

Decision of the Examiner: Application refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009

Action brought on 2 March 2013 — Evonik Oil Additives v OHIM — BRB International (VISCOTECH)

(Case T-138/13)

(2013/C 141/42)

Language in which the application was lodged: German

Parties

Applicant: Evonik Oil Additives GmbH (Darmstadt, Germany) (represented by: J. Albrecht, lawyer)

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

Other party to the proceedings before the Board of Appeal: BRB International BV (Ittervoort, Netherlands)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 December 2012 in Case R 907/2012-5;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BRB International BV

Community trade mark concerned: the word mark 'VISCOTECH' for goods in Classes 1 and 4

Proprietor of the mark or sign cited in the opposition proceedings: the applicant

Mark or sign cited in opposition: the national and international word marks 'VISCOPLEX' for goods in Classes 1 and 4

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was upheld and the opposition was rejected

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

Action brought on 15 March 2013 — Zanjani v Council

(Case T-155/13)

(2013/C 141/43)

Language of the case: English

Parties

Applicant: Babak Zanjani (Dubai, United Arab Emirates) (represented by: L. Defalque and C. Malherbe, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul paragraph I.I.1 (under the heading 'Person') of the Annex to Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71);

— Annul paragraph I.I.1 (under the heading 'Person') of the Annex to Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55);

— Declare Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran inapplicable in so far as Article 19(1)(b) and (c) of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) is applied to the applicant, and declare that the applicant is not concerned by the restrictive measures it provides; and

— Order the defendant to pay the applicant's costs for this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council adopted the disputed restrictive measures provided for in Article 19(1)(b) and (c) of Council Decision 2010/413/CFSP in absence of any legal provisions/grounds.

2. Second plea in law, alleging that the Council has breached the obligation to state reasons. The statement of reasons of the disputed decision and resolution is vague and general and does not indicate the specific and actual reasons why, in the exercise of its broad discretion, the Council considered that the applicant should be subject to the disputed restrictive measures.

3. Third plea in law, alleging that the Council has violated the applicant's rights of defence, right to a fair hearing and right to effective judicial protection. The applicant has neither been informed nor notified of any possible evidence adduced against him to justify the measure adversely affecting him. The Council neither granted the applicant access to its file nor provided him with the requested documents (including precise and personalised information justifying the disputed restrictive measures) nor disclosed to him the possible evidence adduced against him. The applicant was denied to be heard by the Council as he expressly requested it. The abovementioned violation of the applicant's rights of defence — notably the failure to inform the applicant of the evidence adduced against him — results in a violation of the applicant's right to effective judicial protection.

4. Fourth plea in law, alleging that the Council made a manifest error of assessment when adopting the restrictive measures against the applicant. The reasons relied on by the Council against the applicant do not constitute an adequate statement of reasons. Moreover, the Council has produced neither evidence nor information to establish the reasons it invoked to justify the disputed restrictive measures, which are based on mere allegations.

5. Fifth plea in law, alleging that the disputed restrictive measures are vitiated and tainted with illegality due to the defects in the Council's assessment prior their adoption. The Council did not carry out a genuine assessment of the circumstances of the case, but it has restricted itself to following the UNSC's recommendations and adopting the proposals submitted by the Member States.

Action brought on 14 March 2013 — First Islamic Investment Bank v Council

(Case T-161/13)

(2013/C 141/44)

Language of the case: English

Parties

Applicant: First Islamic Investment Bank Ltd (Labuan, Malaysia) (represented by: B. Mettetal and C. Wucher-North, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul paragraph I.I.10 of the Annex to Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71) in so far as the applicant is concerned;

— Annul paragraph I.I.10 of the Annex to Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55) in so far as the applicant is concerned;

— Order the defendant to pay, in addition to its own costs, those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the applicant does not assist designated entities to violate the provisions of EU regulation on Iran and does not provide financial support to the government of Iran. It is neither being used to channel Iranian oil-related payment. Accordingly, the substantive criteria for designation under the challenged Annexes of the Decision 2012/829/CFSP of 21 December 2012 and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 are not met in respect of the applicant and/or the Council committed a manifest error of assessment in determining whether or not those criteria were met. The Council also failed to apply the correct test.

2. Second plea in law, alleging the Council breaches the procedural requirements to give the adequate reasons in the Annexes of Decision 2012/829/CFSP and the Council Implementing Regulation (EU) No 1264/2012 and to respect the rights of defense and the right to effective judicial protection.

3. Third plea in law, alleging that the designation of the applicant violates the principle of proportionality.

Action brought on 21 March 2013 — Novomatic v OHIM — Simba Toys (AFRICAN SIMBA)

(Case T-172/13)

(2013/C 141/45)

Language in which the application was lodged: German

Parties

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

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

Other party to the proceedings before the Board of Appeal: Simba Toys GmbH & Co. KG (Fürth-Stadeln, Germany)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2013 in Case 157/2012-4 and dismiss the opposition in its entirety as a result of a lack of similarity between the goods and/or signs and grant registration of the Community trade mark 'AFRICAN SIMBA' (application No 7 5 4175) in the form applied for;

— order OHIM and — in the case of written intervention — the opponent to bear their own costs and those incurred by the applicant in the proceedings before OHIM and in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'ARFICAN SIMBA' for goods and services in Classes 9, 28 and 41 — Community trade mark application No 7 534 175

Proprietor of the mark or sign cited in the opposition proceedings: Simba Toys GmbH & Co. KG

Mark or sign cited in opposition: National figurative mark containing the word element 'Simba', and international word mark 'SIMBA' for goods in Class 28

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 42(2) in conjunction with Article 42(3) of Regulation No 207/2009 in conjunction with Rule 22(2) of Regulation No 2868/95 and Article 8(1)(b) of Regulation No 207/2009

Action brought on 20 March 2013 — Selo Medical v OHIM — biosyn Arzneimittel (SELOGYN)

(Case T-173/13)

(2013/C 141/46)

Language in which the application was lodged: German

Parties

Applicant: Selo Medical GmbH (Unternberg, Austria) (represented by: T. Schneider, lawyer)

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

Other party to the proceedings before the Board of Appeal: biosyn Arzneimittel GmbH (Fellbach, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 January 2013 in Case R 2601/2011-4 and reject the opposition against the Community trade mark application;

— Order OHIM or the potential intervener to pay the costs pursuant to Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'SELOGYN' for goods in Class 5 — Community trade mark application No 9 049 016

Proprietor of the mark or sign cited in the opposition proceedings: biosyn Arzneimittel GmbH

Mark or sign cited in opposition: the national word mark 'SELESYN' for goods and services in Classes 5, 29 and 44

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Order of the General Court of 18 March 2013 — Freistaat Sachsen v Commission

(Case T-215/09) ([1])

(2013/C 141/47)

Language of the case: German

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

([1]) OJ C 180, 1.8.2009.

Order of the General Court of 18 March 2013 — Mitteldeutsche Flughafen and Flughafen Dresden v Commission

(Case T-217/09) ([1])

(2013/C 141/48)

Language of the case: German

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

([1]) OJ C 180, 1.8.2009.

Order of the General Court of 12 March 2013 — Lafarge v Commission

(Case T-49/12) ([1])

(2013/C 141/49)

Language of the case: French

The President of the Seventh Chamber (extended composition) has ordered that the case be removed from the register.

([1]) OJ C 109, 14.4.2012.

Order of the General Court of 27 March 2013 — Advance Magazine Publishers v OHIM — Bauer Consumer Media (GOLF WORLD)

(Case T-194/12) ([1])

(2013/C 141/50)

Language of the case: English

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

([1]) OJ C 209, 14.7.2012.

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