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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 147/01)

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

OJ C 141, 18.5.2013

Past publications

OJ C 129, 4.5.2013

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

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Fővárosi Munkaügyi Bíróság (Hungary) lodged on 8 January 2013 — Csilla Sajtos v Budapest Főváros VI Ker. Önkormányzata

(Case C-10/13)

(2013/C 147/02)

Language of the case: Hungarian

Referring court

Fővárosi Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Csilla Sajtos

Defendant: Budapest Főváros VI Ker. Önkormányzata

Questions referred

1. Having regard to Article 6(3) of the [Treaty on European Union], does the right to protection against unjustified dismissal constitute a fundamental right which, as a general principle, forms part of European Union law and is to be regarded as a rule of primary law?

2. If question 1 is answered in the affirmative, are civil servants also entitled to that right?

Request for a preliminary ruling from the Sozialgerichts Nürnberg (Germany) lodged on 22 January 2013 — Petra Würker v Familienkasse Nürnberg

(Case C-32/13)

(2013/C 147/03)

Language of the case: German

Referring court

Sozialgerichts Nürnberg

Parties to the main proceedings

Appellant: Petra Würker

Respondent: Familienkasse Nürnberg

Question referred

1. Must Articles 77 or 78 of Regulation (EEC) No 1408/71 ([1]) be interpreted as meaning that receipt of a child raising pension (Erziehungsrente) confers a right against the Member State which pays the pension?

2. Has the situation changed from 1 May 2010 with the entry into force of Regulation (EC) No 883/2004 ([2]) and must Article 67 of that regulation be interpreted as meaning that any type of pension (including a German child raising pension) triggers the right?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2).

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 28 January 2013 — Andreas Kainz AG v Pantherwerke AG

(Case C-45/13)

(2013/C 147/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Andreas Kainz

Defendant: Pantherwerke AG

Questions referred

1. Is the 'place where the harmful event occurred or may occur' in Article 5(3) of Regulation (EC) No 44/2001 ([1]) ('Regulation No 44/2001') to be interpreted, in relation to product liability, as meaning:

   1.1 that the place of the event giving rise to the damage (*Handlungsort*) is the place where the manufacturer is established;

   1.2 that the place of the event giving rise to the damage (*Handlungsort*) is the place where the product is put into circulation;

   1.3 that the place of the event giving rise to the damage (*Handlungsort*) is the place where the product is put into circulation;

2. If Question 1.2 is answered in the affirmative:

   2.1 Is the product put into circulation when it has left the manufacturing process operated by the producer and enters a marketing process in the form in which it is offered to the public in order to be used or consumed?

   2.2 Is the product put into circulation when it is marketed in a structured way to end-users?

([1]) 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).

Request for a preliminary ruling from the Datenschutzkommission (Austria) lodged on 28 January 2013 — H v E

(Case C-46/13)

(2013/C 147/05)

Language of the case: German

Referring court

Datenschutzkommission

Parties to the main proceedings

Applicant: H

Defendant: E

Questions referred

1. Is Article 7(c) of Directive 2006/24/EC ([1]) to be interpreted as meaning that natural persons affected by the retention of data within the meaning of the Directive do not fall into the category of 'specially authorised personnel' within the meaning of that provision and may not be granted a right to receive information on data relating to their own person from the provider of a publicly available communications service or a public communications network?

2. Is Article 13(1)(c) and (d) of Directive 95/46/EC ([2]) to be interpreted as meaning that the right of natural persons affected by the retention of data within the meaning of Directive 2006/24/EC to receive information on data relating to their own person pursuant to Article 12(a) of Directive 95/46/EC from the provider of a publicly available communications service or a public communications network can be excluded or restricted?

3. If Question 1 is answered at least partly in the affirmative: Is Article 7(c) of Directive 2006/24/EC compatible with the fundamental right laid down in the second sentence of Article 8(2) [of the Charter of Fundamental Rights of the European Union] and thus valid?

([1]) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Request for a preliminary ruling from the Tribunale ordinario di Aosta (Italy) lodged on 30 January 2013 — Rocco Papalia v Comune di Aosta

(Case C-50/13)

(2013/C 147/06)

Language of the case: Italian

Referring court

Tribunale ordinario di Aosta

Parties to the main proceedings

Applicant: Rocco Papalia

Defendant: Comune di Aosta

Question referred

Must Directive 1999/70/EC [1] (Article 1, along with Clause 5 of the annexed framework agreement, as well as any other provision in any way connected or linked) be interpreted as permitting a situation in which a worker who has been recruited by a public body on a fixed-term contract, without the requirements laid down by the above Community rules being satisfied, is entitled to compensation in respect of damage only if he proves that such damage actually exists, and thus only if he provides positive, including presumptive, evidence, but at any rate specific evidence, that he has had to forgo other, better, employment opportunities?

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

Request for a preliminary ruling from the Szegedi Ítélőtábla (Hungary) lodged on 4 February 2013 — Érsekcsanádi Mezőgazdasági Zrt. v Bács-Kiskun Megyei Kormányhivatal

(Case C-56/13)

(2013/C 147/07)

Language of the case: Hungarian

Referring court

Szegedi Ítélőtábla

Parties to the main proceedings

Applicant: Érsekcsanádi Mezőgazdasági Zrt.

Defendant: Bács-Kiskun Megyei Kormányhivatal

Questions referred

1. Was the decision of the Hungarian administrative authorities, within the framework of interim protection measures against highly pathogenic avian influenza, to order a protection zone and, within that framework, to ban inter alia the transportation of poultry consistent with Union law — Council Directive 92/40/EEC [1] or 2005/94/EC, [2] or Commission Decision 2006/105/EC?

   Was the decision by the Hungarian administrative authorities, within the framework of interim protection measures against highly pathogenic avian influenza, to amend some of the rules on protection zones and, within that framework, to ban inter alia the moving of poultry within the protection zone, together with the measure taken by those authorities in the form of an official opinion to the applicant (a decision against which there was no right of appeal), by which the authorities refused permission for the transport (introduction) of turkeys to a site within the protection zone and located precisely at the centre of infection, consistent with Union law — Council Directive 92/40/EEC or 2005/94/EC, or Commission Decision 2006/115/EC?

2. Was the aim of Council Directive 92/40/EEC or 2005/94/EC, as sources of Union law, to create a system of regulation by Union law of compensation for any damage caused to individuals by interim protection measures taken against highly pathogenic avian influenza within the Union? Did the legal basis in Union law indicated in Council Directive 92/40/EEC or 2005/94/EC, or Commission Decisions 2006/105/EC and 2006/115/EC provide appropriate powers to create a system of regulation by Union law of compensation for damage caused to individuals by interim protection measures taken in relation to highly pathogenic avian influenza?

3. If the response to the second question is in the affirmative, is it lawful and consistent with Union law to restrict compensation claims resulting from interim national measures taken in the course of the implementation of the legislation listed? May a national legal provision that restricts State compensation to the actual damage and costs, and excludes the opportunity to recover loss of earnings, be regarded as a necessary and proportionate restriction in connection with a claim for compensation for damage caused to individuals?

4. If the response to the second question is in the negative, may the applicant base a claim for compensation to recover loss of earnings directly on a violation of the provisions of the Charter of Fundamental Rights (Article 16, concerning freedom to conduct a business, Article 17, concerning the right to property, and Article 47, concerning the right to an effective remedy and to a fair trial), if the interim measures taken by a Member State in the course of the implementation of Union law for the purpose of protection against highly pathogenic avian influenza caused damage to the applicant but the legal rules of the Member State relating to compensation for the damage caused restrict the submission of such claims and exclude the opportunity to submit a claim for loss of earnings?

5. If a full claim for damages can be enforced on the basis of any Union law, may such claims be enforced exclusively against the State or, on a wide construction of the concept of the State, may such a claim also be enforced against the public administrative authority, in proceedings for compensation for damage caused in the exercise of public authority? If the claim can also be enforced against administrative bodies, may the law of the Member State require that additional conditions be complied with in order for a right to compensation to arise?

6. If Union law does not allow an applicant to obtain full compensation, directly on the basis of Union law, for the damage sustained by him, does the requirement of equality of procedure mean that the same rules govern the processing of claims that may be decided on the basis of Union law and similar claims that may be decided on the basis of Hungarian law?

7. In circumstances such as those in the present case — given that the legislative and administrative measures taken by Member States for the purposes of protection against highly pathogenic avian influenza occurring in wild birds within the Union, of necessity, affect the operation of the internal market — is it possible to request an *amicus curiæ* opinion from the European Commission in legal proceedings relating to measures implementing Union law, particularly in cases where it becomes clear that the European Commission has initiated infringement proceedings against the Member State in connection with legal matters relevant to the legal dispute in question?

8. If it is possible to request either an *amicus curiæ* opinion or to make a simple request for information from the European Commission, is the European Commission obliged to supply an *amicus curiæ* opinion or the information sought with regard to the data, documents and statements arising during the infringement proceedings and the practices engaged in by the European Commission within this area, particularly if the information in question is not in the public domain and originated during the period prior to the infringement proceedings being brought before the Court of Justice? May such information be used in public in an individual legal dispute before a court of the Member State?

(1) Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza (OJ 1992 L 167, p. 1).

(2) Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ 2006 L 10, p. 16).

Request for a preliminary ruling from the Consiglio Nazionale Forense (Italy) lodged on 4 February 2013 — Angelo Alberto Torresi v Consiglio dell'Ordine degli Avvocati di Macerata

(Case C-58/13)

(2013/C 147/08)

Language of the case: Italian

Referring court

Consiglio Nazionale Forense

Parties to the main proceedings

Applicant: Angelo Alberto Torresi

Defendant: Consiglio dell'Ordine degli Avvocati di Macerata

Questions referred

1. In the light of the general principle which prohibits any abuse of rights and Article 4(2) TEU, relating to respect for national identities, is Article 3 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (1) to be interpreted as obliging national administrative authorities to register in the register of lawyers qualifying abroad Italian nationals who have conducted themselves in a manner which abuses Union law, and as precluding a national practice which allows such authorities to reject applications for registration in the register of lawyers qualifying abroad where there are objective circumstances to indicate that there has been an abuse of Union law, without prejudice either to respect of the principles of proportionality and non-discrimination or to the right of the person concerned to institute legal proceedings in order to argue a possible infringement of the right of establishment and, consequently, the possibility of judicial review of the administrative action in question?

2. If the first question should be answered in the negative, is Article 3 of Directive 98/5/EC, thus interpreted, to be regarded as invalid in light of Article 4(2) TEU, in that it enables circumvention of the rules of a Member State which make access to the legal profession conditional on passing a State examination, given that the Constitution of that Member States makes provision for such an examination and that the examination forms part of the fundamental principles safeguarding consumers of legal services and the proper administration of justice?

(1) OJ 1998 L 77, p. 36.

Request for a preliminary ruling from the Consiglio Nazionale Forense (Italy) lodged on 4 February 2013 — Pierfrancesco Torresi v Consiglio dell'Ordine degli Avvocati di Macerata

(Case C-59/13)

(2013/C 147/09)

Language of the case: Italian

Referring court

Consiglio Nazionale Forense

Parties to the main proceedings

Applicant: Pierfrancesco Torresi

Defendant: Consiglio dell'Ordine degli Avvocati di Macerata

Questions referred

1. In the light of the general principle which prohibits any abuse of rights and Article 4(2) TEU, relating to respect for national identities, is Article 3 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained [1] to be interpreted as obliging national administrative authorities to register in the register of lawyers qualifying abroad Italian nationals who have conducted themselves in a manner which abuses Union law, and as precluding a national practice which allows such authorities to reject applications for registration in the register of lawyers qualifying abroad where there are objective circumstances to indicate that there has been an abuse of Union law, without prejudice either to respect of the principles of proportionality and non-discrimination or to the right of the person concerned to institute legal proceedings in order to argue a possible infringement of the right of establishment and, consequently, the possibility of judicial review of the administrative action in question?

2. If the first question should be answered in the negative, is Article 3 of Directive 98/5/EC, thus interpreted, to be regarded as invalid in light of Article 4(2) TEU, in that it enables circumvention of the rules of a Member State which make access to the legal profession conditional on passing a State examination, given that the Constitution of that Member States makes provision for such an examination and that the examination forms part of the fundamental principles safeguarding consumers of legal services and the proper administration of justice?

[1] OJ 1998 L 77, p. 36.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 8 February 2013 — Green Network SpA v Autorità per l'energia elettrica e il gas

(Case C-66/13)

(2013/C 147/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Green Network SpA

Defendant: Autorità per l'energia elettrica e il gas

Questions referred

1. Is it inconsistent with the correct application of Articles 3(2) and 216 TFEU — according to which the Union has exclusive competence for the conclusion of an international agreement when that conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope, with the twofold consequence that, first, the power to conclude with non-member States agreements that affect common rules or alter their operation, or [affect] a sector completely governed by Community law and for which the Union has exclusive competence, is centralised within the European Union itself and, secondly, that such authority no longer resides individually or collectively with the Member States — and of Article 5 of Directive 2001/77/EC, for a national provision ([Article] 20(3) of Legislative Decree No 387 of 2003) to make the recognition of the guarantees of origin issued by third States subject to the conclusion of an appropriate international agreement between the Italian State and the third State in question?

2. Are the national rules at issue inconsistent with the correct application of the abovementioned Community rules, when the Non-Member State is the Swiss Confederation, linked to the European Union by a free trade agreement concluded on 22 July 1972 and entered into force on 1 January 1973?

3. Is it inconsistent with the correct application of the Community rules referred to in question (i) for the provision of national law, contained in Article 4(6) of the Ministerial Decree of 11 November 1999, to lay down that, when electricity is imported from non-Member States of the European Union, acceptance of the application is conditional upon the conclusion of an agreement between the National Grid Manager and an equivalent local authority determining the detailed rules for the necessary checks?

4. In particular, is it inconsistent with the proper application of the Community rules at issue for the agreement under Article 4(6) of the Ministerial Decree of November 1999 to consist of a merely tacit agreement, never set out in official documents and the subject of a mere statement by the appellant, which is unable to provide details of its essential elements?

Request for a preliminary ruling from the Tribunale civile di Roma (Italy) lodged on 11 February 2013 — Mediaset SpA v Ministero dello Sviluppo Economico

(Case C-69/13)

(2013/C 147/11)

Language of the case: Italian

Referring court

Tribunale civile di Roma

Parties to the main proceedings

Applicant: Mediaset SpA

Defendant: Ministero dello Sviluppo Economico

Questions referred

1. Is the national court called upon to rule on the amount of State aid which the Commission has ordered to be recovered bound, as regards both the existence of the State aid and its amount, by the Commission's Decision of 24 January 2007 adopted upon the conclusion of procedure No C 52/2005 concerning State aid, as supplemented by the determinations which the Commission made in its notes of 11 June 2008 COMP/H4/EK/cd D(2008) 127 and 23 October 2009 COMP/H4/CN/si D(2009)230 and as confirmed by the Court of Justice in its judgment of 15 June 2010 in Case T-177/07?

2. If the first question should be answered in the negative: In affirming in its judgment of 15 June 2010 in Case T-177/07 that it is for the national court to rule on the amount of the State aid, did the Court of Justice intend to restrict that power to the quantification of an amount which, inasmuch as it relates to State aid actually implemented and received, must necessarily have a positive value and cannot therefore be nil, or

3. Did the Court of Justice, in affirming in its judgment of 15 June 2010 in Case T-177/07 that it is for the national court to rule on the amount of the State aid, instead mean to ascribe to the national court the power to assess the claim for the recovery of State aid insofar as concerns both the existence of the State aid and its quantum and also, therefore, the power to hold that there is no obligation to repay aid?

Request for a preliminary ruling from the Tribunale di Tivoli (Italy) lodged on 11 February 2013 — T

(Case C-73/13)

(2013/C 147/12)

Language of the case: Italian

Referring court

Tribunale di Tivoli

Parties to the main proceedings

Applicant: T

Questions referred

1. Does Article 82 of Presidential Decree No 115 of 30 May 2002 on legal aid in Italian law — insofar as it stipulates that the judicial authorities are to make an order for payment in respect of the fees and expenses of the defending council which complies with the standard scale of lawyers' fees in such a way that, they may not, in any event, be greater than the average amounts payable under the scales of fees in force relating to fees, court fees and emoluments, bearing in mind the nature of the professional commitment with reference to the impact of the tasks undertaken in relation to the procedural status of the defendant — comply with Article 47(3) of the [Charter of Fundamental Rights] of the European Union, which stipulates that legal aid is to be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice?

2. Does Article 82 of Presidential Decree No 115 of 30 May 2002 on legal aid in Italian law — insofar as it stipulates that the judicial authorities are to make an order for payment in respect of the fees and expenses of the defending council which complies with the standard scale of lawyers' fees in such a way that, they may not, in any event, be greater than the average amounts payable under the scales of fees in force relating to fees, court fees and emoluments, bearing in mind the nature of the professional commitment with reference to the impact of the tasks undertaken in relation to the procedural status of the defendant — comply with Article 6 the European Convention for the Protection of Human Rights, as transposed into Community law by Article 52(3) of the [Charter of Fundamental Rights] of the European Union and by Article 6 [TFEU]?

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 14 February 2013 — SEK Zollagentur GmbH v Hauptzollamt Gießen

(Case C-75/13)

(2013/C 147/13)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: SEK Zollagentur GmbH

Defendant: Hauptzollamt Gießen

Questions referred

1. Are the relevant provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, ([1]) in particular Article 50 thereof, to be interpreted as meaning that an article left with a person by the customs authority for temporary storage in an approved place is deemed to have been removed from customs supervision if it is declared for an external transit procedure, but it does not in fact accompany the prepared transit papers on the transport planned and is not presented to the customs office at the place of destination?

2. If the answer to the first question is affirmative: In such circumstances is the person who, as the approved consignor, placed the goods in the transit procedure a customs debtor under the first indent of Article 203(3) of the Customs Code or under the fourth indent of Article 203(3) of the Customs Code?

([1]) OJ 1992 L 302, p. 1.

Request for a preliminary ruling from the Supreme Administrative Court (Nejvyšší správní soud) (Czech Republic) lodged on 15 February 2013 — ACO Industries Tábor s. r. o. v Appellate Tax Directorate (Odvolací finanční ředitelství)

(Case C-80/13)

(2013/C 147/14)

Language of the case: Czech

Referring court

Supreme Administrative Court

Parties to the main proceedings

Applicant: ACO Industries Tábor s. r. o.

Defendant: Appellate Tax Directorate

Questions referred

1. Do Articles 18, 45, 49 and 56 of the Treaty on the Functioning of the European Union preclude provisions under which an employer established in one Member State is obliged to make advance payments of tax on the income of workers (nationals of another Member State) temporarily assigned to the employer by a temporary work agency established in another Member State through a branch established in the first Member State?

2. Do Articles 18, 45, 49 and 56 of the Treaty on the Functioning of the European Union preclude provisions under which the basis of assessment of such workers is set at a flat rate of at least 60 % of the amount invoiced by the temporary work agency in cases where the intermediation fee is included in the amount invoiced?

3. If the answer to the first or second question is yes in the affirmative, is it possible, in a situation such as the present case, to restrict the said fundamental freedoms for reasons of public policy, public security or public health, or for the effectiveness of fiscal supervision?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 19 February 2013 — Società cooperativa Madonna dei Miracoli v Regione Abruzzo, Ministero delle Politiche Agricole e Forestali

(Case C-82/13)

(2013/C 147/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Società cooperativa Madonna dei Miracoli

Respondents: Regione Abruzzo, Ministero delle Politiche Agricole e Forestali

Questions referred

1. Is it the case that the European Commission has cancelled the grant of the Community contribution and what was the decision adopted?

In the alternative:

2. What legal effect is to be attached to the Commission's failure to act, as a result of which the Community contribution was not paid?

3. Does the Commission's failure to act by non-disbursement of the Community contribution preclude the application of Article 42(a) of Abruzzo Regional Law 31/82, under which the appellant was granted the regional contribution ancillary to the Community contribution and, consequently, [does that failure] preclude payment of the regional contribution?

At all events:

4. What are the obligations incumbent on the Italian State in the case of the European Commission's persistent failure to act?

Action brought on 21 February 2013 — European Commission v Italian Republic

(Case C-85/13)

(2013/C 147/16)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: E. Manhaeve and L. Cimaglia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic, by having failed to:

  — adopt the provisions necessary to ensure that the agglomerations of Bareggio, Cassano d'Adda, Melegnano, Mortara, Olona Nord, Olona Sud, Robecco sul Naviglio, San Giuliano Milanese Est, San Giuliano Milanese Ovest, Seveso Sud, Trezzano sul Naviglio, Turbigo and Vigevano (Lombardy), which have a population equivalent of more than 10 000 and discharge into receiving waters considered to be 'sensitive areas' for the purposes of Article 5(1) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, ([1]) are provided with collection systems for urban waste water, pursuant to Article 3 of that directive;

  — adopt the provisions necessary to ensure that, in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cormons, Gradisca d'Isonzo, Grado, Pordenone/Porcia/Roveredo/Cordenons, Sacile (Friuli-Venezia Giulia), Bareggio, Broni, Calco, Cassano d'Adda, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, San Giuliano Milanese Ovest, Seveso Sud, Somma Lombardo, Trezzano sul Naviglio, Turbigo, Valle San Martino, Vigevano, Vimercate (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Nuoro (Sardinia), Castellammare del Golfo I, Cinisi, Terrasini (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto), which have a population equivalent of more than 10 000, urban waste water entering collecting systems is, before discharge, subject to secondary treatment or an equivalent treatment, pursuant to Article 4 of Directive 91/271/EEC;

  — adopt the provisions necessary to ensure that, in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, San Vito al Tagliamento, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Francavilla Fontana, Monteiasi, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia) and Castellammare del Golfo I, Cinisi, Partinico, Terrasini and Trappeto (Sicily), which have a population equivalent of more than 10 000 and discharge into receiving waters considered to be 'sensitive areas' for the purposes of Directive 91/271/EEC, urban waste water entering collecting systems is, before discharge, subject to more stringent treatment than secondary treatment or an equivalent treatment, pursuant to Article 5 of that directive;

  — adopt the provisions necessary to ensure that the urban waste water treatment plants built to comply with the requirements of Articles 4 to 7 of Directive 91/271/EEC are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions and to ensure that, when the plants are being designed, seasonal variations of the load are taken into account in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, San Vito al Tagliamento, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Bareggio, Broni, Calco, Cassano d'Adda, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, San Giuliano Milanese Ovest, Seveso Sud, Somma Lombardo, Trezzano sul Naviglio, Turbigo, Valle San Martino, Vigevano, Vimercate (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Francavilla Fontana, Monteiasi, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia), Castellammare del Golfo I, Cinisi, Partinico, Terrasini, Trappeto (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto);

  has failed to fulfil its obligations under Article 3 and/or Article 4 and/or Article 5 as well as Article 10 of Directive 91/271/EEC;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission complains that, in parts of its territory, Italy has not correctly implemented Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

First of all, the Commission finds a number of breaches of Article 3 of that directive, the second subparagraph of paragraph 1 and paragraph 2 of which provide, regarding urban waste water discharging into receiving waters which are considered 'sensitive areas' as defined under Article 5 of the directive, that Member States were required to ensure, by 31 December 1998 at the latest, that all agglomerations with a population equivalent of more than 10 000 were provided with collection systems satisfying the requirements of Annex I(A). In various agglomerations in the Lombardy Region falling within the ambit of those provisions, that requirement was not properly complied with.

In addition, under Article 4(1) and (3) of Directive 91/271/EEC, Member States were required to ensure, by 31 December 2000 at the latest for all discharges from agglomerations with a population equivalent of more than 15 000 and by 31 December 2005 at the latest for discharges from agglomerations with a population equivalent of between 10 000 and 15 000, that urban waste water entering collecting systems was, before discharge, subject to secondary treatment or an equivalent treatment, in accordance with the relevant requirements of Annex I(B). The Commission has found that Italy failed to comply with those provisions in a series of agglomerations situated in the regions of Abruzzo, Friuli-Venezia Giulia, Lombardy, Marche, Piedmont, Sardinia, Sicily, Aosta Valley and Veneto.

Next, under Article 5(2) and (3) of the directive, the Member States were required to ensure by 31 December 1998 at the latest that, for all discharges from agglomerations with a population equivalent of more than 10 000, urban waste water entering collecting systems was, before discharge into sensitive areas, subject to more stringent treatment than that described in Article 4. The Commission has found that Italy failed to comply with those provisions in a series of agglomerations situated in the regions of Abruzzo, Friuli-Venezia Giulia, Lazio, Puglia, Sardinia and Sicily.

Lastly, the failure to comply with Articles 4 and 5 of Directive 91/271/EEC also entails a breach of Article 10 of the directive, which provides that urban waste water treatment plants must be designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions.

[1] OJ 1991 L 135, p. 40.

Request for a preliminary ruling from the Cour de cassation (Belgium) lodged on 22 February 2013 — Philippe Gruslin v Citibank Belgium SA

(Case C-88/13)

(2013/C 147/17)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Philippe Gruslin

Respondent: Citibank Belgium SA

Question referred

Is Article 45 of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [1] to be interpreted as meaning that the concept of 'payments to unit-holders' also refers to the delivery to unit-holders of certificates for registered units?

[1] OJ 1985 L 375, p. 3.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 25 February 2013 — Essent Energie Productie BV; other party: Minister van Sociale Zaken en Werkgelegenheid

(Case C-91/13)

(2013/C 147/18)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Essent Energie Productie BV

Other party: Minister van Sociale Zaken en Werkgelegenheid

Questions referred

1. In a situation such as that at issue in the main proceedings, can a principal contractor which must, pursuant to Article 2(1) of the Wet arbeid vreemdelingen 1994 (1994 Netherlands Law on the employment of foreign nationals),

be regarded as the employer of the Turkish workers concerned rely, as against the Netherlands authorities, on the standstill rule in Article 13 of Decision No 1/80 ([1]) or on the standstill rule in Article 41 of the Additional Protocol? ([2])

2. (a) Must the standstill rule in Article 13 of Decision No 1/80 or the standstill rule in Article 41 of the Additional Protocol be interpreted as precluding the introduction of a prohibition, as referred to in Article 2(1) of the Wet arbeid vreemdelingen 1994, for principal contractors to have work carried out in the Netherlands by workers who are nationals of a third country, in this case Turkey, without a work permit, if those workers are in the employ of a German undertaking and work for the principal contractor in the Netherlands via a Netherlands user undertaking?

(b) Is it significant in that regard that an employer was already prohibited, before both the standstill rule in Article 41 of the Additional Protocol and the standstill rule in Article 13 of Decision No 1/80 entered into force, from having work carried out by a foreign national without a work permit under a contract of employment and that that prohibition was extended, likewise before the standstill rule in Article 13 of Decision No 1/80 entered into force, to user undertakings to which foreign nationals are posted?

([1]) Decision No 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association.

([2]) Signed in Brussels on 23 November 1970 and concluded, approved and confirmed by means of Council Regulation (EEC) No 2760.72 of 19 December 1972 (OJ 1972 L 293, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 25 February 2013 — Gemeente 's-Hertogenbosch v Staatssecretaris van Financiën

(Case C-92/13)

(2013/C 147/19)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Gemeente 's-Hertogenbosch

Defendant: Staatssecretaris van Financiën

Question referred

Should Article 5(7)(a) of the Sixth Directive ([1]) be interpreted as meaning that supplies are made for consideration in a situation in which a municipality takes first occupation of a building which it has had built on its own land and which it is to use at the rate of 94 % for its activities as a public authority and at the rate of 6 % for its activities as a taxable person, including 1 % for exempt activities to which no right of deduction applies?

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

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 4 March 2013 — P.J. Vonk Noordegraaf v Staatssecretaris van Economische Zaken

(Case C-105/13)

(2013/C 147/20)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Appellant: P.J. Vonk Noordegraaf

Respondent: Staatssecretaris van Economische Zaken

Question referred

Can it be said to constitute a correct application of Regulation (EC) No 73/2009, ([1]) with particular reference to Articles 34, 36 and 137, if a farmer with payment entitlements acquired on the basis of non-area-related production, allocated to the area in his possession, does not have a significant proportion of those entitlements paid out to him despite the fact that he declared the eligible area of the hectares which remained unchanged in his possession in good faith in accordance with the measuring method used by the Member State at the time of the activation of the payment entitlements under Article 34 of Regulation (EC) No 73/2009, but subsequently rejected by the Commission, for

the sole reason that the eligible area determined for purposes of the payment turns out to be smaller as the result of a changed measuring method?

(1) Council Regulation of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 7 March 2013 — HaTeFo GmbH v Finanzamt Haldensleben

(Case C-110/13)

(2013/C 147/21)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant and appellant on a point of law: HaTeFo GmbH

Defendant and respondent on a point of law: Finanzamt Haldensleben

Questions referred

1. (a) What requirements are to be set for a finding that persons are 'acting jointly' within the meaning of the fourth subparagraph of Article 3(3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (1) ('the SME Recommendation'): Is it simply sufficient in this respect that there is any enterprise-related cooperation between the natural persons with shareholdings in both enterprises, without disputes or conflicts of interest coming to light, or rather is some recognisably coordinated course of conduct by these persons required?

   (b) If some coordinated course of conduct is required: Does such conduct follow simply from purely de facto cooperation?

2. Where no obligation to draw up consolidated accounts exists, is it necessary, in order to decide whether an enterprise is linked with another enterprise via a person or a group of natural persons acting jointly, to undertake, over and above an examination of the 'relationships' set out in the first subparagraph of Article 3(3) of the Annex to the SME Recommendation, an overall economic examination, in which aspects such as property relationships — in this case particularly the fact that shareholders belong to one family —, the share structure and the degree of economic integration — in particular also the identity of the managing directors — of the enterprises in question are to be scrutinised?

3. In the event that, also where the SME Recommendation applies, an overall economic examination going beyond the formal examination is possible: Does this presuppose the intention, or at least the risk, of circumventing the SME definition?

(1) OJ 2003 L 124, p. 36.

Request for a preliminary ruling from the Arbeidshof te Antwerpen (Belgium) lodged on 11 March 2013 — Theodora Hendrika Bouman v Rijksdienst voor Pensioenen

(Case C-114/13)

(2013/C 147/22)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Appellant: Theodora Hendrika Bouman

Respondent: Rijksdienst voor Pensioenen

Question referred

Is the part of the AOW benefit which is paid to a Netherlands resident and which is based on an insurance period during which that Netherlands resident, simply by making an application, may refrain from joining the Netherlands scheme and thus from paying the premium, and in fact did so for a limited period, to be regarded as a benefit which is awarded on the basis of a voluntary or optional continued insurance within the meaning of Article 46a(3)(c) of Regulation 1408/71, (1) so that no account may be taken of it when applying the provision

against overlapping as laid down in Article 52(1)(1) of the Belgian Koninklijk Besluit van 21 december 1967 tot vaststelling van het algemeen reglement betreffende het rust- en overlevingspensioen voor werknemers.

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2).

Appeal brought on 15 March 2013 by Versalis SpA and Eni SpA against the judgment delivered by the General Court (Seventh Chamber) on 13 December 2012 in Case T-103/08 Versalis SpA, formerly Polimeri Europa SpA, and Eni SpA v Commission

(Case C-123/13 P)

(2013/C 147/23)

Language of the case: Italian

Parties

Appellants: Versalis SpA and Eni SpA (represented by: M. Siragusa, G.M. Roberti, F. Moretti, I. Perego, F. Cannizzaro, A. Bardanzellu, D. Durante and V. Laroccia, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside, in whole or in part, the judgment of the General Court of the European Union of 13 December 2012, in so far as it dismissed the joint action brought by Versalis and Eni, and, accordingly:

— annul, in whole or in part, the Decision of the European Commission of 5 December 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38629 — Chloroprene rubber);

— annul, or at least reduce, the fine imposed on Versalis and Eni by that decision;

or, in the alternative,

— set aside, in whole or in part, the judgment in Case T-103/08 in so far as it dismissed the action brought by Versalis and Eni, and refer the case back to the General Court for a ruling on the merits in the light of such guidance as the Court of Justice may provide;

— order the Commission to pay the costs incurred in relation to the current appeal proceedings and to the proceedings at first instance (Case T-103/08).

Grounds of appeal and main arguments

In support of their appeal against the judgment in Case T-103/08, Versalis and Eni submit, first, that the General Court, in breach of Article 101 TFEU, deviated from the relevant EU case-law in order to attribute to the parent company — Eni — the infringement committed, so it is claimed, by Eni's subsidiaries in the chloroprene rubber industry, and, in particular, that the General Court deviated from its duties to conduct a proper analysis and to state reasons when assessing the evidence adduced to reverse the presumption that decisive influence was exercised, thereby acting in breach of the fundamental principles of legality, of liability for one's own acts in relation to antitrust liability and of the presumption of innocence, and infringing the rights of the defence, as well as the principle of the limited liability of companies.

Secondly, Versalis and Eni submit that the General Court misapplied the relevant EU case-law in order to attribute to Versalis the infringement committed by Syndial SpA and did not give an adequate statement of reasons for rejecting the pleas raised by Eni and Versalis at first instance.

The third ground of appeal is that the General Court applied incorrectly, and in a contradictory manner, the principle enshrined in case-law regarding express dissociation from a cartel, and infringed the principle of *in dubio pro reo*, by holding that EniChem SpA had taken part in the meeting of 12 to 13 May 1993 in Florence and that the meetings which took place in 2002, in which Versalis took part, had been anti-competitive in nature. As a result, the General Court made an incorrect assessment and failed to exercise its own jurisdiction to review legality, in finding that those companies had participated in the cartel throughout its duration (that is, from May 1993 until May 2002).

Moreover, it is submitted that the General Court infringed EU law by failing to point out that the Commission had made serious errors in determining the basic amount of the fine in accordance with the Guidelines on the method of setting fines.

It is also claimed that the General Court infringed EU law by partially confirming that the aggravating circumstance of repeated infringement applied to Versalis and, in addition, by not giving an adequate statement of reasons for its conclusions on that point; in the alternative, the General Court erred in setting the percentage reduction in the increase of the fine and in maintaining Eni's joint liability for payment of the fine, including the part attributable to repeated infringement.

According to Versalis and Eni, the General Court then manifestly misapplied Article 23(2) of Regulation (EC) No 1/2003 (1) in determining the maximum amount of the fine and erred in law by failing to conduct a full review of how the Leniency Notice was applied by the Commission. They also claim that the

General Court failed to note that the Commission had acted in breach of the principles of fairness, equal treatment and the protection of legitimate expectations when it, first, deprived Versalis and Eni of their chance to compete 'on equal terms' with the other undertakings to have the amount of the fine reduced, and, second, found that their cooperation had not merited a reduction of the fine for the purposes of the Notice and the Guidelines.

Lastly, Versalis and Eni claim that the General Court failed to exercise its jurisdiction to review the legality of the Commission's findings regarding the quantification of the fine ultimately imposed.

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

Appeal brought on 15 March 2013 by Guido Strack against the judgment of the General Court (Fourth Chamber) delivered on 15 January 2013 in Case T-392/07 Guido Strack v European Commission

(Case C-127/13 P)

(2013/C 147/24)

Language of the case: German

Parties

Appellant: Guido Strack (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the General Court of the European Union (Fourth Chamber) of 15 January 2013 in Case T-392/07 in so far as the form of order sought by the applicant was not granted, or was not granted in full;

— grant the form of order sought by the applicant in Case T-392/07;

— order the Commission to pay all the costs of the proceedings;

— in the alternative, annul also the decision of the President of the General Court of the European Union by which he allocated Case T-392/07 to the Fourth Chamber of the General Court.

Pleas in law and main arguments

The appellant puts forward nine grounds of appeal.

1. Lack of jurisdiction of the formation of the General Court and associated procedural errors and errors of reasoning, as well as the associated infringement of Article 6(1) of the European Convention on Human Rights ('ECHR'), the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the second paragraph of Article 50 of the Statute of the Court of Justice of the European Union and Articles 12 and 13(1) of the Rules of Procedure of the General Court and other rules of law arising from the so-called reallocation to the Chamber in the present proceedings;

2. Breaches of procedure and infringements of Regulation No 1049/2001, ([1]) Articles 6 and 13 ECHR and Article 47 of the Charter, and breaches of the principles of effective legal protection, the right to a fair hearing and procedural fairness in conjunction with a failure to state reasons and distortion of facts, attributable to: failure to deal with the case under an expedited procedure; unlawful restrictions on the applicant's ability to comment and refusal to admit a document concerning correction of the minutes; insufficient judicial review of the documents and dismissal of the applicant's corresponding application for all documents to be examined *in camera*; distortion of the facts, insufficient judicial review and breach of the principles of the allocation of the burden of proof and of procedural fairness with regard to the question whether the documentation is complete and to the numbers of confirmatory applications actually made pursuant to Regulation No 1049/2001; excessive duration of proceedings and unlawful treatment of the corresponding application for compensation;

3. Errors of law, lack of precision and failure to state reasons with regard to the formulation and extension of point 1 of the operative part — and the passages of the judgment underpinning that point — together with distortion of facts, inter alia, by the failure to recognise the applicant's continued interest in bringing proceedings;

4. Distortion of facts, failure to state reasons and breach of the principles of interpretation with regard to the scope of the applicant's application for access to the documents in Case T-110/04;

5. Errors of law, distortion of facts and failure to state reasons in connection with the application and interpretation of Article 4(1)(b) and Article 4(4) of Regulation No 1049/2001 in conjunction with the rules on data protection;

6. Errors of law, distortion of facts and failure to state reasons in connection with the application and interpretation of Article 4(2) of Regulation No 1049/2001;

7. Errors of law and failure to state reasons in connection with the rejection of the claim for compensation in the application, in particular breach of the principles of taking evidence and of effective legal protection;

8. Breach of the principle of effective legal protection in the context of the dismissal of an application by the applicant in paragraph 90 of the judgment in Case T-392/07;

9. Errors of law and failure to state reasons in connection with the decision on costs.

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

Appeal brought on 18 March 2013 by Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperativa Mare Azzurro Soc. coop. rl, and Cooperativa vongolari Sottomarina Lido Soc. coop. rl against the order of the General Court (Fourth Chamber) of 22 January 2013 in Case T-218/00, Cooperativa Mare Azzurro v Commission

(Case C-136/13 P)

(2013/C 147/25)

Language of the case: Italian

Parties

Appellants: Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperativa Mare Azzurro Soc. coop. rl and Cooperativa vongolari Sottomarina Lido Soc. coop. rl (represented by: A. Vianello, A. Bortoluzzi e A. Veronese, avvocati)

Other parties to the proceedings: Ghezzo Giovanni & C. Snc di Ghezzo Maurizio am C., European Commission

Form of order sought

— Annul and/or vary the order under appeal, the order of the General Court (Fourth Chamber) of 22 January 2013, notified to the appellants on 23 January 2013 in Case T-218/00, in which the General Court dismissed the action brought by Cooperativa Mare Azzurro Soc. coop. rl and Others against the Commission, seeking the annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50);

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', first, with regard to the obligation to state reasons for the Commission's decisions on State aid and, second, with regard to the allocation of the burden of proof as regards the conditions set out in Article 107(1) TFEU.

By the order under appeal, the General Court did not follow the rulings of the judgment delivered by the Court of Justice on 9 June 2011 in 'Comitato Venezia vuole vivere', in so far as that judgment states that the Commission's decision 'must contain in itself all the matters essential for its implementation by the national authorities'. Even though the decision lacked the matters essential for its implementation by the national authorities, the General Court failed to point to any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) are met. In the present case, however, in the contested decision the Commission failed to specify the 'modalities' for any such verification. Consequently, since it did not have available to it, at the time when the aid was to be recovered, the matters essential for the purpose of showing whether the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraphs 351 et seq.) — decided to reverse the burden of proof, in breach of Community case law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That is clearly contrary to the principles outlined by the Court in its judgment in 'Comitato Venezia vuole vivere'.

GENERAL COURT

Judgment of the General Court of 11 April 2013 — CBp Carbon Industries v OHIM (CARBON GREEN)

(Case T-294/10) [1]

(Community trade mark — International registration designating the European Community — Community word mark CARBON GREEN — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2013/C 147/26)

Language of the case: English

Parties

Applicant: CBp Carbon Industries, Inc. (Tortola, British Virgin Islands, United Kingdom) (represented by: S. Malynicz, Barrister, and J. Fish, Solicitor)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 April 2010 (Case R 1361/2009-1), concerning an application for registration of the word sign CARBON GREEN as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CBp Carbon Industries, Inc. to pay the costs.*

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[1] OJ C 260, 25.9.2010.

Judgment of the General Court of 10 April 2013 — Höganäs v OHIM — Haynes (ASTALOY)

(Case T-505/10) [1]

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

(2013/C 147/27)

Language of the case: English

Parties

Applicant: Höganäs AB (Höganäs, Sweden) (represented by: L.-E. Ström, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Haynes International, Inc. (Kokomo, Indiana (United States)) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 August 2010 (Case R 1530/2009-4), relating to opposition proceedings between Haynes International, Inc. and Höganäs AB.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Höganäs AB to pay the costs.*

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[1] OJ C 346, 18.12.2010.

Judgment of the General Court of 10 April 2013 — GRP Security v Court of Auditors

(Case T-87/11) [1]

(Arbitration clause — Public service contracts — Surveillance and security services for the buildings of the Court of Auditors — Action for annulment — Decision to unilaterally terminate the contract with application for payment of damages and interest — Measure of a contractual nature — Lack of reclassification of the action — Inadmissibility — Decision to impose a penalty of exclusion for three months — Interest in bringing proceedings — Rights of defence — Serious breach of obligations — Principle that penalties must have a proper legal basis — Misuse of powers — Proportionality)

(2013/C 147/28)

Language of the case: French

Parties

Applicant: GRP Security (Bertrange, Luxembourg) (represented by: initially by G. Osch, then by C. Arendt and M. Larbi, lawyers)

Defendant: Court of Auditors of the European Union (represented by: initially by T. Kennedy, J.-M. Stenier and J. Vermer, then by T. Kennedy and J. Vermer, acting as Agents)

Re:

First, application for annulment of the decision of the Court of Auditors of 14 January 2011 to unilaterally terminate the framework service contract 'Various security services' (LOG/2026/10/02) and to apply for payment of damages and interest and, secondly, application for annulment of the decision of 14 January 2011 to impose a penalty of exclusion

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders GRP Security to pay the costs, including those relating to the applications for interim measures.*

([1]) OJ C 120, 16.4.2011.

Judgment of the General Court of 9 April 2013 — Italiana Calzature v OHIM — Vicini (Giuseppe GIUSEPPE ZANOTTI DESIGN)

(Case T-336/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Giuseppe GIUSEPPE ZANOTTI DESIGN — Prior national figurative and Community word marks ZANOTTI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 147/29)

Language of the case: Italian

Parties

Applicant: Societá Italiana Calzature SpA (Milan, Italy) (represented by: A. Rapisardi and C. Ginevra, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vicini SpA (San Mauro Pascoli, Italy) (represented by: M. Franzosi and M. Giorgetti, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 April 2011 (Case R 634/2010-2), concerning opposition proceedings between Societá Italiana Calzature SpA and Vicini SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Societá Italiana Calzature SpA to pay the costs.*

([1]) OJ C 252, 27.8.2011.

Judgment of the General Court of 9 April 2013 — Italiana Calzature v OHIM — Vicini (Giuseppe BY GIUSEPPE ZANOTTI)

(Case T-337/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Giuseppe BY GIUSEPPE ZANOTTI — Prior Community word mark ZANOTTI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 147/30)

Language of the case: Italian

Parties

Applicant: Societá Italiana Calzature SpA (Milan, Italy) (represented by: A. Rapisardi and C. Ginevra, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vicini SpA (San Mauro Pascoli, Italy) (represented by: M. Franzosi and M. Giorgetti, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 April 2011 (Case R 918/2010-2), concerning opposition proceedings between Societá Italiana Calzature SpA and Vicini SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Societá Italiana Calzature SpA to pay the costs.*

([1]) OJ C 252, 27.8.2011.

Judgment of the General Court of 10 April 2013 — Fercal — Consultadoria e Serviços v OHIM — Parfums Rochas (PATRIZIA ROCHA)

(Case T-360/11) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark PATRIZIA ROCHA — Earlier national word mark ROCHAS — Refusal to register by the Opposition Division — Inadmissibility of the action brought before the Board of Appeal — Article 60 of Regulation (EC) No 207/2009)

(2013/C 147/31)

Language of the case: Portuguese

Parties

Applicant: Fercal — Consultadoria e Serviços, Lda (Lisbon, Portugal) (represented by: A. J. Rodrigues, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Parfums Rochas SAS (Paris, France)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 April 2011 (Case R 2355/2010-2), relating to opposition proceedings between Parfums Rochas SAS and Fercal — Consultadoria e Serviços, Lda

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Fercal — Consultadoria e Serviços, Lda to pay the costs.*

[1] OJ C 298, 8.10.2011.

Judgment of the General Court of 10 April 2013 — IPK International v Commission

(Case T-671/11) [1]

(Financial assistance for an ecological tourism project — Repayment of the amounts recovered — Decision taken following the annulment by the General Court of the earlier decision cancelling the assistance — Compensatory interest — Default interest — Calculation)

(2013/C 147/32)

Language of the case: German

Parties

Applicant: IPK International — World Tourism Marketing Consultants GmbH (Munich, Germany) (represented by: C. Pitschas, lawyer)

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

Re:

Application for partial annulment of the Commission's decision of 14 October 2011 (ENTR/R1/HHO/lsa — entre.r.l (2011)1183091) to pay to the applicant a total amount of EUR 720 579,90, including the sum of EUR 158 618,27 by way of compensatory interest

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 14 October 2011 (ENTR/R1/HHO/lsa — entre.r.l(2011)1183091) in so far as it limits the amount of interest to be paid to IPK International — World Tourism Marketing Consultants GmbH to EUR 158 618,27;*

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

[1] OJ C 65, 3.3.2012.

Order of the President of the General Court of 11 March 2013 — Iranian Offshore Engineering & Construction v Council

(Case T-110/12 R)

(Interim relief — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds and economic resources — Application for interim measures — No urgency — Weighing up of the interests involved)

(2013/C 147/33)

Language of the case: Spanish

Parties

Applicant: Iranian Offshore Engineering & Construction Co. (Tehran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union (represented by: P. Plaza García and V. Piessevaux, Agents)

Re:

Application for suspension of the operation of (i) Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71) in so far as the applicant's name was listed 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 (ii) in so far as

they concern the applicant, Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11) and Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Appeal brought on 22 February 2013 by Kris Van Neyghem against the judgment of the Civil Service Tribunal of 12 December 2012 in Case F-77/11, Van Neyghem v Council

(Case T-113/13 P)

(2013/C 147/34)

Language of the case: French

Parties

Appellant: Kris Van Neyghem (Tienen, Belgium) (represented by M. Velardo, lawyer)

Other party to the proceedings: Council of the European Union

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment in Case F-77/11 Kris Van Neyghem v Council;

— annul the decision of 1 October 2010 refusing to promote the appellant and upheld the claim for damages;

— refer the case back to the Civil Service Tribunal for a decision if necessary;

— order to defendant to pay the costs including all the costs of the proceedings at first instance.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law and a breach of the duty to state reasons, as the CST held that the decision refusing to promote the person concerned could be reasoned at the stage of the answer to the complaint whereas the reasoning should already have been set out in the decision refusing promotion in so far as that decision was adopted under article 266 TFEU implementing the judgment in case F-53/08 *Bouillez and Others* v *Council* [2010] ECR I-0000 and not in accordance with article 45 of the Staff Regulations.

2. Second pleas in law alleging an error of law and an infringement of Article 266 TFEU and the relevant case-law, as the CST did not base its decision either on the operative part or on the grounds for its judgment in case F-53/08 in order to establish whether that judgment had been correctly implemented.

Appeal brought on 25 February 2013 by Giorgio Lebedef against the order of the Civil Service Tribunal of 12 December 2012 in Case F-70/11, Lebedef v Commission

(Case T-116/13 P)

(2013/C 147/35)

Language of the case: French

Parties

Appellant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the order of the CST of 12 December 2012 in Case F-70/11 *Lebedef* v *Commission* seeking the annulment of the applicant's evaluation report for the period 1.1. 2008 — 31.12.2008 and, more specifically, the part of the report drafted by EUROSTAT for the same period;

— grant the appellant's form of order sought at first instance;

— alternatively, refer the case back to the Civil Service Tribunal;

— make an order as to costs and order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law in that the CST held that the appellant was not designated to participate in

consultations and that his participation in those consultations was covered by the half time discharge from duties for trade union purposes which he enjoyed (paragraphs 41 to 45 of the order under appeal).

2. Second plea in law alleging an error of law in that the CST found that the special procedure for the assessment of staff representatives covers all trade union activities and incorrectly interpreted the reasons for which the appellant did not work for the department to which he had been assigned and held that the appellant could no longer challenge the competence of the assessors (points 50 and 51 of the order under appeal).

3. Third plea in law alleging an error of law in that the CST based its decision on incorrect findings concerning, in particular, the powers of the assessors to evaluate the appellant solely on the basis of his work for the department to which he was assigned, and the fact that he relied on the half time discharge from the performance of his duties for trade union purposes in order to justify the fact that he did not work for the service to which he was assigned (paragraphs 59 and 60 of the order under appeal).

4. Fourth plea in law alleging an error of law in that the CST concluded that the facts in the present case are distinguishable from those that gave rise to the judgment in Case F-36/07 *Lebedef* v *Commission* ECR Staff Cases I-A-1-143 and II-A-1-759 and that performance level IV could legitimately be attributed to the appellant (paragraphs 69 to 70 of the order under appeal).

Appeal brought on 25 February 2013 by Giorgio Lebedef against the order of the Civil Service Tribunal of 12 December 2012 in Case F-109/11, Lebedef v Commission

(Case T-117/13 P)

(2013/C 147/36)

Language of the case: French

Parties

Appellant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the order of the CST of 12 December 2012 in Case F-109/11 *Lebedef* v *Commission* seeking the annulment of the appellant's appraisal report for the period 1.1.2009 — 31.12.2009 and, more specifically, the part of the report drafted by EUROSTAT for the same period;

— uphold the appellant's form of order sought at first instance;

— alternatively, refer the case back to the Civil Service Tribunal;

— make an order as to costs and order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on six pleas in law, of which the first, second, third and six are essentially the same as or similar to those relied on in Case T-116/13 P *Lebedef* v *Commission*.

The fourth plea in law alleges an error of law in that, according to the appellant, the CST concluded that the report covering his activities in a professional or trade union organisation (OSP report) which should appear only as a document attached to the report concerning the appellant's duties at the Statistical Office of the European Union (Eurostat) (paragraphs 68 to 70 of the order under appeal).

The fifth plea in law alleges an error of law in that the appellant claims that the CST held that the appellant wished to challenge his appraisal reports prior to 2009 and the Commission decision not to promote him (paragraphs 74 and 75 of the order under appeal).

Action brought on 1 March 2013 — Direct Way and Direct Way Worldwide v Parliament

(Case T-126/13)

(2013/C 147/37)

Language of the case: French

Parties

Applicants: Direct Way (Brussels, Belgium); and Direct Way Worldwide (Machelen, Belgium) (represented by: E. van Nuffel d'Heynsbroeck, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the action admissible and well founded;

— consequently,

— annul:

— the Parliament's decision, of unknown date, to abandon the tendering procedure implemented on the ground that 'the bids received in response to the tender were unacceptable in view of the award criteria, in particular the proposed prices, which are too high compared to the value set out in the contract notice', brought to the attention of the Direct Way group by letter dated 3 September 2012;

— the Parliament's decision, of unknown date, to apply the negotiated procedure without publication for the purpose of awarding the contract, brought to the attention of the Direct Way group by the tendering procedure invitation communicated to it on 19 September 2012;

— the Parliament's decision, of unknown date, to award the contract to a competing tenderer, brought to the attention of the Direct Way group by e-mail of 21 December 2012 and confirmed by letter of 3 January 2013;

— accordingly, declare void the contract concluded between the Parliament and the s.c.s. TMS Limousines;

— order the Parliament to pay to the Direct Way group the provisional amount of EUR 199 500 per year as compensation for the loss sustained;

— order the Parliament to pay the costs in their entirety, in accordance with Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. The first plea alleges infringement of Article 101 of the Financial Regulation [1], of Article 127(1)(a) of the Regulation implementing the Financial Regulation [2] and of the principle of equality, and a manifest error of assessment, as the Parliament awarded the contract by negotiated procedure at a price above that submitted by the applicants in the context of the initial invitation to tender.

2. A second, alternative, plea alleges infringement of Article 127(1)(a) of the Regulation implementing the Financial Regulation and of the principle of equality, as the Parliament substantially amended the initial conditions of the contract (i) by awarding the contract at a price above that considered unacceptable in the initial invitation to tender (first part) and (ii) by lowering the estimate of the volume to be provided in relation to the volume set out in the initial conditions of the contract, thus affecting the assessment of the price of the negotiated bids (second part).

[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

[2] Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 8 March 2013 — Eltek/OHIM — Eltec Elektronik (ELTEK)

(Case T-139/13)

(2013/C 147/38)

Language in which the application was lodged: English

Parties

Applicant: Eltek SpA (Casale Monferrato, 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: Eltec Elektronik AG (Mainz, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the Board of Appeal's decision of 7 January 2013 (as rectified by corrigendum of 22 January 2013) notified and received on 10 January 2013 in Case R 511/2012-1, pertaining to opposition proceedings No B 992 851, and application for Community trade mark registration no. 4 368 064, by reason of the full satisfaction of all the requirements for valid registration of each product;

— Order OHIM to pay the costs with regard to the proceedings before the Court and order the opponent to pay the costs with regard to the proceedings before the Opposition Division and the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ELTEK', for goods in class 9 — Community trade mark application No 4 368 064

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

Mark or sign cited in opposition: German trade mark and International registration 'ELTEC', designating the Benelux, Spain, France, Italy, Austria and Portugal, for goods and services in classes 9, 37, 38, 41 and 42

Decision of the Opposition Division: Partially dismissed the opposition

Decision of the Board of Appeal: Allowed the appeal and rejected the Community trade mark applied for with respect to certain goods of class 9

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

Action brought on 8 March 2013 — Scheepsbouw Nederland v Commission

(Case T-140/13)

(2013/C 147/39)

Language of the case: English

Parties

Applicant: Scheepsbouw Nederland (Rotterdam, Netherlands) (represented by: K. Struckmann, lawyer, and G. Forwood, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission of 20 November 2012 in case SA.34736 (Early depreciation of certain assets acquired through a financial leasing), published in the Official Journal of the European Union on 13 December 2012 (OJ 2012 C 384, p. 2); and

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Commission failed to comply with Article 108(3) TFEU and Article 4(2) and 4(3) of Council Regulation (EC) No 659/1999 ([1]).

In this respect, the applicant argues that, in view of the circumstances of the case, as well as the insufficient and incomplete nature of the substantive examination carried out by the Commission during the preliminary examination procedure, there is sufficient evidence of the existence of serious difficulties as to the assessment of the proposed measure. The Commission was therefore not properly able to conclude, following its preliminary examination, that the measure in question was not State aid within the meaning of Article 107(1) TFEU. The Commission had no choice but to open the formal investigation procedure under Article 108(2) TFEU.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

Action brought on 11 March 2013 — Ziegler Relocation v Commission

(Case T-150/13)

(2013/C 147/40)

Language of the case: French

Parties

Applicant: Ziegler Relocation SA (Brussels, Belgium) (represented by: J.-F. Bellis, M. Favart and A. Bailleux, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— join the present action to Case T-539/12;

— declare the present action admissible and well-founded;

— hold that the European Union has incurred non-contractual liability as regards the applicant;

— order the European Union to pay the applicant the sum of EUR 112 872,50 per year from 11 March 2008, together with interest until payment in full;

— order the European Union to pay the costs.

Pleas in law and main arguments

The damage in respect of which the applicant seeks compensation from the European Union concerns the loss of earnings which it claims to have suffered since the adoption of the Commission's decision of 11 March 2008 in Case COMP/38.543 — *International removal services* as a result of the practice of European Union officials to request cover quotes in the context of removals the costs of which are reimbursed in accordance with the status of European Union officials has not ceased. The applicant's refusal to respond

favourably to such requests has the effect of removing it from the markets concerned, to the extent that it no longer supplies removal services to more than a very limited number of officials of the European institutions. It is a failure on the part of the European Union to fulfil its duty of care which is the cause of the loss thus suffered by the applicant.

Action brought on 14 March 2013 — Petro Suisse Intertrade v Council

(Case T-156/13)

(2013/C 147/41)

Language of the case: English

Parties

Applicant: Petro Suisse Intertrade Co. SA (Pully, Switzerland) (represented by: J. Grayston, Solicitor, P. Gjørtler, G. Pandey, D. Rovetta, N. Pilkington and D. Sellers, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision 2012/829/CFSP of 21 December 2012 (OJ 22.12.2012, L 356, p.71), amending Decision 2010/413/CFSP concerning restrictive measures against Iran, and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 (OJ 22.12.2012, L 356, p. 55), implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran, in so far as the contested acts include the applicant; and,

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

Pleas in law and main arguments

The applicant submits six grounds of challenge concerning infringement of an essential procedural requirement, as well as infringement of the Treaties and of rules of law relating to their application: violation of the right of hearing, violation of the obligation to give proper notice, insufficient statement of grounds, violation of the right of defence, manifest error of assessment, and breach of the fundamental right to property.

The applicant finds that the Council failed to perform a hearing of the applicant, and that no contrary indications would justify this. Furthermore, the Council failed to properly identify the applicant as the subject of the decision and regulation and also to properly identify the applicant in its letter of notification, and in any case these acts contained an insufficient statement of reasons. Requests by the applicant to confirm the identification, to expand on the statement of reasons, and for access to documents were not replied to, apart from a brief letter acknowledging receipt. By these omissions, the Council violated the right of defence of the applicant, who was denied the possibility of effectively arguing against the findings of the Council, as these findings were withheld from the applicant. Contrary to the claim of the Council, the applicant is not a front company controlled by the National Iranian Oil Company (NIOC), and in any case the Council has not substantiated that control of the applicant by NIOC would entail an economic benefit for the Iranian State that would be contrary to the aim of the contested decision and regulation. Finally, by restricting the ability of the applicant to form contracts, the Council has violated the basic right of property by taking measures for which the proportionality cannot be ascertained.

Action brought on 15 March 2013 — Sorinet Commercial Trust Bankers v Council

(Case T-157/13)

(2013/C 147/42)

Language of the case: English

Parties

Applicant: Sorinet Commercial Trust Bankers Ltd (Kish Island, Iran) (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.12 (under the heading 'Entities') of the Annex to Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;

— Annul paragraph I.I.12 (under the heading 'Entities') 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; and,

— Order that the Council pays the Applicant's costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the 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.

2. Second 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 it to justify the measure adversely affecting it. The Council neither granted the Applicant access to its file nor provided it with the requested documents (including precise and personalised information justifying the disputed restrictive measures) nor disclosed to it the possible evidence adduced against it. The Applicant was denied to be heard by the Council as the Applicant 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 it — results in a violation of the Applicant's right to effective judicial protection.

3. Third 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.

4. Fourth 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 15 March 2013 — Iralco v Council

(Case T-158/13)

(2013/C 147/43)

Language of the case: English

Parties

Applicant: Iranian Aluminum Co. (Iralco) (Tehran, Iran) (represented by: S. Millar and S. Ashley, Solicitors, and M. Lester, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul 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, in so far as the contested acts include the applicant; and,

— Order the Council to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council has failed to give adequate or sufficient reasons for designating the applicant.

2. Second plea in law, alleging that the Council has failed to safeguard the applicant's rights of defence and to effective judicial review.

3. Third plea in law, alleging that the Council erred manifestly in considering that any of the criteria for listing were fulfilled.

4. Fourth plea in law, alleging that the Council's decision to designate the applicant has infringed, without justification or proportion, the applicant's fundamental rights, including its right to protection of its property, business and reputation.

Action brought on 15 March 2013 — HK Intertrade v Council

(Case T-159/13)

(2013/C 147/44)

Language of the case: English

Parties

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

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision 2012/829/CFSP of 21 December 2012 (OJ 22.12.2012, L 356, p.71), amending Decision 2010/413/CFSP concerning restrictive measures against Iran, and Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 (OJ 22.12.2012, L 356, p.55), implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran, in so far as the contested acts include the applicant; and,

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

Pleas in law and main arguments

The applicant submits five grounds of challenge concerning infringement of an essential procedural requirement, as well as infringement of the Treaties and of rules of law relating to their application: violation of the right of hearing, violation of the obligation to give notice, insufficient statement of reasons, violation of the right of defence, and manifest error of assessment.

The applicant finds that the Council failed to perform a hearing of the applicant and violated its obligation to give notice to the applicant. Furthermore, the Council failed to supply a sufficient statement of reasons, which failing has been compounded by the failure of the Council to reply to the applicant's requests for access to documents and for general disclosure. By these omissions, the Council violated the right of defence of the applicant, who was denied the possibility of effectively arguing against the findings of the Council, as these findings were withheld from the applicant. Contrary to the claim of the Council, the applicant is not a 'front company' for National Iranian Oil Company (NIOC), and in any case the Council has not substantiated that the mere fact that the applicant was established as a subsidiary of NIOC is sufficient to thereby entail an economic benefit for the Iranian State contrary to the aim of the contested measures. Further, the Council has clearly violated the right of defence of the applicant and lastly has made manifest errors of assessment.

Action brought on 15 March 2013 — Bank Mellat v Council

(Case T-160/13)

(2013/C 147/45)

Language of the case: English

Parties

Applicant: Bank Mellat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, F. Zaiwalla, Solicitors, D. Wyatt, QC, and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Article 1(15) of Council Regulation (EU) No 1263/2012 ([1]); and/or

— Annul Article 1(15) of Council Regulation (EU) No 1263/2012 in so far as it applies to the applicant; and

— Declare Article 1(6) of Council Decision 2012/635/CFSP ([2]) inapplicable to the applicant; and

— Order the defendant to pay the costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Financial Embargo is not a 'necessary measure' and so lacks any legal basis under Article 215 TFEU in that it is not rationally connected with the relevant foreign policy aim.

2. Second plea in law, alleging that the Financial Embargo is in any event disproportionate to the foreign policy aim allegedly pursued and accordingly lacks any legal basis under Article 215 TFEU.

3. Third plea in law, alleging that the Financial Embargo is contrary to the general principles of EU law and Article 215(3) TFEU in particular, it is contrary to the principles of proportionality, legal certainty, non–arbitrariness and the requirement that sanctions contain necessary legal safeguards.

4. Fourth plea in law, alleging that the Financial Embargo violates the applicant's property rights, rights to trade and rights to free movement of capital and the principle of proportionality.

([1]) Council Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 34)

([2]) 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)

Action brought on 18 March 2013 — Magic Mountain Kletterhallen and Others v Commission

(Case T-162/13)

(2013/C 147/46)

Language of the case: German

Parties

Applicants: Magic Mountain Kletterhallen GmbH (Berlin, Germany); Kletterhallenverband Klever e.V. (Leipzig, Germany); Neoliet Beheer BV (Son, Netherlands); and Pedriza BV (Haarlem, Netherlands) (represented by: M. von Oppen and A. Gerdung)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2012) 8761 final of 5 December 2012 concerning State aid SA.33952 (2012/NN) — Germany, Climbing centres of the Deutscher Alpenverein, in accordance with the first paragraph of Article 264 TFEU;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of Article 107(3)(c) TFEU

   By their first plea in law, the applicants submit that the Commission wrongly found the aid at issue to be compatible with the internal market, since the requirements of Article 107(3)(c) TFEU were not satisfied. They submit that the aid does not serve a purpose in the common interest. In that respect, they also argue, inter alia, that this can be determined only in the case of a proven market deficiency, which is lacking in this instance. Moreover, they argue that there is no compatibility for the purposes of Article 106(2) TFEU. Furthermore, the applicants claim that the aid is not appropriate to address the alleged market efficiency problem. The aid also provides no incentive. The Commission merely assumes that the aid has an incentive effect. The aid is also not appropriate. The Commission merely assumes that the national authorities would ensure that the individual aid payments were proportionate, and it bases its misassumption on the status of the association of being in the common interest. The applicants accuse the Commission of having failed to balance the various interests correctly, in that it failed to weigh up the positive and negative effects of the aid. In that respect, they claim that, in the case of doubt, operating aid (and the aid granted is primarily operating aid) is not compatible with the internal market.

2. Second plea in law: failure to initiate the formal investigation procedure

   In the context of their second plea, the applicants submit that, in spite of serious difficulties in assessing the compatibility of the aid with the internal market, the Commission failed to initiate the formal investigation procedure. An indicator of such serious difficulties is the length of the preliminary investigation procedure — over one year in this instance. Similarly, the Commission failed to sufficiently establish the facts necessary for its assessment. In the view of the applicants, only in the formal investigation procedure could a sufficiently in-depth investigation of the climbing centre market have been carried out. Furthermore, the complaint examined by the Commission gave rise to difficult legal issues regarding operating aid for associations in the common interest. The applicants further submit that, as competitor undertakings or associations of undertakings they are interested parties within the meaning of Article 1(h) of Regulation (EC) No 659/1999, and they have the right to submit their opinion in the formal investigation procedure in accordance with Article 108(2) TFEU, a right of which they were deprived as a result of the failure to initiate the procedure.

Action brought on 15 March 2013 — Sun Capital Partners/OHIM — Sun Capital Partners (SUN CAPITAL)

(Case T-164/13)

(2013/C 147/47)

Language in which the application was lodged: English

Parties

Applicant: Sun Capital Partners, Inc. (New York, United States) (represented by: P.-A. Dubois, Solicitor, D. Alexander, QC and F. Clark, Barrister)

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

Other party to the proceedings before the Board of Appeal: Sun Capital Partners Ltd (London, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision of the Board; and/or

— Remit the matter for further consideration by the Board;

— Order the defendant to pay the costs of the proceedings, including the costs incurred by the applicant before the Board;

— Order SCPL to pay the costs of the proceedings, including the costs incurred by the applicant before the Board, in the event that SCLP becomes an intervening party in these proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'SUN CAPITAL'– Community trade mark registration No 2 942 654

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Articles 53(1)(c) and 8(4) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested Community trade mark invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1) in conjunction with 8(4) of Council Regulation No 207/2009.

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTO B)

(Case T-169/13)

(2013/C 147/48)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision due to the fact that the prior marks of the applicant shall be considered earlier trade marks within the meaning of Article 8(1)(b) Council Regulation No 207/2009 and therefore the applicant's opposition based on likelihood of confusion shall be assessed as to its substance;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'MOTO B' claiming the colours black, white, red, gold, green, brown and grey for goods in classes 9, 12 and 25 — Community trade mark application No 8 780 926

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

Mark or sign cited in opposition: Well-known, Italian, non-registered figurative marks «MOTOBI» et al.

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTOBI)

(Case T-170/13)

(2013/C 147/49)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the defendant's decision and order the dismissal of the application for revocation filed by the cancellation applicant;

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision should the Court consider that it is inevitable to conduct another thorough analysis of the evidence of genuine use;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'MOTOBI' for goods in class 12 — Community trade mark registration No 835 264

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTOBI B PESARO)

(Case T-171/13)

(2013/C 147/50)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the defendant's decision and order the dismissal of the application for revocation filed by the cancellation applicant;

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision should the Court consider that it is inevitable to conduct another thorough analysis of the evidence of genuine use;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The figurative mark 'MOTOBI B PESARO' for goods in classes 9, 12 and 25 — Community trade mark registration No 2 262 269

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.

Action brought on 25 March 2013 — Omega v OHIM — Omega Engineering (Ω OMEGA)

(Case T-175/13)

(2013/C 147/51)

Language in which the application was lodged: Spanish

Parties

Applicant: Omega SA (Biel/Bienne, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Other party to the proceedings before the Board of Appeal: Omega Engineering, Inc. (Stamford, United States)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2013 in Joined Cases R 2055/2011-1 and R 2186/2011-1 and grant protection for the trade mark concerned in respect of all of the goods requested;

— order OHIM and Omega Engineering, Inc. to pay the costs of the present proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Omega SA

Community trade mark concerned: International registration, designating the European Union, of the figurative mark with word element 'Ω OMEGA' for goods in Class 9 — international registration No 997 036 designating the European Union

Proprietor of the mark or sign cited in the opposition proceedings: Omega Engineering, Inc.

Mark or sign cited in opposition: National and Community word marks 'OMEGA' for goods and services in Classes 7, 9, 11, 16, 35, 38, 41 and 42

Decision of the Opposition Division: Opposition upheld in part and protection applied for refused in part

Decision of the Board of Appeal: Dismissal of the applicant's appeal and more extensive partial refusal of the protection applied for

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

Action brought on 21 March 2013 — Pesquerias Riveirenses and others v Council

(Case T-180/13)

(2013/C 147/52)

Language of the case: Spanish

Parties

Applicants: Pesquerias Riveirenses, SL (Ribeira, Spain); Pesquerias Campo de Marte, SL (Ribeira); Pesquera Anpajo, SL (Ribeira); Arrastreros del Barbanza, SA (Ribeira); Martínez Pardavila e Hijos, SL (Ribeira); Lijo Pesca, SL (Ribeira); Frigoríficos Hermanos Vidal, SA (Ribeira); Pesquera Boteira, SL (Ribeira); Francisco Mariño Mos y Otros, CB (Ribeira); Juan Antonio Pérez Vidal y Hermano, CB (Ribeira); Marina Nalda, SL (Ribeira); Portillo y Otros, SL (Ribeira); Vidiña Pesca, SL (Ribeira); Pesca Hermo, SL (Ribeira); Pescados Oubiña Perez, SL (Ribeira); Manuel Pena Graña (Ribeira); Campo Eder, SL (Ribeira); Pesquera Laga, SL (Ribeira); Pesquera Jalisco, SL (Ribeira); Pesquera Jopitos, SL (Ribeira); y Pesca-Julimar, SL (Ribeira) (represented by: J. Tojeiro Sierto, lawyer)

Defendant: Council of the European Union

Form of order sought

— The applicants claim that the General Court should annul Council Regulation (EU) No 40/2013 of 21 January 2013 in so far as it amalgamates the northern and southern components of the stock of blue whiting in the north-east Atlantic in order to establish the TAC (total allowable catch) for blue whiting set out in Annexes IA and IB (pages 84 and 103, respectively; OJ 2013 L 23, p. 54).

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 39 TFEU

   — It is claimed in this regard that Article 39 TFEU incorporates, as one of the objectives of the common agricultural and fisheries policy, the rational management of resources, and that the contested regulation infringes that provision inasmuch as, in failing to distinguish between the northern and southern components of the stock of blue whiting in the north Atlantic, it does not reflect what must be understood as a rational management of resources. The applicants do not dispute that the situation in the northern component requires restrictive fisheries management measures, but that is not the case in the southern component, the species of which are not overfished. Such an approach also entails an infringement of the principle of non-discrimination, which requires, according to settled case-law of the CJEU, comparable situations not to be treated differently and different situations not to be treated alike unless such treatment is objectively justified.

2. Second plea in law, alleging infringement of Article 2(1) of Regulation (EC) No 2371/2002 and Article 6 of the New York Agreement of 1995

   — It is claimed in this regard that Article 2(1) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, establishes the precautionary approach as the guiding approach for the adoption of measures for the conservation and sustainable exploitation of fisheries resources; and that the same principle governs Article 6 of the 'Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks' (New York, 1995; OJ 1998 L 189, p. 14), to which the EU, and its then Member States, acceded on 19.12.2003, and which entered into force on 18.1.2004. The applicants claim that the management of the stock of blue whiting in the north-east Atlantic under the contested regulation, by failing to distinguish between the northern and southern components of stock, imposes such a drastic and indiscriminate catch-reduction in the southern component as to generate a 'risk' that would have required the application of the precautionary approach.

3. Third plea in law, alleging infringement of the principle of proportionality

   — The applicants claim in this regard that the EU's management of the stock of blue whiting in the north-east Atlantic for the year 2013 (contested Council Regulation), inasmuch as it fails to distinguish between the northern and southern components, imposes on the southern component traumatic measures (reduction of TAC) that go beyond that which is necessary to achieve the objective sought (recovery of the stock of blue whiting in the north-east Atlantic) and, therefore, infringes the principle of proportionality.

Action brought on 5 April 2013 — Spain v Commission

(Case T-191/13)

(2013/C 147/53)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: S. Centeno Huerta, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul notice of open competition EPSO/AD/248/13 — Administrators (AD 6), in the buildings sector, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those raised in Case T-148/13 *Kingdom of Spain* v *Commission*.

Action brought on 5 April 2013 — United Parcel Service v Commission

(Case T-194/13)

(2013/C 147/54)

Language of the case: English

Parties

Applicant: United Parcel Service, Inc. (Atlanta, United States) (represented by: A. Ryan, B. Graham, Solicitors, W. Knibbeler and P. Stamou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul in its entirety the Decision of the European Commission of 30 January 2013, C(2013) 431 (Comp/M.6570 — UPS/TNT Express), prohibiting the proposed acquisition by UPS of TNT Express N.V., in so far as it prohibits the concentration; and

— Order the defendant to pay the costs of the present proceedings, including those of any potential intervener.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed an error of law and a manifest error of assessment when examining the likely price effects of the concentration. Further, the Commission breached its obligation to state reasons and infringed UPS' rights of defence by substantially modifying the econometric model submitted by UPS without hearing UPS or explaining adequately the modifications made.

2. Second plea in law, alleging that by setting an arbitrary standard for verifiability of efficiencies, the Commission erred in law and diverged from the standard set by the case law. Further, the Commission erred in law and committed a manifest error of assessment in assigning insufficient or zero weight to efficiencies that it accepted in principle. Finally the Commission breached UPS' rights of defence by basing its rejection of efficiencies on objections that UPS had not been confronted with previously.

3. Third plea in law, alleging that the Commission erred in law and committed a manifest error of assessment by misapplying the concept of closeness of competition. It equally erred in concluding, without substantive evidence, that the merged entity's potential price increases would be accommodated by the rival to the merged entity.

4. Fourth plea in law, alleging that the Commission breached UPS' rights of defence by denying it access to relevant and exculpatory evidence. Moreover, the Commission failed to state reasons, erred in law and in fact and committed a manifest error of assessment when it concluded that competitors who are not close competitors could not expand to constrain effectively the merged entity in the foreseeable future.

5. Fifth plea in law, alleging that the Commission erred in law and committed a manifest error of assessment in analyzing customers' ability to restrain the merged entity.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 30 January 2013 — De Luca v Commission

(Case F-20/06)

(Civil service — Officials — Referral back to the General Court after annulment — Appointment — Official advancing to a higher function group by open competition — Candidate placed on a reserve list prior to the entry into force of the new Staff Regulations — Transitional rules governing classification in grade at the time of recruitment — Classification in grade pursuant to the new rules — Article 12(3) of Annex XIII to the Staff Regulations)

(2013/C 147/55)

Language of the case: French

Parties

Applicant: Patrizia De Luca (Brussels, Belgium) (represented by: S. Orlandi, and J.-N. Louis, lawyers)

Defendant: European Commission (represented by: J. Currall, acting as Agent)

Re:

Annulment of the Commission's decision of 23 February 2005 appointing the applicant, an official already graded at A*10 and a successful candidate in a competition for grades A5/A4, to a post as an administrator in the Directorate-General for Justice, Freedom and Security in so far as it alters her classification in grade from A*10 to A*9.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Mrs De Luca and the European Commission must bear their own costs in the two sets of proceedings brought before the Tribunal;*

3. *Declares that the European Commission must bear its own costs and orders it to pay the costs of Mrs De Luca incurred in the proceedings brought before the General Court of the European Union;*

4. *Declares that the Council of the European Union must bear its own costs.*

Judgment of the Civil Service Tribunal (Third Chamber) of 13 March 2013 — AK v Commission

(Case F-91/10) [1]

(Civil Service — Officials — First paragraph of Article 43 of the Staff Regulations — Delay in drawing up career development reports — Non-pecuniary damage — Loss of the opportunity to be promoted)

(2013/C 147/56)

Language of the case: French

Parties

Applicant: AK (Esbo, Finland) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Commission (represented by: G. Berscheid and J. Baquero Cruz, acting as Agents)

Re:

Application for annulment of the decision rejecting the applicant's claim for compensation for the loss suffered by reason of the failure to establish career development reports and for the opening of an administrative inquiry to establish the facts of harassment and application for compensation for the damage suffered.

Operative part of the judgment

The Tribunal:

1. *Orders the European Commission to pay the sum of EUR 15 000 to AK as compensation for non-pecuniary damage;*

2. *Orders the European Commission to pay the sum of EUR 4 000 to AK as compensation for the loss of opportunity to be promoted to a grade higher than A 5 or equivalent before 1 March 2008;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to bear its own costs and to pay those incurred by AK.*

[1] OJ C 13, 15.1.2011, p. 40.

Judgment of the Civil Service Tribunal (Third Chamber) of 30 January 2013

Wahlström v Frontex

(Case F-87/11) [1]

(Civil service — Member of the temporary staff — Non-renewal of a fixed-term contract — Article 8 of the Conditions of Employment — Procedure — Infringement of essential procedural requirements — Competence)

(2013/C 147/57)

Language of the case: English

Parties

Applicant: Kari Wahlström (Alimos, Greece), (represented by S. Pappas, lawyer)

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

Re:

The annulment of the decision not to renew the temporary agent contract of the applicant.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, of 10 December 2010, not to extend Mr Wahlström's contract as a member of the temporary staff;*
2. *Orders the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union to bear its own costs and to pay the costs incurred by Mr Wahlström.*

[1] OJ C 347, 26.11.2011, p. 45.

Judgment of the Civil Service Tribunal (2nd Chamber) of 21 March 2013 — Taghani v Commission

(Case F-93/11) [1]

(Civil service — Open competition — Selection board's decision not to admit to the assessment tests — Remedies — Court action brought without waiting for a decision on the administrative complaint — Admissibility — Amendment of the competition notice after admission tests held — Principle of the protection of legitimate expectations — Legal certainty)

(2013/C 147/58)

Language of the case: French

Parties

Applicant: Jamal Taghani (Brussels, Belgium) (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Application for annulment of the decision adopted by the chairman of the selection board for Competition EPSO/AST/111/10 — Secretaries (AST 1) not to admit the applicant to the assessment tests.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the selection board for open competition EPSO/AST/111/10, of 15 June 2011, not to admit Mr Taghani to the assessment tests;*
2. *Orders the European Commission to pay EUR 1 000 to Mr Taghani;*
3. *Dismisses the action as to the remainder;*
4. *Orders each party to bear its own costs.*

[1] OJ C 347, 26.11.2011, p. 46.

Judgment of the Civil Service Tribunal (Third Chamber) of 21 March 2013 — van der Aat and Others v Commission

(Case F-111/11) [1]

(Civil service — Remuneration — Annual adjustment of the remuneration and pensions of officials and other servants — Articles 64, 65, and 65a of the Staff Regulations — Annex XI to the Staff Regulations — Regulation (EU) No 1239/2010 — Correction coefficients — Officials employed at Ispra)

(2013/C 147/59)

Language of the case: French

Parties

Applicants: van der Aat and Others (Besozzo, Italy) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, and D. Abreu Caldas, lawyers)

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

Re:

Application for the annulment of the applicants' pay slips for the month of February 2011 and the pay slips for the following months applying the new correction coefficient for the town of Varese in accordance with Council Regulation (EU) No 1239/2010 of 20 December 2010.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*
2. *Declares that the applicants must bear their own costs and orders them to pay the costs incurred by the European Commission;*

3. *Declares that the Council of the European Union, intervener, must bear its own costs.*

(1) OJ C 6, 7.1.2012, p.27.

Judgment of the Civil Service Tribunal (Third Chamber) of 21 March 2013 — Dalmasso v Commission

(Case F-112/11) (1)

(Civil Service — Remuneration — Annual adjustment of the remuneration and pensions of officials and other EU staff — Articles 64, 65 and 65a of the Staff Regulations — Annex XI to the Staff Regulations — Regulation (EU) No 1239/2010 — Corrective coefficients — Officials assigned to Ispra)

(2013/C 147/60)

Language of the case: French

Parties

Applicant: Raffaele Dalmasso (Monvalle, Italy) (represented by: C. Mourato, lawyer)

Defendant: European Commission (represented by: J. Currall and D. Martin, Agents)

Re:

Application to annul the applicant's salary slip for the month of February 2011 and the salary slips for the following months applying the new corrective coefficient for the town of Varese in accordance with Council Regulation (EU) No 1239/2010 of 20 December 2010.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Dalmasso to bear his own costs and to pay the costs incurred by the European Commission;*

3. *Orders the Council of the European Union, the intervener, to bear its own costs.*

(1) OJ C 6, 7.1.2012, p. 27.

Judgment of the Civil Service Tribunal (1st Chamber) of 19 March 2013 — SF (*) v Commission

(Case F-10/12) (1)

(Civil Service — Remuneration — Daily subsistence allowance — Transfer — Grant of the daily subsistence allowance — Official owning accommodation located at the new place of employment — Proof of expenses incurred due to provisional installation at the new place of employment)

(2013/C 147/61)

Language of the case: French

Parties

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

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

Re:

Civil Service — Application to annul the Commission decision refusing to grant the applicant daily subsistence allowances.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the European Commission to bear its own costs and to pay half the costs incurred by SF (*);*

3. *Orders SF (*) to bear half of his own costs.*

(1) OJ C 65, 3.3.2012, p. 29.

Judgment of the Civil Service Tribunal (First Chamber) of 19 March 2013 — BR v Commission

(Case F-13/12) (1)

(Civil service — Member of the temporary service — Non-renewal of a contract)

(2013/C 147/62)

Language of the case: French

Parties

Applicant: BR (Wezembeek-Oppem, Belgium) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

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

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

Re:

Civil service — Application for annulment of the decision of the Commission not to renew the applicant's contract as a member of the contract staff.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 138, 12.5.2012, p. 32.

Judgment of the Civil Service Tribunal (Third Chamber) of 6 March 2013 — Scheefer v Parliament

(Case F-41/12) ([1])

(Civil service — Temporary staff — Termination of a temporary staff contract of indefinite duration — Legitimate reason)

(2013/C 147/63)

Language of the case: French

Parties

Applicant: Séverine Scheefer (Luxembourg, Luxembourg) (represented by: R. Adam and P. Ketter, lawyers)

Defendant: European Parliament (represented by: V. Montebello-Demogeot and M. Ecker, Agents)

Re:

Application to annul the Parliament's decision to terminate the applicant's temporary staff contract of indefinite duration and an application for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Scheefer to bear her own costs and to pay the costs incurred by the European Parliament.*

([1]) OJ C 138, 12.5.2012, p. 38.

Order of the Civil Service Tribunal (Third Chamber) of 11 March 2013 — Marcuccio v Commission

(Case F-17/12) ([1])

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

(2013/C 147/64)

Language of the case: Italian

Parties

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

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

Re:

Application for an order that the Commission pay compensation for the damage which the applicant claims to have sustained as a result of the excessive duration of the procedure for recognising the serious nature of the illness from which he suffered.

Operative part of the order

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

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

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

Order of the Civil Service Tribunal (Third Chamber) of 28 February 2013 — Pepi v ERCEA

(Case F-33/12) ([1])

(Civil Service — Contract staff — Auxiliary contract staff — Recruitment — Classification on recruitment — Articles 3a, 3b and 86 of the CEOS — ERCEA — Internal rules on the classification of members of the contract staff)

(2013/C 147/65)

Language of the case: French

Parties

Applicant: Jean Pepi (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Defendant: European Research Council Executive Agency (represented by: M. Oliván Avilés and G. Bambara, Agents)

Re:

Application for partial annulment of the applicant's contract with the ERCEA in so far as he is classified at Grade AD 10.

Operative part of the order

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

2. *Mr Pepi shall bear his own costs and is ordered to pay the costs incurred by the European Research Council Executive Agency.*

3. *The Council of the European Union, the intervener, shall bear its own costs.*

([1]) OJ C 184, 23.6.2012, p. 23.

Order of the Civil Service Tribunal (Third Chamber) of 6 February 2013 — Marcuccio v Commission

(Case F-67/12) ([1])

(Civil service — Officials — Action for damages — Unlawfulness — Letter concerning compliance with a judgment sent to the applicant's representative in the appeal against that judgment — Action manifestly devoid of any basis in law — Article 94(a) of the Rules of Procedure)

(2013/C 147/66)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of the decision rejecting the applicant's request for compensation for the damage allegedly suffered due to the defendant having sent a letter concerning the applicant to a lawyer not yet representing the applicant in that case.

Operative part of the order

1. *The action is dismissed as manifestly devoid of any basis in law.*

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

3. *Mr Marcuccio is ordered to pay to the Tribunal the sum of EUR 2 000.*

([1]) OJ C 311, 13.10.2012, p. 16.

Order of the Civil Service Tribunal (Third Chamber) of 29 January 2013 — Brus v Commission

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

(Civil Service — Officials — Application instituting proceedings — Formal requirements — Statement of the grounds on which the application is based — Action manifestly inadmissble)

(2013/C 147/67)

Language of the case: Dutch

Parties

Applicant: Karel Brus (Zaventem, Belgium) (represented by: J. Duvekot, lawyer)

Defendant: European Commission (represented by: J. Currall, J. Baquero Cruz and W. Roels, acting as Agents)

Re:

Application to annul the Commission's decisions to dismiss the applicant from his functions and to reduce the amount of his pension following disciplinary proceedings brought finding an infringement of Article 11 of the Staff Regulations.

Operative part of the order

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

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

([1]) OJ C 319, 20.10.2012, p. 18.

Order of the Civil Service Tribunal (Third Chamber) of 11 March 2013 — Marcuccio v Commission

(Case F-131/12)

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

(2013/C 147/68)

Language of the case: Italian

Parties

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

Defendant: European Commission

Re:

Application for annulment of the refusal to pay compensation for the harm allegedly suffered by the applicant as a result of his having been retired, together with a claim for damages.

Operative part of the order

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

2. *Mr Marcuccio is ordered to pay his own costs.*

Action brought on 24 September 2012 — ZZ v Commission

(Case F-101/12)

(2013/C 147/69)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to withdraw the offer of transfer of pension rights accepted by the applicant and to replace it with another, calculated on the basis of the new GIP.

Form of order sought

— Declare Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations unlawful;

— Annul the decision of 21 June 2011 annulling and replacing the offer of transfer of pension rights accepted on 28 July 2010;

— Annul the decision of 21 June 2011 to apply the parameters set out in the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011 to the applicant's application for transfer of pension rights;

— Order the European Commission to pay the costs.

Action brought on 13 December 2012 — ZZ v Parliament

(Case F-150/12)

(2013/C 147/70)

Language of the case: German

Parties

Applicant: ZZ (represented by: G. Maximini, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for annulment of the defendant's decision refusing payment to the applicant of part of the resettlement allowance and reimbursement of certain travel expenses.

Form of order sought

— Annul the defendant's decision of 29 March 2012 in so far as the applicant was thereby refused payment of the second half of the resettlement allowance under Article 6 of Annex VII to the Staff Regulations and full reimbursement of travel expenses under Article 7 of Annex VII;

— order the defendant to pay to the applicant the second half of the resettlement allowance in the amount of a further month's basic salary, together with full travel expenses to his place of origin, on account of the termination of the applicant's service, in respect of the applicant, his wife and his severely disabled son who lives with the applicant;

— order the defendant to pay the costs of the proceedings and all necessary expenses incurred by the applicant.

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