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COURT OF JUSTICE OF THE EUROPEAN UNION

(2014/C 39/01)

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

OJ C 31, 1.2.2014

Past publications

OJ C 24, 25.1.2014

OJ C 15, 18.1.2014

OJ C 9, 11.1.2014

OJ C 377, 21.12.2013

OJ C 367, 14.12.2013

OJ C 359, 7.12.2013

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 26 November 2013 — Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH v European Commission

(Case C-40/12 P) [1]

(Appeal — Competition — Cartels — Industrial plastic bags sector — Whether the infringement by a subsidiary may be attributed to the parent company — Excessive length of the proceedings before the General Court — Principle of effective legal protection)

(2014/C 39/02)

Language of the case: French

Parties

Appellant: Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH (represented by: F. Puel and L. François-Martin, avocats)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and N. von Lingen, Agents)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 16 November 2011 in Case T-79/06 *Sachsa Verpackung* v *Commission*, by which that court dismissed the application for annulment in part of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding under Article 81 (EC) (Case COMP/38.354 — Industrial bags) concerning a cartel in the industrial plastic bags sector and an application to vary that decision.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Gascogne Sack Deutschland GmbH to pay the costs of this appeal.*

[1] OJ C 89, 24.3.2012.

Judgment of the Court (Grand Chamber) of 26 November 2013 — Kendrion NV v European Commission

(Case C-50/12 P) [1]

(Appeal — Competition — Cartels — Industrial plastic bags sector — Whether the infringement by a subsidiary may be attributed to the parent company — Joint and several liability of the parent company for the payment of the fine imposed on the subsidiary — Excessive length of the proceedings before the General Court — Principle of effective legal protection)

(2014/C 39/03)

Language of the case: Dutch

Parties

Appellant: Kendrion NV (represented by: P. Glazener and T. Ottervanger, advocaten)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and S. Noë, Agents)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 16 November 2011 in Case T-54/06 *Kendrion* v *Commission*, by which the General Court dismissed an application for annulment of Commission Decision C(2005) 4634 of 30 November 2005 relating to a proceeding pursuant to Article 81 (EC) (Case COMP/F/38.354 — Industrial bags), in so far as it is addressed to Kendrion, concerning a cartel in the industrial plastic bags sector, and application for annulment or, in the alternative, reduction of the fine imposed on Kendrion.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Kendrion NV to pay the costs of this appeal.*

(1) OJ C 80, 17.3.2012.

Judgment of the Court (Grand Chamber) of 26 November 2013 — Groupe Gascogne SA v European Commission

(Case C-58/12 P) (1)

(Appeal — Competition — Cartels — Industrial plastic bags sector — Whether the infringement by a subsidiary may be attributed to the parent company — Taking into account the total turnover of the group in order to calculate the upper limit of the fine — Excessive length of the proceedings before the General Court — Principle of effective legal protection)

(2014/C 39/04)

Language of the case: French

Parties

Appellant: Groupe Gascogne SA (represented by: P. Hubert and E. Durand, avocats)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and N. von Lingen, Agents)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 16 November 2011 in Case T-72/06 *Groupe Gascogne* v *Commission*, by which that court dismissed the application for annulment in part and variation of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding under Article 81 (EC) (Case COMP/F/38.354 — Industrial bags) concerning a cartel in the industrial plastic bags sector, and an application to vary that decision.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Groupe Gascogne SA to pay the costs of this appeal.*

(1) OJ C 89, 24.3.2012.

Judgment of the Court (Grand Chamber) of 19 November 2013 — European Commission v Council of the European Union

(Case C-63/12) (1)

(Action for annulment — Decision 2011/866/EU — Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Staff Regulations — Article 65 of the Staff Regulations — Method of adjustment — Article 3 of Annex XI to the Staff Regulations — Exception clause — Article 10 of Annex XI to the Staff Regulations — Serious and sudden deterioration in the economic and social situation — Adjustment of correction coefficients — Article 64 of the Staff Regulations — Council decision — Refusal to adopt the Commission's proposal)

(2014/C 39/05)

Language of the case: French

Parties

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

Intervener in support of the applicant: European Parliament (represented by: A. Neergaard and S. Seyr, acting as Agents)

Defendant: Council of the European Union (represented by: M. Bauer and J. Herrmann, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, D. Hadroušek and J. Vláčil, acting as Agents), Kingdom of Denmark (represented by: V. Pasternak Jørgensen and C. Thorning, acting as Agents, Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents), Kingdom of Spain (represented by: N. Díaz Abad and S. Centeno Huerta, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Bulterman, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and J. Beeko, acting as Agents, and R. Palmer, Barrister)

Re:

Action for annulment — Council Decision 2011/866/EU of 19 December 2011 concerning the Commission's proposal for a Council Regulation adjusting with effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto OJ 2011 L 341, p. 54) — Non-compliance with method for annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Refusal to adjust correction coefficients relating to places of employment — Misuse of power — Infringement of Articles 64 and 65 of the Staff Regulations and Articles 1, 3 and 10 of Annex XI to the Staff Regulations — Infringement of the principle 'patere legem quam ipse fecisti' — Infringement of the principle of equal treatment — Insufficient statement of reasons

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Grand Chamber) of 19 November 2013 — Council of the European Union v European Commission

(Case C-66/12) ([1])

(Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Staff Regulations — Action for annulment — Communication COM(2011) 829 final — Proposal COM(2011) 820 final — Action for failure to act — Submission of proposals on the basis of Article 10 of Annex XI to the Staff Regulations — Failure of the Commission — Application devoid of purpose — No need to adjudicate)

(2014/C 39/06)

Language of the case: French

Parties

Applicant: Council of the European Union (represented by: M. Bauer and J. Herrmann, acting as Agents)

Interveners in support of the applicant: Czech Republic (represented by: M. Smolek, D. Hadroušek and J. Vláčil, acting as Agents), Kingdom of Denmark (represented by: V. Pasternak Jørgensen and C. Thorning, acting as Agents), Federal Republic of Germany (represented by: T. Henze and N. Graf Vitzthum, acting as Agents), Ireland (represented by: E. Creedon, acting as Agent, and by C. Toland BL and A. Joyce, Solicitor), Kingdom of Spain (represented by: N. Díaz Abad and S. Centeno Huerta, acting as Agents), French Republic (represented by: G. de Bergues, D. Colas and J. S. Pilczer, acting as Agents), Republic of Latvia (represented by: I. Kalniņš and A. Nikolajeva, acting as Agents), Kingdom of the Netherlands (represented by: C. Wissels and M. Bulterman, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and J. Beeko, acting as Agents, and R. Palmer, Barrister)

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

Intervener in support of the defendant: European Parliament (represented by: A. Neergaard and S. Seyr, acting as Agents)

Re:

Action for annulment — Communication from the Commission (COM(2011) 829 final of 24 November 2011 on the refusal to submit proposals on the basis of the 'exception clause' contained in Article 10 to Annex XI of the Staff Regulations — Commission proposal for a Council Regulation adjusting, as from 1st July 2011, the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applying thereto — Action for failure to act — Unlawful failure by the Commission to submit proposals on the basis of Article 10 to Annex XI of the Staff Regulations.

Operative part of the judgment

The Court:

1. *Declares that there is no need to adjudicate on the action;*

2. *Orders the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Republic of Latvia, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, the European Parliament, the Council of the European Union and the European Commission to bear their own costs.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Grand Chamber) of 19 November 2013 — European Commission v Council of the European Union

(Case C-196/12) ([1])

(Action for failure to act — Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Staff Regulations — Adjustment of correction coefficients — Council decision — Refusal to adopt the Commission's proposal — Failure to act — Inadmissibility)

(2014/C 39/07)

Language of the case: French

Parties

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

Intervener in support of the applicant: European Parliament (represented by: A. Neergaard and S. Seyr, acting as Agents)

Defendant: Council of the European Union (represented by: M. Bauer and J. Herrmann, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents), Kingdom of Spain (represented by: N. Díaz Abad and S. Centeno Huerta, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Bulterman, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and J. Beeko, acting as Agents, and R. Palmer, Barrister)

Re:

Action for failure to act — Council's unlawful failure to adopt the Commission's proposal for a Council Regulation under Article 3 of Annex XI to the Staff Regulations adjusting, as from 1st July 2011, the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applying thereto — Refusal to adjust correction coefficients relating to places of employment — Infringement of Articles 64 and 65 of the Staff Regulations and Articles 1, 3 and 10 of Annex XI to the Staff Regulations.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Federal Republic of Germany, the Kingdom of Spain, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.*

([1]) OJ C 184, 23.6.2012.

Judgment of the Court (Second Chamber) of 21 November 2013 (request for a preliminary ruling from the Oberlandesgericht Koblenz — Germany) — Deutsche Lufthansa AG v Flughafen Frankfurt-Hahn GmbH

(Case C-284/12) ([1])

(State aid — Articles 107 TFEU and 108 TFEU — Benefits granted by a public airport operator to a low-cost airline — Decision to initiate a formal investigation procedure in respect of that measure — Obligation of Member States' courts to abide by the Commission's assessment in that decision concerning the existence of aid)

(2014/C 39/08)

Language of the case: German

Referring court

Oberlandesgericht Koblenz

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Flughafen Frankfurt-Hahn GmbH

Intervener in support of the defendant: Ryanair Ltd

Re:

Request for a preliminary ruling — Oberlandesgericht Koblenz — Interpretation of Articles 107(1) TFEU and 108(3) TFEU and Article 2(b)(i) of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ 2006 L 318, p. 17) — State aid — Benefits granted by a public airport operator to a low-cost airline — Commission decision to carry out a formal investigation in respect of that aid — Possible obligation of Member States' courts to abide by the Commission's assessment concerning the selective nature of that aid

Operative part of the judgment

Where, in accordance with Article 108(3) TFEU, the European Commission has initiated the formal examination procedure under Article 108(2) TFEU with regard to a measure which has not been notified and is being implemented, a national court hearing an application for the cessation of the implementation of that measure and the recovery of payments already made is required to adopt all the necessary measures with a view to drawing the appropriate conclusions from an infringement of the obligation to suspend the implementation of that measure.

To that end, the national court may decide to suspend the implementation of the measure in question and order the recovery of payments already made. It may also decide to order provisional measures in order to safeguard both the interests of the parties concerned and the effectiveness of the European Commission's decision to initiate the formal examination procedure.

Where the national court entertains doubts as to whether the measure at issue constitutes State aid within the meaning of Article 107(1) TFEU or as to the validity or interpretation of the decision to initiate the formal examination procedure, it may seek clarification from the European Commission and, in accordance with the second and third paragraphs of Article 267 TFEU, it may or must refer a question to the Court of Justice of the European Union for a preliminary ruling.

([1]) OJ C 273, 8.9.2012.

Judgement of the Court (Second Chamber) of 21 November 2013 (request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — X v Minister van Financiën

(Case C-302/12) [1]

(Request for a preliminary ruling — Article 43 EC — Motor vehicles — Use in a Member State of a private motor vehicle registered in another Member State — Taxation of that vehicle in the first Member State when it was first used on the national road network and also in the second Member State when it was registered — Vehicle used by the citizen concerned for both private use and for going, from the Member State of origin, to the place of work situated in the first Member State)

(2014/C 39/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X

Respondent: Minister van Financiën

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 21 TFEU, 45 TFEU, 49 TFEU and 56 TFEU — National legislation imposing a registration tax when a motor vehicle is first used on the national road network — Tax owed by a person residing in two Member States, including the Member State concerned, and using her motor vehicle there on a permanent basis — Vehicle registered in the other Member State — Exercise of powers of taxation by both Member States.

Operative part of the judgment

Article 43 EC must be interpreted as not precluding legislation of a Member State under which a motor vehicle, which is registered and is already the subject of taxation as a result of its registration in another Member State, is the subject of a tax when it is first used on the national road network, where that vehicle is intended, essentially, to be actually used on a long-term basis in both those Member States or is, in fact, used in that manner, as long as that tax is not discriminatory.

[1] OJ C 287, 22.9.2012.

Judgment of the Court (Fifth Chamber) of 28 November 2013 — Council of the European Union v Manufacturing Support & Procurement Kala Naft Co., Tehran, European Commission

(Case C-348/12 P) [1]

(Appeal — Restrictive measures against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Measures directed against the Iranian oil and gas industry — Freezing of funds — Obligation to state reasons — Obligation to substantiate the measure)

(2014/C 39/10)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute-Cordeiro, acting as Agents)

Other parties to the proceedings: Manufacturing Support & Procurement Kala Naft Co., Tehran (represented by: F. Esclatine and S. Perrotet, avocats), European Commission (represented by M. Konstantinidis and E. Cujo, acting as Agents)

Re:

Appeal lodged against the judgment of the General Court in Case T-509/10 *Manufacturing Support & Procurement Kala Naft*, by which the General Court annulled, in so far as they concern Manufacturing Support & Procurement Kala Naft Co., Tehran, 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); Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25); Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81); Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1) — Common foreign and security policy — Restrictive measures adopted against Iran with the aim of preventing nuclear proliferation — List of persons, bodies and entities to which the freezing of funds applies — Errors of law — Admissibility — Governmental organisation status of the entity concerned — Ability of such an organisation to rely on the protection of fundamental rights — Burden of proof

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 25 April 2012 in Case T-509/10 Manufacturing Support & Procurement Kala Naft v Council;*

2. *Dismisses the action for annulment brought by Manufacturing Support & Procurement Kala Naft Co., Tehran;*

3. *Orders Manufacturing Support & Procurement Kala Naft Co., Tehran to bear its own costs and to pay those incurred by the Council of the European Union in relation both to the proceedings at first instance and to the appeal proceedings;*

4. *Orders the European Commission to bear its own costs both of the proceedings at first instance and of the appeal proceedings.*

([1]) OJ C 287, 22.9.2012.

Judgment of the Court (Second Chamber) of 21 November 2013 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Dixons Retail plc v Commissioners for Her Majesty's Revenue and Customs

(Case C-494/12) ([1])

(Directive 2006/112/EC — Value added tax — Supply of goods — Concept — Fraudulent use of a bank card)

(2014/C 39/11)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Appellant: Dixons Retail plc

Respondents: Commissioners for Her Majesty's Revenue and Customs

Re:

Request for a preliminary ruling — First-tier Tribunal (Tax Chamber) — Interpretation of Articles 14(1) and 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Concept of 'supply of goods' — Supply following a purchase made by means of the unauthorised and fraudulent use of a credit card

Operative part of the judgment

Articles 2(1), 5(1) and 11A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment and Articles 2(1)(a), 14(1) and 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the physical transfer of goods to a purchaser who fraudulently uses a bank card as a means of payment constitutes a 'supply of goods' within the meaning of Articles 2(1) and 5(1) of Directive 77/388 and Articles 2(1)(a) and 14(1) of Directive 2006/112 and that, in the context of such a transfer, the payment made by a third party, under an agreement concluded between it and the supplier of those goods by which the third party has undertaken to pay the supplier for the goods sold by the latter to purchasers using such a card as a means of payment, constitutes 'consideration' within the meaning of Article 11A(1)(a) of Directive 77/388 and Article 73 of Directive 2006/112.

([1]) OJ C 26, 26.1.2013.

Request for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 21 November 2013 — Staatssecretaris van Financiën, other party: Fiscale Eenheid X NV cs

(Case C-595/13)

(2014/C 39/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant in cassation: Staatssecretaris van Financiën

Other party: Fiscale Eenheid X NV cs

Questions referred

1. Is Article 13B(d)(6) of the Sixth Directive ([1]) to be interpreted as meaning that a company which has been set up by more than one investor for the sole purpose of investing the assets assembled in immovable property may be regarded as a special investment fund within the meaning of that provision?

2. If the answer to Question 1 is in the affirmative: is Article 13B(d)(6) of the Sixth Directive to be interpreted as meaning that the term 'management' also covers the actual management of the company's immovable property, which the company has entrusted to a third party?

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

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 25 November 2013 — AMBISIG-Ambiente e Sistemas de Informação Geográfica Lda v NERSANT-Associação Empresarial da Região de Santarém, NÚCLEO INICIAL — Formação e Consultoria Lda

(Case C-601/13)

(2014/C 39/13)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: AMBISIG-Ambiente e Sistemas de Informação Geográfica Lda

Defendants: NERSANT-Associação Empresarial da Região de Santarém, NÚCLEO INICIAL — Formação e Consultoria Lda

Question referred

With regard to a procurement contract for the provision of training and consultancy services, of an intellectual nature, is it compatible with Directive 2004/18/EC [1] of the European Parliament and of the Council of 31 March 2004, as amended, to lay down, among the factors making up the award criterion in relation to tenders in a public tendering procedure, a factor that evaluates the teams specifically put forward by the tenderers for the performance of the contract, having regard to the composition of the respective teams, their proven experience and analysis of their CVs?

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

Request for a preliminary ruling from the Kammarrätten i Sundsvall (Sweden) lodged on 25 November 2013 — OKG AB v Skatteverket

(Case C-606/13)

(2014/C 39/14)

Language of the case: Swedish

Referring court

Kammarrätten i Sundsvall

Parties to the main proceedings

Applicant: OKG AB

Defendant: Skatteverket

Questions referred

1. Article 4(2) of the Energy Taxation Directive [1] states that 'level of taxation' is the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of electricity at the time of release for consumption. Under Article 21(5) of that directive, electricity is to be subject to taxation and the tax liability is to become applicable at the time of supply by the distributor or redistributor. Do these articles preclude a tax levied on the thermal power of nuclear reactors?

2. Does a tax on thermal power constitute an excise duty which is levied directly or indirectly on the consumption of such goods (excise goods) as are referred to in Article 1(1) of the Excise Duty Directive? [2]

[1] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

[2] Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

Appeal brought on 28 November 2013 by Orange, formerly France Télécom against the judgment of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-258/10 Orange v Commission

(Case C-621/13 P)

(2014/C 39/15)

Language of the case: French

Parties

Appellant: Orange, formerly France Télécom (represented by: H. Viaene and D. Gillet, avocats)

Other parties to the proceedings: European Commission, French Republic, Département des Hauts-de-Seine, Sequalum SAS

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 16 September 2013 in Case T-258/10 *Orange* v *European Commission* and, if the Court considers that it has available to it all the evidence necessary in order to give

final judgment on the substance of the case, annul Commission Decision C(2009) 7426 final of 30 September 2009 relating to compensation for costs for a public service delegation for the establishment and operation of a very-high-speed broadband electronic communications network in the Département des Hauts-de-Seine (State Aid N 331/2008 — France);

— in the alternative, set aside the judgment under appeal and refer the case back to the General Court for the proceedings to be continued;

— order the Commission, the Département des Hauts-de-Seine and Sequalum to pay the entire costs of the action, except those costs incurred by the French Republic;

— declare that the French Republic is to bear its own costs.

Grounds of appeal and main arguments

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

First, the appellant submits that the General Court infringed its obligation to state reasons, based on Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice, because it ruled inadequately and in a contradictory way on a ground relating to absence of market deficiency. The appellant complains, in particular, that the General Court rejected its argument that the THD 92 project could not be considered to be a service of general economic interest based on the absence of market deficiency arising from the presence of competing operators offering analogue services.

Second, the appellant complains that the General Court erred in law in its assessment of when the existence of such a market deficiency must be determined. Thus, according to the appellant, it is at the moment when the measure intended to address a market deficiency is adopted that the existence of that deficiency must be determined.

Third, the appellant alleges that the General Court erred in law in its interpretation of paragraph 78 of the Guidelines [1] by considering that the 'detailed analysis' to which every State Aid envisaged in a traditional black area must be subject, does not entail the initiation of the formal investigation procedure laid down by Article 108(2) TFEU.

Lastly, the appellant submits that the General Court's finding, according to which the areas in which the internal rate of return is between 9 and 10,63 % are not the subject of compensation, is manifestly incorrect. The legal consequences drawn from that finding by the General Court, namely the absence of overcompensation, and consequently, compliance of the project at issue with the third criterion of the judgment in *Altmark*, are therefore incorrect.

[1] Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ 2009, C 235, p. 7).

Appeal brought on 2 December 2013 by Iliad SA, Free infrastructure and Free SAS against the judgment delivered on 16 September 2013 in Case T-325/10 Iliad and Others v Commission

(Case C-624/13 P)

(2014/C 39/16)

Language of the case: French

Parties

Appellants: Iliad SA, Free infrastructure, Free SAS (represented by: T. Cabot, avocat)

Other party to the proceedings: European Commission, French Republic, Republic of Poland, Département des Hauts-de-Seine

Forms of order sought

— Set aside in its entirety the judgment of the General Court delivered on 16 September 2013 in Case T-325/10 *Iliad, Free infrastructure and Free* v *Commission*;

— Grant the forms of order sought at first instance by Iliad, Free infrastructure and Free by annulling Commission Decision C(2009) 7426 Final of 30 September 2009 relating to compensation for the costs of providing a public service for the establishment and operation of a very-high-speed broadband electronic communications network in the Hauts-de-Seine department (State aide N 331/2008 — France) if the Court considers that the state of the proceedings is such as to permit final judgment in the matter;

— Refer the case back to the General Court if the Court considers that the state of the proceedings is not such as to permit final judgment in the matter;

— If the Court gives judgment in the case, order the European Commission to pay the costs;

— If the Court refers the case back to the General Court, reserve costs.

Grounds of appeal and main arguments

The appellants put forward six grounds in support of their appeal.

First, the appellants argue that the General Court disregarded its obligation to state reasons in failing to address the second part of the plea alleging infringement by the Commission of its obligation to open the formal investigation procedure provided for in Article 108(2) TFEU relating to the conclusions inferred from the commitments undertaken by the French authorities, indicating serious difficulties encountered by the Commission and on the basis of which the Commission was required to open the formal investigation procedure.

Second, they complain that the General Court erred in law in calculating the duration of the preliminary investigation procedure conducted by the Commission. They submit that the notification by France could not be considered to have been completed within the prescribed periods and it accordingly should not have been taken into account. They further submit that the General Court erred in law in treating a request for 'any' observations from the Commission to the French authorities as a request for additional information within the meaning of Regulation (EC) No 659/1999. ([1])

Third, they rely on public policy grounds in alleging an error of law by the General Court in failing to note of its own motion that the Commission could not declare the disputed aid to be compatible with the Treaty when the notification of that aid ought to have been deemed to have been withdrawn, pursuant to Article 5 of Regulation No 659/1999. As the French authorities failed to respond to the request for additional information within the prescribed periods, the notification at issue ought to have been withdrawn pursuant to Article 5(3) of that regulation. Consequently, the Commission was not competent to rule on the notified measure, which the General Court should have held of its own motion in the judgment under appeal.

Fourth, the General Court erred in law in the assessment of the market failure. That error of law results from the fact that the Court applied the universality test of market failure from the *Olsen* line of case-law, consisting in ascertaining whether competitors were providing a similar service and not a universal service.

Fifth, the General Court erred in law with respect to the temporal application of the European Union law rules in assessing market failure. The error in law results from limiting the examination of the market failure to the years 2004 and 2005, and from the lack of prospective market analysis to determine whether the market failure can be established for the entire duration of application of the service of general economic interest.

Sixth, the appellants submit that the General Court's reasons were self-contradictory.

([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).

Appeal brought on 29 November 2013 by Villeroy & Boch AG against the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10 Villeroy & Boch AG and Others v European Commission

(Case C-625/13 P)

(2014/C 39/17)

Language of the case: German

Parties

Appellant: Villeroy & Boch AG (represented by: M. Klusmann, Rechtsanwalt, S. Thomas)

Other party to the proceedings: European Commission

Form of order sought by the appellant

Whilst maintaining the submissions made at first instance, the appellant claims that the Court should:

1. Set aside in its entirety the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10 in so far as it dismisses the action and concerns the applicant;

2. In the alternative, annul Article 1 of Decision C(2010) 4185 final of the defendant of 23 June 2010 in the form of the judgment under appeal in so far as it concerns the applicant;

3. In the alternative, reduce appropriately the amount of the fine imposed on the applicant under Article 2 of the contested decision of the defendant of 23 June 2010;

4. In the further alternative, refer the case back to the General Court for a fresh decision;

5. Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The first to sixth grounds of appeal complain of errors of law committed by the General Court in connection with the assessment of the evidence. The General Court considered evidence in the present case concerning an alleged infringement in France to be sufficient to condemn the applicant, whereas the assessment of the same question in parallel proceedings ([1]) was diametrically opposite. That runs counter to the principle of the benefit of the doubt and the laws of logic because the same assessment cannot be made with contrary results which are to the applicant's detriment.

The second ground of appeal complains that the General Court attributed infringements of non-competitors (fittings manufacturers) in Italy to the applicant as a sanitary ceramics manufacturer although the applicant had not once attended their association meetings which were allegedly contrary to competition law. At the same time, the General Court held, with regard to the applicant's competitors in parallel judgments ([2]) and on the same point, that there was no anti-competitive conduct amongst non-competitors even where they were present at the alleged infringements of the fittings manufacturers. Also in this respect there is an infringement of the principle of the benefit of the doubt and the laws of logic in the judgment, in addition to a blatantly discriminatory difference in treatment to the applicant's detriment. Where two different assessments of the same facts are possible from the point of view of the General Court, only the less drastic alternative for the recipient of a penalty may be assumed in the law on penalties and not — as in this case — the unfavourable alternative.

The third ground of appeal complains of the illegitimacy of a decision that refers to time-barred facts concerning events in the Netherlands, as well as the lack of congruence between the findings of the General Court in the grounds of its judgment and those in its operative part. The latter is broader than the actual findings of the General Court in the grounds of its judgment, which is a serious lack of reasoning of the judgment, whose operative part was not supported by the grounds in this respect. That infringes Article 101 TFEU and Article 81 of the Rules of Procedure of the General Court.

The fourth ground of appeal contests, with regard to Belgium, essentially the non-consideration of facts relevant to the decision, which the General Court itself raised at the hearing.

The fifth ground of appeal contests the findings of an infringement in Germany. It complains of mischaracterisation or distortion of the applicant's submissions as well as the legal untenability of various findings of an allegedly unlawful exchange of information within the meaning of Article 101(1) TFEU.

The sixth ground of appeal concerns errors of law relating to the assessments of the General Court with regard to Austria.

The seventh ground of appeal complains that the attribution to the applicant of infringements of other legally autonomous undertakings infringes the fault principle.

The eighth ground of appeal contests the combination in law of factually and legally unrelated conduct into an allegedly single, complex and continuous infringement (SCCI), which in the applicant's view should not have legally taken place because of the lack of complementarity between the conduct that was assessed together. In the way it was used in this case, the concept of the SCCI infringes the principle of a right to a fair trial.

The ninth ground of appeal complains that the lack of entitlement to impose joint and several liability for payment of the fine in the group in the absence of direct participation in the offence infringes the principle of legality and the principle of personal responsibility.

The 10th ground of appeal complains of a legally deficient 'light review' of the General Court, which did not adequately carry out its task of examination and thereby undermined the Community law guarantee of legal protection.

Finally, the 11th ground of appeal complains that the confirmed fine is, in any case, disproportionate. As incriminating findings of fact were set aside in the judgment and will be set aside owing to legal errors in reasoning, an unchanged imposition of the statutory maximum penalty of 10 % of the group turnover, which the General Court declared, cannot be proportionate and thus cannot be lawful. Where the findings of fact used to establish the infringement are to a large extent not valid, then, in view of glaring gaps in causality and evidence as well as the absence of attribution links, there cannot be any SCCI which covered six countries, three product groups and 10 years, but at most punctual, local infringements, which would far from justify the level of penalty imposed in this case. The facts under examination in this case are a long way from constituting a serious or by no means most serious case imaginable, a matter which the General Court — in gross disregard of the discretionary criteria which it had to interpret — did not consider.

([1]) Joined Cases T-379/10 and T-381/10 *Keramag Keramische Werke AG and Others* and *Sanitec Europe Oy* v *Commission* (2013) ECR.

([2]) Joined Cases T-379/10 and T-381/10 *Keramag Keramische Werke AG and Others* and *Sanitec Europe Oy* v *Commission* (2013) ECR, and Case T-380/10 *Wabco Europe and Others* v *Commission* (2013) ECR.

Appeal brought on 29 November 2013 by Villeroy & Boch Austria GmbH against the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10 Villeroy & Boch Austria GmbH and Others v European Commission

(Case C-626/13 P)

(2014/C 39/18)

Language of the case: German

Parties

Appellant: Villeroy & Boch Austria GmbH (represented by: A. Reidlinger and J. Weichbrodt, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside in its entirety the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10 in so far as it dismisses the action and concerns the applicant;

— in the alternative, annul Article 1 of Decision C(2010) 4185 final of the defendant of 23 June 2010 in the form of the judgment under appeal in so far as it concerns the applicant;

— in the alternative, reduce appropriately the amount of the fine imposed on the applicant under Article 2 of the contested decision of the defendant of 23 June 2010;

— in the further alternative, refer the case back to the General Court for a fresh decision;

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

Pleas in law and main arguments

1. The first ground of appeal complains that the findings of the General Court with regard to an alleged infringement in Austria are vitiated by errors of law. The General Court basis its judgment on findings and reasons which were not previously the object of the contested Commission decision or of objections. At the same time, the relevant assertions of the applicant are disregarded or inaccurately represented.

2. The second ground of appeal contests the combination in law of factually and legally unrelated conduct into an allegedly single, complex and continuous infringement ('SCCI'), which in the applicant's view should not have legally taken place because of the lack of complementarity between the conduct that was assessed together. In the way it was used in this case, the concept of the SCCI infringes the principle of a right to a fair trial.

3. The third ground of appeal complains of a legally deficient so-called 'light review' of the General Court, which did not adequately carry out its task of examination and thereby undermined the Community law guarantee of legal protection.

4. Finally, the fourth ground of appeal complains that the confirmed fine is, in any case, disproportionate. As incriminating findings of fact were set aside in the judgment and will be set aside owing to legal errors in reasoning, an unchanged imposition of the statutory maximum penalty of 10 % of group turnover, which the General Court declared, cannot be proportionate and thus cannot be lawful. Where the findings of fact used to establish the infringement are to a large extent not valid, then, in view of glaring gaps in causality and evidence as well as the absence of attribution links, there cannot be any SCCI which covered six countries, three product groups and 10 years, but at most punctual, local infringements, which would far from justify the level of penalty imposed in this case. The facts under examination in this case are a long way from constituting a serious or by no means most serious case imaginable, a matter which the General Court — in gross disregard of the discretionary criteria which it had to interpret — did not consider.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 December 2013 — Criminal proceedings against Miguel M.

(Case C-627/13)

(2014/C 39/19)

Language of the case: German

Referring court

Bundesgerichtshof

Party to the main proceedings

Miguel M.

Question referred

Are medicinal products, as defined in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, [1] which contain scheduled substances listed in Regulations (EC) No 273/2004 [2] and (EC) No 111/2005 [3] always excluded from the scope of those regulations in accordance with Article 2(a) of both those regulations, or is that to be presumed only where the medicinal products are compounded in such a way that the scheduled substances cannot be easily used or extracted by readily applicable or economically viable means?

[1] OJ 2001 L 311, p. 67.
[2] Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (OJ 2004 L 47, p. 1).
[3] Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (OJ 2005 L 22, p. 1).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 2 December 2013 — Jean-Bernard Lafonta v Autorité des marchés financiers

(Case C-628/13)

(2014/C 39/20)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Jean-Bernard Lafonta

Respondent: Autorité des marchés financiers

Question referred

Must Article 1(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [1] and Article 1(1) and (2) of Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation [2] be interpreted as meaning that only information in respect of which it may be determined, with a sufficient degree of probability, that, once it is made public, its potential effect on the prices of the financial instruments concerned will be in a particular direction may constitute inside information?

[1] OJ 2003 L 96, p. 16.
[2] OJ 2003 L 339, p. 70.

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 4 December 2013 — SC ALKA CO SRL v Autoritatea Națională a Vămilor — Direcția Regională pentru Accize și Operațiuni Vamale Constanța, Direcția Generală a Finanțelor Publice a Municipiului București

(Case C-635/13)

(2014/C 39/21)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Appellant: SC ALKA CO SRL

Respondents: Autoritatea Națională a Vămilor — Direcția Regională pentru Accize și Operațiuni Vamale Constanța, Direcția Generală a Finanțelor Publice a Municipiului București

Questions referred

1. Must raw shelled pumpkin (vegetable) seeds, intended to undergo heat and mechanical treatment in order to be used for human consumption (as a snack-type food) be classified under heading 1207 — subheading 1207999710, or under heading 1209 — subheading 1209919010 of the combined nomenclature of goods?

2. Must raw shelled pumpkin (vegetables) seeds, intended to undergo heat and mechanical treatment in order to be used for human consumption (as a snack-type food) be classified, according to the explanatory notes to the combined nomenclature, under heading 1207 — subheading 1207999710, or under heading 1209 — subheading 1209919010?

3. Where there exists a contradiction between the customs classification under the Common Customs Tariff and the customs classification derived from the explanatory notes concerning the same product (raw shelled pumpkin — vegetable — seeds), which of those customs classifications applies in this case?

4. In the light of Articles 109(a), 110 and 256(3) of Regulation (EEC) No 2454/1993, [1] are special administrative procedures necessary, such as submitting an application or presenting a EUR.1 certificate to a specific authority, in order to trigger the specific effect, namely, the concession by the customs authority of the preferential tariff scheme under Article 98 of the same regulation?

[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Request for a preliminary ruling from the Curtea de Apel Galați (Romania) lodged on 5 December 2013 — Casa Județeană de Pensii Brăila v E.S.

(Case C-646/13)

(2014/C 39/22)

Language of the case: Romanian

Referring court

Curtea de Apel Galați

Parties to the main proceedings

Appellant: Casa Județeană de Pensii Brăila

Respondent: E.S.

Questions referred

1. Must Article 8(1) of Regulation (EC) No 883/2004 [1] be interpreted as excluding the application of a bilateral convention on social security which was entered into prior to application of that regulation and does not appear in Annex II to that regulation, under circumstances in which the rules applicable under that bilateral convention prove to be more favourable for the insured person than would be the case under the rules based on that regulation?

2. When an assessment is made as to whether the bilateral convention is more favourable, does Article 8(1) of Regulation (EC) No 883/2004 require the view to be taken that it is necessary to remain within the legal interpretation of the bilateral convention or is it also necessary to include the specific detailed arrangements for application (regarding the quantum of the pension which can be granted by each State, the payment of which is determined by reference to the application/exclusion of application of the convention by the regulation)?

3. In the event of a negative answer to the first question (to the effect that application of the bilateral convention on social security is not excluded), is it possible to regard as more favourable, within the meaning of Article 8(1) of Regulation (EC) No 883/2004, legal rules on the basis of which a State signatory to the convention on social security recognises a shorter contributory period than that actually completed, and that State pays a pension of a greater amount than that to which entitlement would arise if the entire contributory period in the joint-signatory State were to be recognised?

[1] 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 Tribunal de commerce de Versailles (France) lodged on 6 December 2013 — Works Council of Nortel Networks SA and Others v Me Rogeau, Liquidator of Nortel Networks SA, Alan Robert Bloom and Others

(Case C-649/13)

(2014/C 39/23)

Language of the case: French

Referring court

Tribunal de commerce de Versailles

Parties to the main proceedings

Applicants: Works Council of Nortel Networks SA and Others

Defendants: Me Rogeau, Liquidator of Nortel Networks SA, Alan Robert Bloom and Others

Question referred

Do the courts of the State in which secondary proceedings have been opened have exclusive jurisdiction over or concurrent jurisdiction with the courts of the State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling with the scope of the effects of the secondary proceedings in accordance with Articles 2(g), 3(2) and 27 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [1] and, in the event that there is exclusive or concurrent jurisdiction, is the applicable law that of the main proceedings or of the secondary proceedings?

[1] OJ 2000 L 160, p. 1.

GENERAL COURT

Judgment of the General Court of 12 December 2013 — Berliner Institut für Vergleichende Sozialforschung v Commission

(Case T-171/08) [1]

(European Refugee Fund — Action to raise awareness and disseminate information concerning refugees who are victims of psychological trauma — 'Traumatised refugees in the European Union: institutions, protection mechanisms and good practice' project — Payment of the balance — Obligation to state reasons — Principle of sound administration — Error of assessment)

(2014/C 39/24)

Language of the case: German

Parties

Applicant: Berliner Institut für Vergleichende Sozialforschung eV (Berlin, Germany) (represented by: initially U. Claus, then C. Otto, S. Reichmann and L.-J. Schmidt, lawyers)

Defendant: European Commission (represented by: initially S. Grünheid and B. Simon, then S. Grünheid, acting as Agents)

Re:

Application for annulment of the Commission decision, enclosed in the letter of 7 March 2008, concerning the Commission's partial non-recognition of the costs incurred by the applicant in the context of Grant Agreement JAI/2004/ERF/073 relating to Community financing of an action to raise awareness and disseminate information concerning refugees who are victims of psychological trauma.

Operative part of the judgment

The Court:

1. *Dismissses the application;*

2. *Orders the Berliner Institut für Vergleichende Sozialforschung eV to pay the costs.*

[1] OJ C 171, 5.7.2008.

Judgment of the General Court of 13 December 2013 — HSE v Commission

(Case T-399/09) [1]

(Competition — Agreements, decisions and concerted practices — Market for calcium carbide and magnesium for the steel and gas industries in the EEA, with the exception of Ireland, Spain, Portugal and the United Kingdom — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Imputability of the unlawful conduct — Presumption of innocence — Fines — Article 23 of Regulation (EC) No 1/2003 — 2006 guidelines on the method of setting fines — Mitigating circumstances — Infringement committed as a result of negligence — Infringement authorised or encouraged by the public authorities)

(2014/C 39/25)

Language of the case: English

Parties

Applicant: Holding Slovenske elektrarne d.o.o. (HSE) (Ljubljana, Slovenia) (represented by: F. Urlesberger, lawyer)

Defendant: European Commission (represented by: initially J. Bourke and N. von Lingen, and subsequently by N. von Lingen and R. Sauer, Agents)

Re:

Application for annulment of Commission Decision C(2009) 5791 final of 22 July 2009 relating to a proceeding under Article 81 (EC) and Article 53 of the EEA Agreement (Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries), in so far as it relates to the applicant, and, in the alternative, for the reduction of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Holding Slovenske elektrarne d.o.o. (HSE) to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 312, 19.12.2009.

Judgment of the General Court of 13 December 2013 — Hungary v Commission

(Case T-240/10) ([1])

(Approximation of the laws — Deliberate release into the environment of GMOs — Marketing authorisation procedure — EFSA Scientific Opinions — Committee procedure — Regulatory procedure — Infringement of an essential procedural requirement — Finding of the Court of its own motion)

(2014/C 39/26)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: Z. Fehér and K. Szíjjártó, acting as Agents)

Defendant: European Commission (represented initially by: A. Sipos and L. Pignataro-Nolin, and subsequently by: A. Sipos and D. Bianchi, acting as Agents)

Interveners in support of the applicant: French Republic (represented by: G. de Bergues and S. Memez, acting as Agents); Grand Duchy of Luxembourg (represented initially by: C. Schiltz, and subseqeuntly by: P. Frantzen, and finally by: L. Delvaux and D. Holderer, acting as Agents); Republic of Austria (represented by: C. Pesendorfer and E. Riedl, acting as Agents); and Republic of Poland (represented initially by: M. Szpunar, B. Majczyna and J. Sawicka, and subsequently by: B. Majczyna and J. Sawicka, acting as Agents)

Re:

Annulment of Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (Solanum tuberosum L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (OJ 2010 L 53, p. 11), and of Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 53, p. 15).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (Solanum tuberosum L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch and Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Hungary;*

3. *Orders the French Republic, the Grand Duchy of Luxembourg, the Republic of Austria and the Republic of Poland to bear their own costs.*

([1]) OJ C 209, 31.7.2010.

Judgment of the General Court of 12 December 2013 — Nabipour and Others v Council

(Case T-58/12) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Restrictions on admission — Obligation to state reasons — Error of law — Error of assessment — Temporal adjustment of the effects of an annulment)

(2014/C 39/27)

Language of the case: English

Parties

Applicants: Ghasem Nabipour (Tehran, Iran), Mansour Eslami (Madliena, Malta), Mohamad Talai (Hamburg, Germany), Mohammad Moghaddami Fard (Tehran), Alireza Ghezelayagh (Singapore, Singapore), Gholam Hossein Golparvar (Tehran), Hassan Jalil Zadeh (Tehran), Mohammad Hadi Pajand (London, United Kingdom), Ahmad Sarkandi (Al Jaddaf, Dubai, United Arab Emirates), Seyed Alaeddin Sadat Rasool (Tehran), and Ahmad Tafazoly (Shanghai, China) (represented by: S. Kentridge QC, M. Lester, Barrister, and M. Taher, Solicitor)

Defendant: Council of the European Union (represented by: M.-M. Joséphidès, A. Varnav and A. De Elera, acting as Agents)

Re:

Application for annulment, first, of 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), of 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 of 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), in so far as those acts concern the applicants, and, secondly, of Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 156, p. 10), in so far as that decision concerns the fourth and ninth applicants

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it listed the names of Mr Ghasem Nabipour, Mr Mansour Eslami, Mr Mohamad Talai, Mr Mohammad Moghaddami Fard, Mr Alireza Ghezelayagh, Mr Gholam Hossein Golparvar, Mr Hassan Jalil Zadeh, Mr Mohammad Hadi Pajand, Mr Ahmad Sarkandi, Mr Seyed Alaeddin Sadat Rasool and Mr Ahmad Tafazoly 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;*

2. *Annuls Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran, in so far as it listed the names of Mr Nabipour, Mr Eslami, Mr Talai, Mr Fard, Mr Ghezelayagh, Mr Golparvar, Mr Zadeh, Mr Pajand, Mr Sarkandi, Mr Sadat Rasool and Mr Tafazoly in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007;*

3. *Annuls Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010, in so far as it concerns Mr Nabipour, Mr Eslami, Mr Talai, Mr Fard, Mr Ghezelayagh, Mr Golparvar, Mr Zadeh, Mr Pajand, Mr Sarkandi, Mr Sadat Rasool and Mr Tafazoly;*

4. *Annuls Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413 in so far as it concerns Mr Fard and Mr Sarkandi;*

5. *Orders the effects of Decision 2011/783 and of Decision 2013/270 to be maintained as regards Mr Nabipour, Mr Eslami, Mr Talai, Mr Fard, Mr Ghezelayagh, Mr Golparvar, Mr Zadeh, Mr Pajand, Mr Sarkandi, Mr Sadat Rasool and Mr Tafazoly from their entry into force until the annulment in part of Regulation No 267/2012 takes effect;*

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

7. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Nabipour, Mr Eslami, Mr Talai, Mr Fard, Mr Ghezelayagh, Mr Golparvar, Mr Zadeh, Mr Pajand, Mr Sarkandi, Mr Sadat Rasool and Mr Tafazoly.*

(1) OJ C 109, 14.4.2012.

Judgment of the General Court of 12 December 2013 — ANKO v Commission

(Case T-117/12) (1)

(Arbitration clause — Seventh framework programme for research, technological development and demonstration (2007-2013) — Contracts concerning the Perform and Oasis projects — Suspension of payments — Irregularities found in audits relating to other projects — Late-payment interest)

(2014/C 39/28)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: R. Lyal, B. Conte, acting as Agents, and S. Drakakakis, lawyer)

Re:

Action founded on the basis of Article 272 TFEU, seeking, firstly, a declaration from the General Court that the suspension of reimbursement of the sums advanced by the applicant in performance of the contracts relating to the Perform and Oasis projects, which were concluded in the context of the Seventh Framework Programme for research, technological development and demonstration, contributing to the creation of a European Research and Innovation Area (2007-2013), constitutes a breach by the Commission of its contractual obligations and, secondly, an order, on the one hand, that the Commission pay the applicant the sum of EUR 637 117,17 under the Perform project, together with interest for late payment and, on the other, that the applicant is not required to reimburse the sum of EUR 56 390 paid to it under the Oasis project.

Operative part of the judgment

The Court:

1. *Orders the European Commission to pay to ANKO AE Antiprosopeion, Emporiou kai Viomichanias the sums of which the payment was suspended on the basis of the third indent of point II.5(3)(d) of the general conditions annexed to the grant agreements relating to the Oasis and Perform projects, concluded in the context of the Seventh Framework Programme for research, technological development and demonstration (2007-2013), without such payment prejudicing the eligibility of the expenses declared by ANKO Antiprosopeion, Emporiou kai Viomichanias or the implementation of the findings of final audit report 11-INFS-0035 by the Commission. The amount of the sums to be paid shall be inside the limits of the balance of the financial aid available at the time of the suspension of the payments and those sums must be increased by late-payment interest which shall start to run, in respect of each period, on expiry of the 105-day time-limit for payment following receipt of the corresponding reports by the Commission. The interest rate applicable shall be that in force on the first day of the month in which the payment fell due, as published in the Official Journal of the European Union, Series C;*

2. *Dismisses the remainder of the action;*

3. *Orders ANKO AE Antiprosopeion, Emporiou kai Viomichanias to bear a third of its own costs;*

4. *Orders the European Commission to bear its own costs and to pay two-thirds of the costs incurred by ANKO Antiprosopeion, Emporiou kai Viomichanias.*

([1]) OJ C 138, 12.5.2012.

Judgment of the General Court of 12 December 2013 — ANKO v Commission

(Case T-118/12) ([1])

(Arbitration clause — Sixth framework programme for research, technological development and demonstration (2002-2006) — Contract concerning the Personal project — Suspension of payments — Irregularities found in audits relating to other projects — Late-payment interest)

(2014/C 39/29)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: R. Lyal, B. Conte, acting as Agents, and S. Drakakakis, lawyer)

Re:

Action founded on an arbitration clause within the meaning of Article 272 TFEU, seeking, firstly, a declaration from the General Court that the suspension of reimbursement of the sums advanced by the applicant in performance of the Persona contract No 045459, which was concluded in the context of the Sixth Framework Programme for research, technological development and demonstration, contributing to the creation of a European Research and Innovation Area (2002-2006), constitutes a breach by the Commission of its contractual obligations and, secondly, an order that the Commission pay the applicant the sum of EUR 6 752,74 under that project, together with interest for late payment.

Operative part of the judgment

The Court:

1. *Orders the European Commission to pay to ANKO AE Antiprosopeion, Emporiou kai Viomichanias the sums of which the payment was suspended on the basis of the third indent of point II.28(8) of the general conditions annexed to the contract relating to the Persona project, concluded in the context of the Sixth Framework Programme for research, technological development and demonstration, contributing to the creation of a European Research and Innovation Area (2002-2006), without such payment prejudicing the eligibility of the expenses declared by ANKO AE Antiprosopeion, Emporiou kai Viomichanias or the implementation of the findings of final audit report 11-BA134-011 by the Commission. The amount of the sums to be paid shall be inside the limits of the balance of the financial aid available at the time of the suspension of the payments and those sums must be increased by late-payment interest which shall start to run, in respect of each period, on expiry of the 45-day time-limit for payment following approval of the corresponding reports by the Commission and, at the latest, 90 days from their receipt by the Commission. The interest rate applicable shall be that in force on the first day of the month in which the payment fell due, as published in the Official Journal of the European Union, Series C;*

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

([1]) OJ C 138, 12.5.2012.

Judgment of the General Court of 12 December 2013 — Sweet Tec v OHIM (Shape of an oval)

(Case T-156/12) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of an oval — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2)

(2014/C 39/30)

Language of the case: German

Parties

Applicant: Sweet Tec GmbH (Boizenburg, Germany) (represented by: T. Nägele, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 19 January 2012 (Case R 542/2011-1) concerning an application for registration of a three-dimensional sign in the shape of an oval as a Community trade mark.

Operative part of the judgment

The Court:

1. *The action is rejected;*

2. *Sweet Tec GmbH is ordered to pay the costs.*

(1) OJ C 165, 9.6.2012.

Judgment of the General Court of 13 December 2013 — European Dynamics Luxembourg and Evropaïki Dynamiki v Commission

(Case T-165/12) (1)

(Public service contracts — Tender procedure — Provision of support services for the purpose of developing an information technology infrastructure and e-government services in Albania — Rejection of a tenderer's bid — Transparency — Obligation to state reasons)

(2014/C 39/31)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg) and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: P. van Nuffel and M. Konstantinidis, acting as Agents)

Re:

Application for annulment of Commission Decision CMS/cms D(2012)/00008 of 8 February 2012 rejecting the applicants' tender in the closed tendering procedure EuropeAid/131431/C/SER/AL.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision CMS/cms D(2012)/00008 of 8 February 2012 rejecting tender submitted by European Dynamics Luxembourg SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in the closed tendering procedure EuropeAid/131431/C/SER/AL;*

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

(1) OJ C 184, 23.6.2012.

Order of the General Court of 4 December 2013 — Forgital Italy v Council

(Case T-438/10) (1)

(Action for annulment — Common Customs Tariff — Temporary suspension of the autonomous Common Customs Tariff duties on certain industrial, agricultural and fishery products — Amendment of the description of certain suspensions — Regulatory act comprising implementing measures — Inadmissibility)

(2014/C 39/32)

Language of the case: Italian

Parties

Applicant: Forgital Italy SpA (Velo d'Astico, Italy) (represented by: V. Turinetti di Priero and R. Mastroianni, lawyers)

Defendant: Council of the European Union (represented initially by: M.F. Florindo Gijón and A. Lo Monaco, and subsequently by: M. Florindo Gijón and K. Pellinghelli, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: D. Recchia and L. Keppenne, acting as Agents)

Re:

Action for the annulment of Council Regulation (EU) No 566/2010 of 29 June 2010 amending Regulation (EC) No 1255/96 temporarily suspending the autonomous Common Customs Tariff duties on certain industrial, agricultural and fishery products (OJ 2010 L 163, p. 4), in so far as it amends the description of certain goods in respect of which the autonomous Common Customs Tariff duties were suspended.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Forgital Italy SpA shall bear its own costs and pay those incurred by the Council of the European Union.*

3. *The European Commission shall bear its own costs.*

(1) OJ C 317, 20.11.2010.

Order of the General Court of 10 December 2013 — Carbunión v Council

(Case T-176/11) [1]

(Action for annulment — State aid — Decision on aid intended to facilitate the closure of uncompetitive coal mines — Partial annulment — Non-severability — Inadmissibility)

(2014/C 39/33)

Language of the case: English

Parties

Applicant: Federación Nacional de Empresarios de Minas de Carbón (Carbunión) (Madrid (Spain)) (represented by: K. Desai, Solicitor, S. Cisnal de Ugarte and M. Peristeraki, lawyers)

Defendant: Council of the European Union (represented initially by: F. Florindo Gijón and A. Lo Monaco, and subsequently by: F. Florindo Gijón and K. Michoel, acting as Agents)

Intervener in support of the defendant: European Commission (represented by É. Gippini Fournier, L. Flynn and C. Urraca Caviedes, acting as Agents)

Re:

Application for partial suspension of operation of Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ 2010 L 336, p. 24)

Operative part of the order

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

2. *The Federación Nacional de Empresarios de Minas de Carbón (Carbunión) shall, in addition to bearing its own costs, pay the costs incurred by the Council of the European Union, including those relating to the proceedings for interim measures.*

3. *The European Commission shall bear its own costs.*

[1] OJ C 152, 21.5.2011.

Order of the General Court of 3 December 2013 — Pri v OHIM — Belgravia Investment Group (PRONOKAL)

(Case T-159/12) [1]

(Removal from the register — Pleading submitted at the time of discontinuance — Inadmissibility)

(2014/C 39/34)

Language of the case: French

Parties

Applicant: Pri SA (Clémency, Luxembourg) (represented by: C. Marí Aguilar and F. Márquez Martín, lawyers)

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 intervening before the General Court: Belgravia Investment Group Ltd (Tortola, British Virgin Islands) (represented by: J. Bouyssou, lawyer)

Re:

Firstly, action brought against the decision of the Second Board of Appeal of OHIM of 20 December 2011 (Case R 311/2011-2), concerning opposition proceedings between Pri SA and Belgravia Investment Group Ltd, and, secondly, application for rejection of the application for registration of the mark applied for in respect of all the goods covered by the opposition proceedings.

Operative part of the order

1. *Case T-159/12 shall be removed from the register of the General Court.*

2. *The pleading lodged by Pri SA, contained in the letter filed at the Registry of the General Court on 13 September 2013, requesting, firstly, that the General Court state that the opposition was withdrawn; secondly, that it rescind the decision of the Opposition Division of 7 December 2010 in so far as it rejects in part the opposition; and, thirdly, that it order that the 'release in full' of the mark PRONOKAL be registered are rejected as inadmissible.*

3. *Pri SA shall bear its own costs and pay those incurred by OHIM.*

4. *Belgravia Investment Group Ltd shall bear its own costs.*

[1] OJ C 194, 30.6.2012.

Order of the President of the General Court of 18 December 2013 — Istituto Di Vigilanza Dell'Urbe SpA v European Commission

(Case T-579/13 R)

(Interim measures — Public services contracts — Tendering procedure — Provision of security guard and reception services at the 'European Union Houses' in Rome and Milan — Award of the contract to another tenderer — Application for suspension of operation — Disregard of the formal requirements — Inadmissibility)

(2014/C 39/35)

Language of the case: Italian

Parties

Applicant: Istituto Di Vigilanza Dell'Urbe SpA (Rome, Italy) (represented by: D. Dodaro and S. Cianciullo, lawyers)

Defendant: European Commission (represented by: F. Moro and L. Cappelletti, acting as Agents)

Re:

Application seeking the suspension of the operation of the award decision, adopted on 27 August 2013 by the Commission, relating to a public service contract concerning security guard and reception services at the 'European Union Houses' in Rome and Milan (Italy).

Operative part of the order

1. *The application for interim measures is dismissed*

2. *The costs are reserved*

Action brought on 13 November 2013 — BSH Bosch und Siemens Hausgeräte v OHIM — LG Electronics (compressor technology)

(Case T-595/13)

(2014/C 39/36)

Language in which the application was lodged: German

Parties

Applicant: BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany) (represented by: S. Biagosch, lawyer)

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

Other party to the proceedings before the Board of Appeal: LG Electronics, Inc. (Seoul, Korea)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 September 2013 (Case R 1176/2012-1);

— Order OHIM to bear its own costs and to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'compressor technology' for goods in Classes 7, 9 and 11 — Community trade mark application No 7420151

Proprietor of the mark or sign cited in the opposition proceedings: LG Electronics, Inc.

Mark or sign cited in opposition: the word marks 'KOMPRESSOR PLUS' and 'KOMPRESSOR' for goods in Classes 7 and 11

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed in part

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

Action brought on 15 November 2013 — Emsibeth v OHIM — Peek & Cloppenburg (Nael)

(Case T-596/13)

(2014/C 39/37)

Language in which the application was lodged: Italian

Parties

Applicant: Emsibeth SpA (Verona, Italy) (represented by: A. Arpaia, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Peek & Cloppenburg KG (Düsseldorf, Germany)

Form of order sought

The applicant claims the General Court should:

— set aside the contested decision; and

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community mark sought: the figurative mark 'Nael', for goods in class 3 — application for registration No 9726894

Proprietor of the mark or sign cited in the opposition proceedings: Peek & Cloppenburg KG

Mark or sign cited in opposition: Community word mark 'Mc Neal', for goods in class 3

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and rejection of the application for registration of the mark

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/09.

Action brought on 11 November 2013 — Cosmowell v OHIM — Haw Par (GELENKGOLD)

(Case T-599/13)

(2014/C 39/38)

Language in which the application was lodged: German

Parties

Applicant: Cosmowell GmbH (Sankt Johann in Tirol) (represented by: J. Sachs, lawyer)

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

Other party to the proceedings before the Board of Appeal: Haw Par Corp. Ltd (Singapore, Singapore)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 September 2013 in Case R 2013/2012-4;

— order the intervener to pay the costs of the proceedings, including the costs incurred in the appeal procedure.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative mark which includes the picture of a tiger and the word element 'GELENKGOLD', for goods in Classes 5, 29 and 30 — Community trade mark application No 9957978

Proprietor of the mark or sign cited in the opposition proceedings: Haw Par Corp. Ltd

Mark or sign cited in opposition: Community figurative marks which include the picture of a tiger, for goods in Class 5

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 15 November 2013 — Mustang v OHIM — Dubek (20 CLASS A FILTER CIGARETTES Mustang)

(Case T-606/13)

(2014/C 39/39)

Language in which the application was lodged: German

Parties

Applicant: Mustang — Bekleidungswerke GmbH & Co. KG (Künzelsau, Germany) (represented by: S. Völker, lawyer)

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

Other party to the proceedings before the Board of Appeal: Dubek Ltd (Petach Tikva, Israel)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 September 2013 in Case R 416/2012-4 concerning the opposition proceedings against Community trade mark application No 6 065 098;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dubek Ltd

Community trade mark concerned: figurative mark '20 CLASS A FILTER CIGARETTES Mustang' for goods in Class 34 — Community trade mark application No 6 065 098

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

Mark or sign cited in opposition: German word mark and figurative mark 'MUSTANG' for goods in Classes 9, 14, 18 and 25

Decision of the Opposition Division: the opposition was dismissed

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(1)(b) and (5) of Regulation (EC) No 207/2009

Action brought on 20 November 2013 — alfavet Tierarzneimittel v OHIM — Millet Innovation (Epibac)

(Case T-613/13)

(2014/C 39/40)

Language in which the application was lodged: German

Parties

Applicant: alfavet Tierarzneimittel GmbH (Neumünster, Germany) (represented by: U. Bender, lawyer)

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

Other party to the proceedings before the Board of Appeal: Millet Innovation SA (Loriol sur Drome, France)

Form of order sought

The applicant claims that the Court should:

— alter the decision of the Fourth Board of Appeal of 6 September 2013 (Case R 1253/2012-4) in such a way that the opposition is rejected, and

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: word mark 'Epibac' for goods in Classes 3, 5 and 31 — Community trade mark application No 6861124

Proprietor of the mark or sign cited in the opposition proceedings: Millet Innovation SA

Mark or sign cited in opposition: Word marks 'EPITACT' for goods in Classes 3, 5 and 10

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed in part

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

Action brought on 25 November 2013 — Ratioparts-Ersatzteile v OHIM — Norwood Promotional Products Europe (NORTHWOOD professional forest equipment)

(Case T-622/13)

(2014/C 39/41)

Language in which the application was lodged: German

Parties

Applicant: Ratioparts-Ersatzteile-Vertriebs GmbH (Euskirchen, Germany) (represented by: M. Koch, lawyer)

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

Other party to the proceedings before the Board of Appeal: Norwood Promotional Products Europe, SL (Tarragona, Spain)

Form of order sought

The applicant claims that the Court should:

— alter the decision of the Second Board of Appeal of 11 September 2013 (Case R 1244/2012-2) in such a way that opposition No B 176807 is rejected, and

— order the opponent to pay the costs of the opposition proceedings and the appellant to pay the costs of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'NORTHWOOD' for goods and services in Classes 8, 9, 20, 25 and 35 — Community trade mark application No 9412776

Proprietor of the mark or sign cited in the opposition proceedings: Norwood Promotional Products Europe, SL

Mark or sign cited in opposition: Community word mark 'NORWOOD' for goods in Class 35

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 26 November 2013 — TrekStor v OHIM — MSI Technology (MovieStation)

(Case T-636/13)

(2014/C 39/42)

Language in which the application was lodged: German

Parties

Applicant: TrekStor Ltd (Hong Kong, China) (represented by: O. Spieker, lawyer)

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

Other party to the proceedings before the Board of Appeal: MSI Technology GmbH (Frankfurt am Main, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 27 September 2013 (Case R 1914/2012-4) to the effect that MSI Technology GmbH's application of 20 June 2011 for a declaration of invalidity of the Community trade mark 'MovieStation' is rejected and that MSI Technology GmbH is ordered to pay the costs of that application;

— Order the defendant to pay the costs of the action before the Court.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'MovieStation' for goods in Class 9 — Community trade mark No 5743257

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: MSI Technology GmbH

Grounds for the application for a declaration of invalidity: Article 52(1)(a) in conjunction with Article 7(1)(b), (c) and (d) of Regulation No 207/2009

Decision of the Cancellation Division: the mark concerned was declared invalid

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 2 December 2013 — Sto v OHIM — Fixit Trockenmörtel Holding (CRETEO)

(Case T-640/13)

(2014/C 39/43)

Language in which the application was lodged: German

Parties

Applicant: Sto AG (Stühlingen, Germany) (represented by: K. Kern and J. Sklepek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Fixit Trockenmörtel Holding AG (Baar, Switzerland)

Form of order sought

The applicant claims that the Court should:

— Alter the decision of the Fourth Board of Appeal of OHIM of 25 September 2013 in Case R 905/2012-4 to the effect that the opposition is upheld to the extent put forward in the appeal and Community trade mark application No 9207085 is rejected;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Fixit Trockenmörtel Holding AG

Community trade mark concerned: the word mark 'CRETEO' for goods in Classes 1, 2, 17 and 19 — Community trade mark application No 9207085

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

Mark or sign cited in opposition: the German word marks 'Sto-Cretec' and 'STOCRETE' for goods in Classes 1, 2, 17 and 19

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 2 December 2013 — Meda v OHIM — Takeda (PANTOPREM)

(Case T-647/13)

(2014/C 39/44)

Language in which the application was lodged: German

Parties

Applicant: Meda AB (Solna, Sweden) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Other party to the proceedings before the Board of Appeal: Takeda GmbH (Constance, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of 25 September 2013 in Case R 2171/2012-4 concerning the opposition against Community trade mark application No 9403973 'PANTOPREM';

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'PANTOPREM' for goods in Class 5 — Community trade mark application No 9403973

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

Mark or sign cited in opposition: the Community word marks 'PANTOPAN', 'PANTOMED', 'PANTOPRAZ' and 'PANTOPRO' and the national word mark 'PANTOP' for goods in Class 5

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(1)(b); the first sentence of Article 59; Article 64(1); Article 75; 76(1), *in fine*; Article 77 and Article 112(1) of Regulation (EC) No 207/2009

Action brought on 4 December 2013 — TrekStor v OHIM (SmartTV Station)

(Case T-649/13)

(2014/C 39/45)

Language of the case: German

Parties

Applicant: TrekStor Ltd (Hong Kong, China) (represented by O. Spieker, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of OHIM of 1 October 2013 (Case R 128/2013-4) and alter the contested decision to the effect that the mark 'SmartTV Station' (Application No: 010595577) is allowed to proceed to registration in its entirety;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'SmartTV Station' for goods in Class 9 — Community trade mark application No 10595577

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 6 December 2013 — Gako Konietzko v OHIM (Shape of packaging)

(Case T-654/13)

(2014/C 39/46)

Language of the case: German

Parties

Applicant: Gako Konietzko GmbH (Bamberg, Germany) (represented by S. Reinhardt, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 September 2013 in Case R 2232/2012-1;

— Order the defendant to pay the costs including the costs incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark, representing the shape of packaging, for goods in Classes 3, 5 and 10 — Community trade mark application No 10899037

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 9 December 2013 — Enercon v OHIM (Shades of the colour green)

(Case T-655/13)

(2014/C 39/47)

Language of the case: German

Parties

Applicant: Enercon GmbH (Aurich, Germany) (represented by R. Böhm, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 September 2013 in Case R 0247/2013-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark representing shades of the colour green for goods in Classes 7, 16 and 28 — Community trade mark application No 11055811

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (1st Chamber) of 12 December 2013 — BV v Commission

(Case F-133/11) [1]

(Civil service — Appointment — Candidates entered on reserve lists for competitions the notice for which was published prior to the entry into force of the new Staff Regulations — Classification in grade — Principle of equal treatment — Discrimination on grounds of age — Freedom of movement for persons)

(2014/C 39/48)

Language of the case: German

Parties

Applicant: BV (Berlin, Germany) (represented by: P. Goergen, lawyer)

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

Intervener: Council of the European Union (represented by: J. Herrmann and A.F. Jensen, Agents)

Re:

Annulment of the Commission's decision classifying the applicant — entered on the reserve list for competition EPSO/A/17/04, the notice for which was published prior to the entry into force of the new Staff Regulations — at Grade AD 6, step 2, pursuant to less advantageous provisions.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

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

[1] OJ C 133, 5.5.2013, p. 29.

Judgment of the Civil Service Tribunal (First Chamber) of 12 December 2013 — Simpson v Council

(Case F-142/11) [1]

(Civil service — Promotion — Decision not to promote the applicant to grade AD 9 after he passed a competition for grade AD 9 — Equal treatment)

(2014/C 39/49)

Language of the case: English

Parties

Applicant: Erik Simpson (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union (represented by: M. Bauer and A.F. Jensen, Agents)

Re:

Application for the annulment of the decision not to promote the applicant to grade AD9 after he passed competition EPSO/AD/113/07 'Heads of unit (AD9) in the field of translation having Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovak and Slovene as their main language', and an application for damages

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Council of the European Union of 9 December 2010;*

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

3. *Declares that the Council of the European Union is to bear its own costs and orders it to pay the costs incurred by Mr Simpson.*

[1] OJ C 65, 3.3.2013, p. 26.

Judgment of the Civil Service Tribunal (First Chamber) of 12 December 2013 — Hall v Commission and CEPOL

(Case F-22/12) [1]

(Civil service — Remuneration — Family allowances — Dependent child allowance — Education allowance — Children of applicant's wife not living at the home of the couple — Conditions for granting)

(2014/C 39/50)

Language of the case: English

Parties

Applicant: Mark Hall (Petersfield, United Kingdom) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendants: European Commission (represented by: J. Currall and D. Martin, Agents) and European Police College (CEPOL) (represented by: F. Bánfi, Agent)

Re:

Application for annulment of the decisions rejecting the applicant's request for the grant of dependent child and education allowances in respect of his wife's three children for the period in which they were still living in the Philippines.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action as inadmissible, in so far as it is directed against the European Police College;*

2. *Annuls the implied decision of 25 March 2011 and the express decision of 11 July 2011 of the European Commission rejecting the application for dependent child and education allowances for the three children of Mr Hall's wife, for the period in which they were still living in the Philippines;*

3. *Dismisses the remainder of the action brought against the European Commission;*

4. *Declares that the European Commission is to bear its own costs and orders it to pay the costs incurred by Mr Hall;*

5. *Orders Mr Hall to pay the costs incurred by the European Police College.*

[1] OJ C 138, 12.5.2012, p. 35.

Judgment of the Civil Service Tribunal (First Chamber) of 12 December 2013 — Lebedef v Commission

(Case F-68/12) [1]

(Civil service — Officials — Staff report — 2010 appraisal procedure — Application for annulment of staff report — Application for annulment of number of promotion points awarded)

(2014/C 39/51)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: C. Berardis-Kayer and G. Berscheid, acting as Agents)

Re:

Application for annulment of promotion points awarded to the applicant and his staff report for the period from 1 January 2010 to 31 December 2010.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

[1] OJ C 258, 25.8.2012, p. 28.

Judgment of the Civil Service Tribunal (1st Chamber) of 12 December 2013 — CH v Parliament

(Case F-129/12) [1]

(Civil service — Accredited parliamentary assistants — Early termination of the contract — Request for assistance — Psychological harassment)

(2014/C 39/52)

Language of the case: French

Parties

Applicant: CH (Brussels, Belgium) (represented by: L. Levi, C. Bernard-Glanz and A. Tymen, lawyers)

Defendant: European Parliament (represented by: S. Alves and E. Taneva, Agents)

Re:

Application to annul the decision to terminate the applicant's employment contract and the decision rejecting his request for assistance seeking recognition of psychological harassment, and an application for damages

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Parliament of 19 January 2012, terminating CH's contract as an accredited parliamentary assistant;*

2. *Annuls the decision of the European Parliament of 15 March 2012 rejecting CH's request for assistance of 22 December 2011;*

3. *Orders the European Parliament to pay CH the sum of EUR 50 000;*

4. *Orders the European Parliament to bear its own costs and to pay the costs incurred by CH.*

([1]) OJ C 26, 26.1.2013, p. 73.

Judgment of the Civil Service Tribunal (First Chamber) of 12 December 2013 — Marenco v REA

(Case F-135/12) ([1])

(Civil service — Temporary staff — Recruitment — Call for expressions of interest REA/2011/TA/PO/AD 5 — Non-inclusion on the reserve list — Validity of the selection procedure — Stability of the composition of the selection committee)

(2014/C 39/53)

Language of the case: English

Parties

Applicant: Claudia Marenco (Brussels, Belgium) (represented by: S. Rodrigues, A. Blot and A. Tymen, lawyers)

Defendant: Research Executive Agency (REA) (represented by: S. Payan-Lagrou, acting as Agent, and by B. Wägenbaur, lawyer)

Re:

Application for annulment of the decision not to include the applicant on the reserve list of the REA/2011/TA/PO/AD 5 selection procedure.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision communicated by e-mail of 12 March 2012 to Ms Marenco by which the selection committee of the Call for expressions of interest REA/2011/TA/PO/AD 5 refused, after review, to include Ms Marenco's name on the reserve list at the end of the selection procedure.*

2. *Declares that the Research Executive Agency is to bear its own costs and orders it to pay the costs incurred by Ms Marenco.*

([1]) OJ C 26, 26.1.2013, p. 74.

Order of the Civil Service Tribunal (1st Chamber) of 16 December 2013 — CL v EEA

(Case F-162/12) ([1])

(Civil service — Temporary staff — Sick leave — Reintegration — Duty to have regard for the welfare of officials — Psychological harrassment)

(2014/C 39/54)

Language of the case: French

Parties

Applicant: CL (Brussels, Belgium) (represented by: S. Orlandi, J.-N. Louis and D. Abreu Caldas, lawyers)

Defendant: European Environment Agency (EEA) (represented by: O. Cornu, Agent, B. Wägenbaur, lawyer)

Re:

Application to annul the decision to reintegrate the applicant following sick leave after the date at which he should have been capable of work according to medical opinion.

Operative part of the order

1. *The action is dismissed;*

2. *CL is to bear his own costs and is ordered to pay the costs incurred by the European Environment Agency.*

([1]) OJ C 86, 23.3.2013, p. 30.

Order of the Civil Service Tribunal (First Chamber) of 16 December 2013 — Roda v Commission

(Case F-30/13)

(Civil service — Survivor's pension — Death of former spouse — Maintenance — Pre-litigation procedure — Requirement of a complaint — Unduly late — Manifest inadmissibility)

(2014/C 39/55)

Language of the case: Italian

Parties

Applicant: Silvana Roda (Ispra, Italy) (represented by: L. Ribolzi, lawyer)

Defendant: European Commission

Re:

Application for annulment of the Commission's decision rejecting the applicant's request to receive a survivor's pension at the rate of 60 % of the last basic salary of her late ex-husband.

Operative part of the order

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

2. *Ms Roda is ordered to bear her own costs.*

Order of the Civil Service Tribunal of 6 December 2013 — Marcuccio v Commission

(Case F-2/10 RENV)

(2014/C 39/56)

Language of the case: Italian

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

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