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Information and Notices

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(2016/C 038/01)

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These texts are available on:

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

Appointment of the Registrar

(2016/C 038/02)

At its general meeting on 27 October 2015, the Court decided to reappoint Mr Alfredo Calot Escobar as Registrar of the Court of Justice of the European Union, in accordance with Article 18 of the Rules of Procedure, for the period from 7 October 2016 to 6 October 2022.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 1 December 2015 — European Parliament, European Commission v Council of the European Union

(Joined Cases C-124/13 and C-125/13) [1]

(Actions for annulment — Regulation (EU) No 1243/2012 — Choice of legal basis — Article 43(2) and (3) TFEU — Policy decision — Long-term plan for cod stocks)

(2016/C 038/03)

Language of the case: English

Parties

Applicants: European Parliament (represented by: I. Liukkonen, L.G. Knudsen and R. Kaškina, acting as Agents), European Commission (represented by: A. Bouquet, K. Banks and A. Szmytkowska, acting as Agents)

Defendant: Council of the European Union (represented by: E. Sitbon, A. de Gregorio Merino and A. Westerhof Löfflerová, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: M. Sampol Pucurull and N. Díaz Abad, acting as Agents), French Republic (represented by: G. de Bergues, D. Colas, R. Coesme and C. Candat, acting as Agents), Republic of Poland (represented by: B. Majczyna, M. Nowacki and A. Miłkowska, acting as Agents)

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks;*

2. *Maintains the effects of Regulation No 1243/2012 until the entry into force, within a reasonable period, which may not exceed 12 months starting from 1 January of the year following the date of delivery of the present judgment, of a new regulation adopted on the appropriate legal basis, namely Article 43(2) TFEU;*

3. *Orders the Council of the European Union to pay the costs;*

4. *Orders the Kingdom of Spain, the French Republic and the Republic of Poland to bear their own costs.*

[1] OJ C 156, 1.6.2013.

Judgment of the Court (Fifth Chamber) of 26 November 2015 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — MedEval — Qualitäts-, Leistungs- und Struktur-Evaluierung im Gesundheitswesen GmbH

(Case C-166/14) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 89/665/EEC — Principles of effectiveness and equivalence — Review procedures concerning the award of public contracts — Period allowed for commencing proceedings — National legislation making an action for damages subject to a precondition that the procedure be declared unlawful — Limitation period which starts to run irrespective of the applicant's knowledge of the unlawfulness)

(2016/C 038/04)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: MedEval — Qualitäts-, Leistungs- und Struktur-Evaluierung im Gesundheitswesen GmbH

Intervening parties: Bundesminister für Wissenschaft, Forschung und Wirtschaft, Hauptverband der österreichischen Sozialversicherungsträger, Pharmazeutische Gehaltskasse für Österreich

Operative part of the judgment

EU law, in particular the principle of effectiveness, precludes national legislation which makes bringing an action for damages in respect of the infringement of a rule of public procurement law subject to a prior finding that the public procurement procedure for the contract in question was unlawful because of the lack of prior publication of a contract notice, where the action for a declaration of unlawfulness is subject to a six-month limitation period which starts to run on the day after the date of the award of the public contract in question, irrespective of whether or not the applicant in that action was in a position to know of the unlawfulness affecting the decision of the awarding authority.

([1]) OJ C 282, 25.8.2014.

Judgment of the Court (Fifth Chamber) of 3 December 2015 — Italian Republic v European Commission

(Case C-280/14 P) ([1])

(Appeal — Regional policy — Regional operational programme (ROP) Puglia (Italy) covered by objective No 1 (2000-2006) — Reduction of the Community financial assistance initially granted by the European Regional Development Fund)

(2016/C 038/05)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato)

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

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Italian Republic to pay the costs.*

(1) OJ C 315, 15.9.2014.

Judgment of the Court (Fourth Chamber) of 3 December 2015 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Pfotenhilfe-Ungarn e.V. v Ministerium für Energiewende, Landwirtschaft, Umwelt und ländliche Räume des Landes Schleswig-Holstein

(Case C-301/14) (1)

(Reference for a preliminary ruling — Regulation (EC) No 1/2005 — Article 1(5) — Protection of animals during transport — Transport of stray dogs from one Member State to another by an animal protection association — Concept of 'economic activity' — Directive 90/425/EEC — Article 12 — Concept of 'dealers engaging in intra-Community trade')

(2016/C 038/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Pfotenhilfe-Ungarn e.V.

Defendant: Ministerium für Energiewende, Landwirtschaft, Umwelt und ländliche Räume des Landes Schleswig-Holstein

Intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Operative part of the judgment

1. *The concept of 'economic activity' within the meaning of Article 1(5) of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, must be interpreted as meaning that it covers an activity, such as that at issue in the main proceedings, relating to the transport of stray dogs from one Member State to another by a charitable association in order to hand over those dogs to persons who have undertaken to adopt them after payment by those persons of a sum covering, in principle, the costs incurred for that purpose by that association.*

2. *The concept of 'dealers engaging in intra-Community trade' within the meaning of Article 12 of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zoo technical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market, as amended by Council Directive 92/60/EEC of 30 June 1992, must be interpreted as meaning that it covers inter alia, a charitable association which transports stray dogs from one Member State to another in order to give those dogs to persons who have agreed to adopt them after they have paid a sum covering in principle the costs incurred for that purpose by that association.*

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Fourth Chamber) of 3 December 2015 (request for a preliminary ruling from the Ráckevei járásbíróság — Hungary) — Banif Plus Bank Zrt. v Márton Lantos, Mártonné Lantos

(Case C-312/14) ([1])

(References for a preliminary ruling — Directive 2004/39/EC — Articles 4(1) and 19(4), (5) and (9) — Markets in financial instruments — Concept of 'investment services and activities' — Provisions to ensure investor protection — Conduct of business obligations when providing investment services to clients — Obligation to assess the suitability or appropriateness of the service to be provided — Contractual consequences of non-compliance with that obligation — Consumer credit contracts — Foreign currency denominated loan — Advancement and reimbursement of loan in domestic currency — Terms relating to the exchange rate)

(2016/C 038/07)

Language of the case: Hungarian

Referring court

Ráckevei járásbíróság

Parties to the main proceedings

Applicant: Banif Plus Bank Zrt.

Defendant: Márton Lantos, Mártonné Lantos

Operative part of the judgment

Article 4(1)(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that, subject to verification by the referring court, an investment service or activity within the meaning of that provision does not encompass certain foreign exchange transactions, effected by a credit institution under clauses of a foreign currency denominated loan agreement such as the one at issue in the main proceedings, consisting in fixing the amount of the loan on the basis of the purchase price of the currency applicable when the funds are advanced and in determining the amounts of the monthly instalments on the basis of the sale price of that currency applicable when each monthly instalment is calculated.

([1]) OJ C 303, 8.9.2014.

Judgment of the Court (Fourth Chamber) of 26 November 2015 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Verein für Konsumenteninformation v A1 Telekom Austria AG

(Case C-326/14) ([1])

(Reference for a preliminary ruling — Directive 2002/22/EC — Electronic communications networks and services — Users' rights — Right of subscribers to terminate their contract without penalty — Changes to charges under terms of the contract — Increase in charges in line with increase in the consumer price index)

(2016/C 038/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: A1 Telekom Austria AG

Operative part of the judgment

Article 20(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that a change in charges for the provision of electronic communications networks or services, resulting from the operation of a price adjustment clause contained in the standard terms and conditions applied by an undertaking providing such services, the term providing that such a change applies in accordance with changes in an objective consumer price index compiled by a public institution, does not constitute a 'modification to the contractual conditions' within the meaning of that provision, which grants the subscriber the right to withdraw from the contract without penalty.

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Fourth Chamber) of 3 December 2015 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Quenon K. SPRL v Beobank SA, formerly Citibank Belgium SA, Metlife Insurance SA, formerly Citilife SA

(Case C-338/14) ([1])

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Article 17(2) — Termination of the agency contract by the principal — Compensation of the agent — Prohibition of the simultaneous operation of the indemnity for customers scheme and compensation for damage scheme — Entitlement of the agent to damages additional to the indemnity for customers — Conditions)

(2016/C 038/09)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellant: Quenon K. SPRL

Respondents: Beobank SA, formerly Citibank Belgium SA, Metlife Insurance SA, formerly Citilife SA

Operative part of the judgment

1. *Article 17(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as not precluding national legislation providing that a commercial agent is entitled, on termination of the agency contract, both to an indemnity for customers limited to a maximum of one year's remuneration and, if that indemnity does not cover all of the loss actually incurred, to the award of additional damages, provided that such legislation does not result in the agent being compensated twice for the loss of commission following termination of the contract.*

2. *Article 17(2)(c) of Directive 86/653/EEC must be interpreted as meaning that it does not make the award of damages conditional on demonstration of the existence of a fault attributable to the principal which caused the alleged harm, but does require the alleged harm to be distinct from that compensated for by the indemnity for customers.*

(1) OJ C 339, 29.9.2014.

Judgment of the Court (Fourth Chamber) of 26 November 2015 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — SIA 'Maxima Latvija' v Konkurences padome

(Case C-345/14) (1)

(Reference for a preliminary ruling — Competition — Article 101(1) TFEU — Application of analogous national legislation — Jurisdiction of the Court — Concept of 'agreement having as its object the restriction of competition' — Commercial lease agreements — Shopping centres — Right of the anchor tenant to prevent the lessor letting commercial premises to third parties)

(2016/C 038/10)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: SIA 'Maxima Latvija'

Defendant: Konkurences padome

Operative part of the judgment

1. *Article 101(1) TFEU must be interpreted as meaning that the mere fact that a commercial lease agreement for the letting of a large shop or hypermarket located in a shopping centre contains a clause granting the lessee the right to oppose the letting by the lessor, in that centre, of commercial premises to other tenants, does not mean that the object of that agreement is to restrict competition within the meaning of that provision.*

2. *Commercial lease agreements, such as those at issue in the main proceedings, may be considered to be an integral part of an agreement having the 'effect' of preventing, restricting or distorting competition within the meaning of Article 101(1) TFEU, from which it is found, after a thorough analysis of the economic and legal context in which the agreements occur and the specificities of the relevant market, that they make an appreciable contribution to the closing-off of that market. The extent of the contribution of each agreement to that closing-off effect depends, in particular, on the position of the contracting parties on that market and the duration of that agreement.*

(1) OJ C 329, 22.9.2014.

Judgment of the Court (Seventh Chamber) of 26 November 2015 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — SC Total Waste Recycling SRL v Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

(Case C-487/14) ([1])

(Reference for a preliminary ruling — Environment — Waste — Shipments — Regulation (EC) No 1013/2006 — Shipments within the European Union — Point of entry different from that specified in the notification and in the prior consent — Essential change to the details of a shipment of waste — Illegal shipment — Proportionality of the administrative fine)

(2016/C 038/11)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: SC Total Waste Recycling SRL

Defendant: Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség

Operative part of the judgment

1. *Article 17(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended by Commission Regulation (EC) No 669/2008 of 15 July 2008, must be interpreted as meaning that the shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a different border crossing point than that which is provided in the notification document and which the competent authorities consented to, must be considered to be an essential change made to the details and/or conditions of the shipment which received consent, so that the fact of not having informed the competent authorities of that change results in the shipment of waste being illegal because it was 'effected in a way which is not specified materially in the notification' within the meaning of Article 2(35)(d) of that regulation.*

2. *Article 50(1) of Regulation No 1013/2006, as amended by Regulation (EC) No 669/2008, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document which had been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements. It is for the national court to determine, by taking into account all the factual and legal circumstances of the case before it, and, in particular, the risks which may be created by that infringement in the field of the protection of the environment and human health, whether the amount of the penalty does not go beyond what is necessary to attain the objectives of ensuring a high level of protection of the environment and human health.*

([1]) OJ C 7, 12.1.2015.

Judgment of the Court (Sixth Chamber) of 26 November 2015 (request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco — Spain) — Administrador de Infraestructuras Ferroviarias (ADIF) v Luis Aira Pascual, Algeposa Terminales Ferroviarios SL, Fondo de Garantía Salarial

(Case C-509/14) ([1])

(Reference for a preliminary ruling — Directive 2001/23/EC — Article 1(1) — Transfers of undertakings — Safeguarding of employees' rights — Obligation on the transferee to take on workers — Public undertaking responsible for a public service — Provision of the service by another undertaking pursuant to a public service operating agreement — Decision not to extend that agreement following its expiry — Retention of identity of the economic entity — Activity based essentially on equipment — Employees not taken on)

(2016/C 038/12)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Administrador de Infraestructuras Ferroviarias (ADIF)

Defendants: Luis Aira Pascual, Algeposa Terminales Ferroviarios SL, Fondo de Garantía Salarial

Operative part of the judgment

Article 1(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that the scope of that directive covers a situation in which a public undertaking, responsible for the economic activity of handling intermodal transport units, entrusts, by a public service operating agreement, the performance of that activity to another undertaking, providing to the latter undertaking the necessary facilities and equipment, which it owns, and subsequently decides to terminate that agreement without taking over the employees of the latter undertaking, on the ground that it will henceforth perform that activity itself with its own staff.

([1]) OJ C 26, 26.1.2015.

Judgment of the Court (Ninth Chamber) of 26 November 2015 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt Frankfurt am Main v Duval GmbH & Co. KG

(Case C-44/15) ([1])

(Reference for a preliminary ruling — Customs union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Position 9025 — Concept of 'thermometer' — Indicators of exposure to a predetermined target temperature to be used on one occasion only)

(2016/C 038/13)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Frankfurt am Main

Defendant: Duval GmbH & Co. KG

Operative part of the judgment

Heading 9025 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 must be interpreted as covering ambient temperature indicators made of paper, in some circumstances covered with plastic film, such as the goods at issue in the main proceedings, which, by the effect of a change in colour, indicate, irreversibly and without the possibility of subsequent re-use, whether one or more threshold temperatures have been reached.

([1]) OJ C 127, 20.4.2015.

Judgment of the Court (Eighth Chamber) of 3 December 2015 — PP Nature-Balance Lizenz GmbH v European Commission

(Case C-82/15 P) ([1])

Appeal — Medicinal products for human use — Directive 2001/83/EC — Articles 31 and 116 — Commission decision ordering the Member States to withdraw or amend national marketing authorisations for medicinal products for human use containing the active substance 'tolpérisone'

(2016/C 038/14)

Language of the case: German

Parties

Appellant: PP Nature-Balance Lizenz GmbH (represented by: M. Ambrosius, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: B.-R. Killmann, A. Sipos and M. Šimerdová, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders PP Nature-Balance Lizenz GmbH to pay the costs.*

([1]) OJ C 127, 20.4.2015.

Order of the Court (Eighth Chamber) of 6 October 2015 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Ministero dello Sviluppo economico v Ediltecnica SpA

(Case C-592/13) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Article 191(2) TFEU — Directive 2004/35/EC — Environmental liability — National legislation which does not provide for the possibility for the administrator to require the owners of contaminated sites who are not responsible for the contamination to implement preventive and remedial measures and which provides only for the obligation to reimburse the measures carried out by the administration — Compatibility with the 'polluter pays' principle, the precautionary principle, the principle of preventive action and the principle that environmental damage should as a priority be rectified at source)

(2016/C 038/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Ministero dello Sviluppo economico

Defendant: Ediltecnica SpA

Operative part of the order

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage must be interpreted as not precluding national legislation such as that at issue in the main proceedings which, in circumstances in which it is impossible to identify the polluter of a site or to have that person adopt remedial measures, do not permit the competent authority to require the owner of that site (who is not responsible for the pollution) to implement preventive and remedial measures, the latter being held responsible only for the reimbursement of expenses related to decontamination measures carried out by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.

([1]) OJ C 52, 22.2.2014.

Order of the Court (Eighth Chamber) of 6 October 2015 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Tamoil Italia SpA v Ministero dell'Ambiente e delle Tutela del Territorio e del Mare

(Case C-156/14) ([1])

Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Article 191(2) TFEU — Directive 2004/35/EC — Environmental liability — National legislation under which no provision is made for the administrative authorities to require owners of polluted land who have not contributed to that pollution to carry out preventive and remedial measures, and the sole obligation imposed concerns the reimbursement of the measures undertaken by those authorities — Whether compatible with the 'polluter pays' principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority

(2016/C 038/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Tamoil Italia SpA

Defendant: Ministero dell'Ambiente e delle Tutela del Territorio e del Mare

Intervening party: Provincia di Venezia, Comune di Venezia, Regione Veneto

Operative part of the order

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage must be interpreted as not precluding national legislation such as that at issue in the main proceedings which, where it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures, does not permit the competent authority to require the owner of the land (who is not responsible for the pollution) to adopt preventive and remedial measures, that person being required merely to reimburse the costs relating to the measures undertaken by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.

([1]) OJ C 194, 24.6.2014.

Order of the Court (Seventh Chamber) of 30 September 2015 (request for a preliminary ruling from the Szekszárdi Közigazgatási és Munkaügyi Bíróság — Hungary) — Jácint Gábor Balogh v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

(Case C-424/14) ([1])

(Reference for a preliminary ruling — VAT — Directive 2006/112/EC — Articles 213 and 214 — Commencement of an activity not stated — Exemption scheme for small businesses — Penalty)

(2016/C 038/17)

Language of the case: Hungarian

Referring court

Szekszárdi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Jácint Gábor Balogh

Defendant: Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

Operative part of the order

1. *Article 213(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding national legislation requiring a taxable person to state when an economic activity commences where the proceeds of that activity do not exceed the threshold of the exemption scheme for small enterprises and the taxable person does not intend to carry out a taxable activity.*

2. *EU law must be interpreted as not precluding an administrative fine from penalising the failure by a taxable person to comply with his obligation to state when an economic activity commences where the proceeds of that activity do not exceed the threshold of the exemption scheme for small thresholds. It is for the referring court to assess whether, in the case in the main proceedings, the penalty imposed is in conformity with the principle of proportionality.*

([1]) OJ C 439, 8.12.2014.

Order of the Court (Third Chamber) of 6 October 2015 (request for a preliminary ruling from the Tribunale ordinario di Torino) — Ford Motor Company v Wheeltrims srl

(Case C-500/14) ([1])

Reference for a preliminary ruling — Designs — Directive 98/71/EC — Article 14 — Regulation (EC) No 6/2002 — Article 110 — So-called 'repair' clause — Use by a third party of a mark, in the absence of the proprietor's consent, for spare parts or accessories for motor vehicles identical to the goods in relation to which the trade mark is registered

(2016/C 038/18)

Language of the case: Italian

Referring court

Tribunale ordinario di Torino

Parties to the main proceedings

Applicant: Ford Motor Company

Defendant: Wheeltrims srl

Operative part of the order

Article 14 of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs and Article 110 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted as precluding, by way of derogation to the provisions of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks and Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, a manufacturer of spare parts and accessories for motor vehicles, such as hub caps, from affixing to its goods a sign which is identical to a registered trade mark, inter alia for such goods, by a manufacturer of motor vehicles, without the consent of the latter, on the ground that the use which would thus be made of that trade mark constitutes the only means of repairing the vehicle at issue by restoring its original appearance as a complex product.

([1]) OJ C 46, 9.2.2015.

Order of the Court (Seventh Chamber) of 6 October 2015 — Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission, Kingdom of the Netherlands, Nederlandse Zuivelorganisatie

(Case C-517/14 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Agriculture — Regulation (EC) No 510/2006 — Register of protected designations of origin and protected geographical indications — Registration of the designation 'Edam Holland' — Producers using the name 'Edam' — Absence of a legal interest in bringing proceedings)

(2016/C 038/19)

Language of the case: German

Parties

Appellant: Schutzgemeinschaft Milch und Milcherzeugnisse e.V. (represented by: M. Loschelder and V. Schoene, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: B. Schima, J. Guillem Carrau and G. von Rintelen, acting as Agents), Kingdom of the Netherlands (represented by: B. Koopman and M. Bulterman, acting as Agents), Nederlandse Zuivelorganisatie (represented by: P. van Ginneken and G. Béquet, advocaten)

Operative part of the order

1. *The appeal is dismissed.*

2. *Schutzgemeinschaft Milch und Milcherzeugnisse e.V. shall pay the costs.*

3. *The Kingdom of the Netherlands and the Nederlandse Zuivelorganisatie shall bear their own respective costs.*

([1]) OJ C 26 of 26.1.2015.

Order of the Court (Seventh Chamber) of 6 October 2015 — Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission, Kingdom of the Netherlands, Nederlandse Zuivelorganisatie

(Case C-519/14 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Agriculture — Regulation (EC) No 510/2006 — Register of protected designations of origin and protected geographical indications — Registration of the designation 'Gouda Holland' — Producers using the name 'Gouda' — Absence of a legal interest in bringing proceedings)

(2016/C 038/20)

Language of the case: German

Parties

Appellant: Schutzgemeinschaft Milch und Milcherzeugnisse e.V. (represented by: M. Loschelder and V. Schoene, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: B. Schima, J. Guillem Carrau and G. von Rintelen, acting as Agents), Kingdom of the Netherlands (represented by: M. Bulterman and B. Koopman, acting as Agents), Nederlandse Zuivelorganisatie (represented by: P. van Ginneken and G. Béquet, advocaten)

Operative part of the order

1. *The appeal is dismissed.*

2. *Schutzgemeinschaft Milch und Milcherzeugnisse e.V. shall pay the costs.*

3. *The Kingdom of the Netherlands and the Nederlandse Zuivelorganisatie shall bear their own respective costs.*

([1]) OJ C 16, 19.1.2015.

Order of the Court (Second Chamber) of 22 October 2015 — European Commission v Hellenic Republic

(Case C-530/14 P) ([1])

(Appeal — State aid — Greek Casinos — System providing for a levy of 80 % of the admissions of different amounts — Decision declaring the aid incompatible with the internal market — Concept of 'State aid' — Advantage — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2016/C 038/21)

Language of the case: Greek

Parties

Appellant: European Commission (represented by: A. Bouchagiar and P.J. Loewenthal, acting as Agents)

Other party to the proceedings: Hellenic Republic (represented by K. Boskovits and P. Mylonopoulos, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *The European Commission is ordered to pay the costs.*

(1) OJ C 26, 26.1.2015.

Order of the Court (Seventh Chamber) of 1 December 2015 — Aguy Clement Georgias, Trinity Engineering (Private) Ltd, Georgiadis Trucking (Private) Ltd v Council of the European Union, European Commission

(Case C-545/14 P) (1)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Action for damages — Restrictive measures against certain persons and entities in view of the situation in Zimbabwe — Removal of the person in question from the list of persons and entities concerned — Compensation for the damage allegedly suffered)

(2016/C 038/22)

Language of the case: English

Parties

Appellants: Aguy Clement Georgias, Trinity Engineering (Private) Ltd, Georgiadis Trucking (Private) Ltd (represented by: H. Mercer QC, and I. Quirk, Barrister)

Other parties to the proceedings: Council of the European Union (represented by: G. Étienne and B. Driessen, acting as Agents), European Commission (represented by: S. Bartelt and M. Konstantinidis, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Aguy Clement Georgias, Trinity Engineering (Private) Ltd and Georgiadis Trucking (Private) Ltd are ordered to bear their own costs and to pay the costs incurred by the Council of the European Union and by the European Commission.*

(1) OJ C 46, 9.2.2015.

Order of the Court (Tenth Chamber) of 21 September 2015 — La Chaîne hôtelière La Frontière, Shotef SPRL v European Commission

(Case C-1/15 SA) (1)

(Application for authorisation to serve an attachment order on the European Commission)

(2016/C 038/23)

Language of the case: French

Parties

Applicant: La Chaîne hôtelière La Frontière, Shotef SPRL (represented by: J.-Y. Steyt, avocat)

Defendant: European Commission (represented by: A. Aresu, acting as Agent)

Operative part of the order

1. *The application is dismissed.*

2. *La Chaîne hôtelière La Frontière, Shotef SPRL is ordered to pay the costs.*

(1) OJ C 73, 2.3.2015.

Order of the Court (Second Chamber) of 29 September 2015 — ANKO AE Antiprosopeion, Emporiou kai Viomichanias v European Commission

(Case C-2/15 SA) (1)

(Application for authorisation to serve an attachment order on the Commission)

(2016/C 038/24)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopeion, Emporiou kai Viomichanias (represented by: S. Paliou, dikigoros)

Defendant: European Commission (represented by: D. Triantafyllou and R. Lyal, acting as Agents)

Operative part of the order

1) *The application is rejected.*

2) *ANKO AE Antiprosopeion, Emporiou kai Viomichanias and the European Commission shall bear their own costs.*

(1) OJ C 118, 13.4.2015.

Order of the Court of 19 November 2015 (request for a preliminary ruling from the Curtea de Apel Oradea — Romania) — Dumitru Tarcău, Ileana Tarcău v Banca Comercială Intesa Sanpaolo România SA and Others

(Case C-74/15) (1)

(Request for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Consumer protection — Directive 93/13/EEC — Article 1(1) and Article 2(b) — Unfair terms in consumer contracts — Guarantee contracts and contracts providing immovable property as security concluded with a credit institution by natural persons acting for purposes outside their trade, business or profession and having no connection of a functional nature with the commercial company for which they act as guarantor)

(2016/C 038/25)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicants: Dumitru Tarcău, Ileana Tarcău

Defendants: Banca Comercială Intesa Sanpaolo România SA Arad, Banca Comercială Intesa Sanpaolo România SA — Sucursala Baia Mare, Cristian Tarcău, Corina Tarcău, SC Magenta, in liquidation, SC Crisco SRL

Operative part of the order

Article 1(1) and Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that that directive may apply to a contract providing immovable property as security or to a guarantee contract concluded between a natural person and a credit institution in order to guarantee the obligations which a commercial company has entered into with that institution in the context of a credit agreement, where that natural person has acted for purposes outside their trade, business or profession and has no connection in terms of function with that company.

([1]) OJ C 171, 26.5.2015.

Order of the Court (Ninth Chamber) of 21 October 2015 (request for a preliminary ruling from the Krajský súd v Košiciach — Slovakia) — Kovozber s. r. o. v Daňový úrad Košice

(Case C-120/15) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Value added tax (VAT) — Directive 2006/112/EC — Article 183 — Refund of excess VAT — National legislation prescribing that default interest relating to the refund of excess VAT is to be calculated only as from ten days after completion of a tax inspection)

(2016/C 038/26)

Language of the case: Slovak

Referring court

Krajský súd v Košiciach

Parties to the main proceedings

Applicant: Kovozber s. r. o.

Defendant: Daňový úrad Košice

Operative part of the order

The first paragraph of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prescribes that default interest relating to the refund of excess value added tax is to be calculated only as from ten days after completion of the tax inspection.

([1]) OJ C 213, 29.6.2015.

Order of the Court (Seventh Chamber) of 17 November 2015 (request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco — Spain) — María Pilar Plaza Bravo v Servicio Público de Empleo Estatal Dirección Provincial de Álava

(Case C-137/15) ([1])

(Request for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 79/7/EEC — Article 4(1) — Equal treatment of male and female workers — Part-time workers, primarily female — National legislation providing for a maximum amount of unemployment benefit — Legislation referring, for the calculation of that amount, to the relationship between the working hours of the part-time employees concerned and the working hours of full-time employees)

(2016/C 038/27)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: María Pilar Plaza Bravo

Defendant: Servicio Público de Empleo Estatal Dirección Provincial de Álava

Operative part of the order

Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, does not preclude, in circumstances such as those in the main proceedings, a provision of national law under which, in order for the amount of the benefit for total unemployment to be received by an employee following the loss of her only part-time employment to be calculated, a reduction coefficient for part-time work that corresponds to the percentage represented by the part-time working hours in relation to the hours completed by a comparable worker employed full-time is applied to the maximum amount of unemployment benefit generally laid down by law.

([1]) OJ C 178, 1.6.2015.

Order of the Court (Tenth Chamber) of 23 October 2015 (request for a preliminary ruling from the Tribunal da Relação de Lisboa — Portugal) — Cruz & Companhia Lda v Instituto de Financiamento da Agricultura e Pescas IP (IFAP), Caixa Central — Caixa Central de Crédito Agrícola Mútuo CRL

(Case C-152/15) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Agriculture — Common organisation of the markets — Regulation (EEC) No 3665/87 — Articles 4(1) and 13 — Regulation (EEC) No 2220/85 — Article 19(1)(a) — Conditions for the release of the guarantee provided to ensure the repayment of the advance — Conditions for the grant of the refund — Sound and fair marketable quality of the products exported — Taking into account, for the grant of the refund, the facts established by the competent authority following an inspection which took place after the actual export and customs clearance of the products — Interpretation of the judgment in Cruz & Companhia (C-128/13, EU:C:2014:2432))

(2016/C 038/28)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Applicant: Cruz & Companhia Lda

Defendants: Instituto de Financiamento da Agricultura e Pescas IP (IFAP), Caixa Central — Caixa Central de Crédito Agrícola Mútuo CRL

Operative part of the order

Article 19(1)(a) of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products, as amended by Commission Regulation (EC) No 3403/93 of 10 December 1993, must be interpreted as meaning that the guarantee furnished by an exporter to ensure the repayment of the advance received by way of export refund may be implemented where, following an inspection carried out after the actual export and customs clearance of the products in question, it is established that one of the other conditions for the grant of that refund, in particular the condition of sound and fair marketable quality of the products exported, provided for in Article 13 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 1829/94 of 26 July 1994, is not satisfied.

([1]) OJ C 205, 22.6.2015.

Order of the Court of 25 September 2015 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Openbaar Ministerie v A.

(Case C-463/15 PPU) ([1])

(Reference for a preliminary ruling — Urgent preliminary-ruling procedure — Article 99 of the Rules of Procedure of the Court of Justice — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 2(4) and Article 4.1 — Conditions of execution — National criminal law making the execution of a European arrest warrant subject to, in addition to double criminality, the condition that the criminal act is punishable by a custodial sentence or a detention order for a maximum period of at least 12 months under the law of the executing Member State)

(2016/C 038/29)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: A.

Operative part of the order

Article 2(4) and Article 4.1 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.

([1]) OJ C 363, 3.11.2015.

Appeal brought by Verband der Kölnisch-Wasser Hersteller, Köln e.V. against the judgment of the General Court (Third Chamber) of 25 November 2014 in Case T-556/13 *Verband der Kölnisch Wasser Hersteller e.V.* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*, lodged by fax on 26 January 2015

(Case C-29/15 P)

(2016/C 038/30)

Language of the case: German

Parties

Appellant: Verband der Kölnisch-Wasser Hersteller, Köln e.V. (represented by: T. Schulte-Beckhausen, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

By Order of 3 December 2015, the Court of Justice of the European Union (Eighth Chamber) dismissed the appeal and ordered the appellant to pay its own costs.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 21 October 2015 — J.J. de Lange v Staatssecretaris van Financiën

(Case C-548/15)

(2016/C 038/31)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: J.J. de Lange

Defendant: Staatssecretaris van Financiën

Questions referred

1. Must Article 3 of Council Directive 2000/78/EC ([1]) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation be interpreted as meaning that that provision applies to a concession contained in tax legislation on the basis of which study costs may, under certain conditions, be deducted from the taxable income?

In the event that the Court answers the first question referred in the negative:

2. Must the principle of non-discrimination on the grounds of age, as a general principle of EU law, be applied to a tax concession on the basis of which training expenditure is only deductible under certain circumstances, even when that concession falls outside the material scope of Directive 2000/78/EC and when that arrangement does not implement EU law?

If the answer to the first or the second question referred is in the affirmative:

3. (a) Can differences in treatment which are contrary to the principle of non-discrimination on the grounds of age as a general principle of EU law be justified in a way provided for in Article 6 of Directive 2000/78/EC?

(b) If not, what criteria apply to the application of that principle or to the justification of a distinction based on age?

4. (a) Should Article 6 of Directive 2000/78/EC and/or the principle of non-discrimination on the grounds of age be interpreted as justifying a difference in treatment on the grounds of age if the ground for that difference in treatment only relates to some of the cases affected by that distinction?

(b) Can a distinction based on age be justified by the view of the legislator that beyond a certain age a tax concession need not be available because it is the 'personal responsibility' of the person claiming it to achieve the objective pursued by the concession?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Curtea de Apel Craiova (Romania) lodged on 28 October 2015 — Fondul Proprietatea SA v Societatea Complexul Energetic Oltenia SA (CE Oltenia)

(Case C-556/15)

(2016/C 038/32)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicant and appellant: Fondul Proprietatea SA

Defendant and respondent: Societatea Complexul Energetic Oltenia SA (CE Oltenia)

Questions referred

1. Must Article 107 TFEU be interpreted as meaning that the participation of the Complexul Energetic Oltenia SA in the capital of the project company Hidro Tarnița SA, whose object is to construct and operate the Tarnița-Lăpuștești hydroelectric power station, constitutes State aid to the producers of wind and photovoltaic energy in that the declared aim of the project is to guarantee optimal conditions for the installation of greater capacity in the power stations which produce those types of energy, that is to say: (i) is it a measure financed by the State or through State resources, (ii) is it selective in nature, and (iii) can it affect trade between the Member States?

2. If the answer is in the affirmative, was such State aid subject to the notification [obligation] laid down in Article 108(3) TFEU?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 3 November 2015 — Onix Asigurari SA v Istituto per la Vigilanza Sulle Assicurazioni (Ivass)

(Case C-559/15)

(2016/C 038/33)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Onix Asigurari SA

Respondent: Istituto per la Vigilanza Sulle Assicurazioni (Ivass)

Question referred

Does Community law, in particular Article 40(6) of Directive 92/49/EEC, ([1]) Commission Interpretative Communication 2000/C/43/03, paragraph 5, and the Community principle of *home country control* preclude an interpretative approach (such as that applied to Article 193(4) of the Codice delle Assicurazioni private, the Private Insurance Code) approved by Legislative Decree No 209 of 7 September 2005, endorsed by this Court) in accordance with which the supervisory authority of a State hosting an insurance operator under the freedom to provide services may, in cases of urgency and for the protection of the interests of insured persons and of persons entitled to insurance benefits, issue injunctions specifically prohibiting the conclusion of new contracts within the territory of the host State, on the grounds of the identified failure, whether pre-existing or supervening, assessed discretionarily, to satisfy a subjective precondition laid down for the purpose of the issue of authorisation to engage in insurance business, in particular the requirement of good repute?

([1]) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 30 October 2015 — Europa Way Srl, Persidera SpA v Autorità per le Garanzie nelle Comunicazioni and Others

(Case C-560/15)

(2016/C 038/34)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Europa Way Srl, Persidera SpA

Respondents: Autorità per le Garanzie nelle Comunicazioni, Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri, Ministero dell'Economia and delle Finanze

Questions referred

1. Do the contested legislation and the consequential implementing measures infringe the rules according to which the functions of regulating the television market are vested in an independent administrative authority (Articles 3 and 8 of Directive 2002/21/EC, ([1]) 'the Framework Directive', as amended by Directive 2009/140/EC ([2]));

2. Do the contested legislation and the consequential implementing measures infringe the provisions (Article 7 of Directive 2002/20/EC, ([3]) 'the Authorisation Directive', and Article 6 of Directive 2002/21/EC, the Framework Directive) which provide for prior public consultation by the national independent authority regulating the sector;

3. Does EU law, and in particular Article 56 TFEU, Article 9 of Directive 2002/21/EC, the Framework Directive, Articles 3, 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, and Articles 2 and 4 of Directive 2002/77/EC, ([4]) 'the Competition Directive', and the principles of non-discrimination, transparency, freedom of competition, proportionality, effectiveness and pluralism of information, preclude annulment of the *beauty contest* procedure — which was commenced in order to remedy, within the system for the allocation of digital television frequencies, the unlawful exclusion of operators from the market and to allow access for small operators — and substitution for it of another payment-based tendering procedure, which provides for the imposition on participants of requirements and obligations not previously required of *incumbents*, rendering engagement in competitive bidding onerous and uneconomic;

4. Does EU law, in particular Article 56 TFEU, Article 9 of Directive 2002/21/EC, the Framework Directive, Articles 3, 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, Articles 2 and 4 of Directive 2002/77/EC, the Competition Directive, and Article 258 TFEU, and the principles of non-discrimination, transparency, freedom of competition, proportionality, effectiveness and pluralism of information, preclude the re-configuration of the Plan for the allocation of frequencies, reducing national networks from 25 to 22 (and retention of the same availability of multiplexes for the *incumbents*), the reduction of lots in the competition to 3 multiplexes, the allocation of frequencies in the VHF-III band involving the risk of severe interference;

5. Is the upholding of the principle of the protection of legitimate expectations, as expounded by the Court of Justice, compatible with the annulment of the *beauty contest* procedure which has not allowed the appellants, already admitted to the free procedure, to be sure of being awarded some of the lots put out to tender;

6. Is the enactment of a provision, such as that contained in Article 3 *quinquies* of Legislative Decree No 16 of 2012, which is out of harmony with the characteristics of the radio and television market, compatible with EU legislation on the allocation of user rights for frequencies (Articles 8 and 9 of Directive 2002/21/EC, the Framework Directive, Articles 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, Articles 2 and 4 of Directive 2002/77/EC, the Competition Directive).

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

([2]) Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ 2009 L 337, p. 37).

([3]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

([4]) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 4 November 2015 — Hans-Peter Ofenböck

(Case C-565/15)

(2016/C 038/35)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Party to the main proceedings

Appellant: Hans-Peter Ofenböck

Questions referred

1. Does Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ([1]) preclude the application of national legislation under which the freedom of service station operators to change fuel prices is restricted in such a way that they may lawfully increase the sale price only once a day?

2. If Question 1 cannot automatically be answered in the affirmative, and, in accordance with the case-law of the Court of Justice, the examination of the lawfulness of such a restriction in the light of the provisions of Articles 5 to 9 of the Unfair Commercial Practices Directive must instead be conducted with reference to the circumstances of each individual case:

Which factors would the case-by-case examination of the lawfulness of such a restriction in the light of the provisions of Articles 5 to 9 of the Unfair Commercial Practices Directive, as required by the Court of Justice in the judgment in Case C-540/08, have to take into account in the case of a provision restricting the freedom to increase consumer prices?

(1) OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Landgericht Stuttgart (Germany) lodged on 5 November 2015 — Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v comtech GmbH

(Case C-568/15)

(2016/C 038/36)

Language of the case: German

Referring court

Landgericht Stuttgart

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V.

Defendant: comtech GmbH

Questions referred

1. Is the first paragraph of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (1) to be interpreted as meaning that, where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer contacting the trader by telephone must not incur higher charges than those that the consumer would incur for calling a standard (geographic) fixed or mobile number?

2. Does the first paragraph of Article 21 of Directive 2011/83/EU preclude national legislation according to which, where a trader operates a shared-cost service on an 0180 number for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer must pay that which the telecommunications service provider charges the consumer for the use of that telecommunications service, even where those charges exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number?

   Does the first paragraph of Article 21 of Directive 2011/83/EU not preclude such national legislation where the telecommunications service provider does not pass on to the trader part of the charges that he receives from the consumer for contacting the trader on the 0180 number?

(1) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 5 November 2015 — X, Other party: Staatssecretaris van Financiën

(Case C-569/15)

(2016/C 038/37)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X

Other party: Staatssecretaris van Financiën

Questions referred

1. Must Title II of Regulation (EEC) No 1408/71 ([1]) be interpreted as meaning that a worker residing in the Netherlands who normally works in the Netherlands and who takes unpaid leave for three months is deemed to continue to be (also) employed in the Netherlands during that period if (i) the employment relationship continues during that period and (ii) for purposes of the application of the Dutch Werkloosheidswet (Law on unemployment) that period is considered to be a period of employment?

2. (a) What legislation does Regulation (EEC) No 1408/71 designate as applicable if during the unpaid leave that worker is employed in another Member State?

2. (b) Is it still important in that regard that the person concerned was employed in the same other Member State twice in the following year and for periods of approximately one to two weeks during the subsequent three years, without any mention in the Netherlands of unpaid leave?

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

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 5 November 2015 — X, Other party: Staatssecretaris van Financiën

(Case C-570/15)

(2016/C 038/38)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X

Other party: Staatssecretaris van Financiën

Question referred

What standard or standards should be used to assess what legislation is designated by Regulation (EEC) No 1408/71 ([1]) as applicable in the case of a worker residing in Belgium who performs the bulk of his work for his Dutch employer in the Netherlands, and in addition performs 6,5 per cent of that work in Belgium in the year in question, at home and with clients, without there being a fixed pattern and without any agreement having been made with his employer with regard to the performance of work in Belgium?

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

Request for a preliminary ruling from the Cour d'appel de Liège (Belgium) lodged on 9 November 2015 — État belge v Oxycure Belgium SA

(Case C-573/15)

(2016/C 038/39)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Appellant: État belge

Respondent: Oxycure Belgium SA

Question referred

Does Article 98(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) read in conjunction with Annex III, points 3 et 4 of the VAT Directive, having regard to, in particular, the principle of neutrality, preclude a national provision which prescribes a reduced rate of VAT for oxygen treatment by means of oxygen cylinders, whereas oxygen treatment by means of an oxygen concentrator is subject to the standard rate of VAT?

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

Appeal brought on 9 November 2015 by Industria de Diseño Textil, S.A. (Inditex) against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-584/14 INDITEX v OHIM — ANSELL (ZARA)

(Case C-575/15 P)

(2016/C 038/40)

Language of the case: Spanish

Parties

Appellant: Industria de Diseño Textil, S.A. (Inditex) (represented by: C. Duch Fonoll, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union dismissing the action brought by the appellant against the decision of the Second Board of Appeal of OHIM of 19 May 2014 (Case R 1118/2013-2) and, consequently, annul the contested decision and the earlier decision of the Cancellation Division of OHIM of 30 April 2013 granting the application for revocation of the Community trade mark ZARA No 112 755 for services in Class 39;

— order OHIM to pay the costs.

Grounds of appeal and main arguments

1. By its appeal, which comprises six grounds of appeal, Inditex contests the grounds set out in paragraphs 32 to 37 of the judgment under appeal.

2. In the first ground of appeal, Inditex argues that the General Court infringed Article 65(3) CTMR ([1]) in that, in paragraph 37 of the judgment under appeal, it went beyond the limits of the action before it by calling into question the use in itself of the trade mark ZARA No 112 755 for services in Class 39, whereas that was an undisputed issue which did not form part of the action.

3. The subject matter of the action before the Board of Appeal was limited to determining whether or not Inditex's use of the trade mark ZARA for the services of transport and product distribution provided by that company to its franchisees could be regarded as external use, as opposed to internal use within the company, and, consequently, whether or not it could be regarded as genuine use. Accordingly, the use in itself of the trade mark ZARA in respect of the transport and distribution services provided by the holder of the mark was an undisputed fact and was not in question before OHIM.

4. By the second ground of appeal, Inditex argues that General Court, in paragraphs 32 and 33 of the judgment under appeal, committed an error of law in the application of Article 51(1)(a) CTMR by confusing the concepts of 'commercial integration', which is characteristic of a franchisee company integrated in the commercial system of the franchisor, with the concept of 'economic integration' or 'economic unity', in the sense of the level of economic dependence.

5. The General Court considered, in paragraph 33 of the judgment under appeal, that because the franchisees of Inditex follow a business model that is integrated in the business model of the franchisor, those franchisees lose their status as independent economic units, that is to say, as third parties separated from the internal organisation of the franchisor. According to Inditex, that assessment is incorrect because it is inconsistent with the law.

6. By the third ground of appeal, Inditex submits that the General Court, in paragraph 33 of the judgment under appeal, distorted the terms of the sworn declaration of 7 May 2012 of Mr Antonio Abril (Annex 4 to the appeal), by partially transcribing part of the declarations actually made by the latter, which led the General Court to interpret that document incorrectly and affected the General Court's conclusion as regards the external use of the trade mark ZARA.

7. By the fourth ground of appeal Inditex submits that the General Court erred in law in the application of Article 51(1)(a) CTMR in that it infringed, in paragraph 35 of the judgment under appeal, the rules according to which the assessment of whether the use of a mark is genuine must take into consideration all of the relevant facts and circumstances in order to determine the reality of its commercial exploitation. Specifically, the General Court considered that Inditex was not present on the market for freight transport services under its trade mark ZARA because that company did not have turnover generated by the provision of the services in Class 39.

8. The General Court considered that Inditex offered freight transport services to third parties separate from its economic unit because it is a company whose business consists of the manufacture and sale of fashion products and not a transport company. According to Inditex, the General Court's position is incorrect and infringes EU law and case-law as cited in the ground of appeal.

9. In the fifth ground of appeal, Inditex submits that the General Court, in paragraph 35 of the judgment under appeal, distorted the terms of the sworn declaration of 7 May 2012 of Mr Antonio Abril, by interpreting the figures in paragraph 18 of the declaration as attesting to the reality of the commercial exploitation of the mark at issue for the marketing of the products, whereas, in reality, the figures set out in that document refer solely to the amounts received by Inditex from its franchisees for the provision of transport services by Inditex to those franchisees.

10. Lastly, the sixth ground of appeal alleges an error of law resulting from the infringement of Article 51(1)(a) CTMR, in conjunction with Rule 22 of Regulation No 2868/1995, ([2]) in that, in paragraph 36 of the judgment under appeal, the General Court required Inditex to produce a *probatio diabolica* by denying that evidence on the turnover had been submitted to it because no invoices had been produced, despite the fact that the General Court was aware that Inditex could not produce such invoices since no such documents existed for the reasons set out in the ground of appeal.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1)
([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1)

Request for a preliminary ruling from the Rechtbank van eerste aanleg West-Vlaanderen, afdeling Brugge (Belgium) lodged on 9 November 2015 — Johannes Van der Weegen, Anna Pot v Belgische Staat

(Case C-580/15)

(2016/C 038/41)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg West-Vlaanderen, afdeling Brugge

Parties to the main proceedings

Applicants: Johannes Van der Weegen, Anna Pot

Defendant: Belgische Staat

Question referred

Does Article 21(5) of the 1992 Belgian Income Tax Code (WIB 1992), as amended by Article 170 of the Law of 25 April 2014 laying down various provisions, infringe the provisions of Articles 56 TFEU and 63 TFEU and Articles 36 and 40 of the EEA Agreement, inasmuch as the provision in question, although applicable without distinction to domestic and foreign service providers, requires compliance with conditions similar to those included in Article [2] of the Royal Decree implementing the 1992 Income Tax Code (KB/WIB 1992) which are *de facto* specific to the Belgian market and consequently amount to a serious obstacle to foreign service providers offering their services in Belgium?

Action brought on 12 November 2015 — European Commission v Portuguese Republic

(Case C-583/15)

(2016/C 038/42)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra Andrade and J. Hottiaux, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to create its national electronic register of road transport undertakings and interconnecting it with the national electronic registers of the other Member States, the Portuguese Republic has failed to fulfil its obligations under Article 16(1) and (5) of Regulation (EC) No 1071/2009 [1] of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.

— order Portuguese Republic to pay the costs.

Pleas in law and main arguments

Article 16(1) of Regulation No 1071/2009 provides that each Member State is to keep a national electronic register of road transport undertakings which have been authorised by the competent national authority to engage in the occupation of road transport operator.

Article 16(1) establishes that the data contained in the register, in particular the mandatory data referred to in Article 16(2), must be processed under the supervision of a public authority designated for that purpose. That data must be accessible to all the competent authorities of the Member State in question.

However, it is apparent from the answer given by the Portuguese State to the additional letter of formal notice that the Portuguese Administration has not yet succeeded in obtaining an agreement among the three national authorities involved in the system, namely the Autoridade Nacional de Segurança Rodoviária (National Road Safety Authority), the Autoridade para as Condições do Trabalho (Employment Conditions Authority) and the Direção-Geral da Administração da Justiça (Directorate-General for the Administration of Justice).

Accordingly, not only is there no national register, as individual registers run by three national authorities continue to operate, but the data in question are not accessible to the competent authorities of the Portuguese State.

It follows that the Portuguese State has failed to comply with Article 16(1) of Regulation No 1071/2009.

Under Article 16(5) of Regulation No 1071/2009, the Member States are required to take all necessary measures to ensure that the national electronic registers are interconnected and accessible throughout the European Union.

As it does not even have a national register, there can be no doubt that the Portuguese Administration has not taken the measures necessary to interconnect its national register (which it does not have) with other national registers.

That being the case, the Portuguese State has failed to comply with Article 16(5) of Regulation No 1071/2009.

([1]) OJ 2009 L 300, p. 51.

Request for a preliminary ruling from the Tribunal administratif de Melun (France) lodged on 11 November 2015 — Glencore Céréales France v Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Case C-584/15)

(2016/C 038/43)

Language of the case: French

Referring court

Tribunal administratif de Melun

Parties to the main proceedings

Applicant: Glencore Céréales France

Defendant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Questions referred

1) It is possible to infer from the terms of the judgment of 9 March 2012 in Case C-564/10 *Bundesanstalt für Landwirtschaft and Ernährung* v *Pfeifer & Langen KG* that Article 3 of Regulation No 2988/95 ([1]) laying down Community law limitation rules is applicable to measures seeking payment of interest due pursuant to Article 52 of Regulation No 800/1999 ([2]) and Article 5a of Regulation No 770/96? ([3])

2) Is the claim for interest to be regarded as naturally arising from a 'continuous or repeated' irregularity which ceases on the date on which the principal is repaid, thus deferring until that date the point at which the limitation period in respect of the claim for interest starts to run?

3) If Question 2 is answered in the negative, must the point at which the limitation period starts to run be the day on which the irregularity giving rise to the principal claim was committed, or may it not be the day on which the aid is paid or the security released, corresponding to the starting point for the calculation of such interest?

4) For the purpose of the application of the rules on limitation laid down by Regulation No 2988/95, must any act which interrupts the limitation period insofar as concerns the principal claim be regarded as also interrupting the time running in respect of interest, even if no mention is made of interest in the acts directed at the principal claim that interrupt the limitation period?

5) Does limitation become effective as a result of the fact that the maximum period provided for in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 has expired if, within that period, the paying agency seeks recovery of the aid unduly paid without demanding at the same time the payment of interest?

6) Is it possible for the general five-year limitation period provided for under national law in Article 2224 of the Civil Code by Law No 2008-561 of 17 June 2008 to have replaced, as regards limitation periods that had not yet expired on the date when that law entered into force, the four-year limitation period laid down by Regulation No 2988/95, in the light of the derogation provided for in Article 3(3) of that regulation?

([1]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

([2]) Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11).

([3]) Commission Regulation (EC) No 770/96 of 26 April 1996 amending Regulation (EEC) No 3002/92 laying down common detailed rules for verifying the use and/or destination of products from intervention (OJ 1996 L 104, p. 13).

Request for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 12 November 2015 — Raffinerie Tirlemontoise SA v État belge

(Case C-585/15)

(2016/C 038/44)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Raffinerie Tirlemontoise SA

Defendant: État belge

Questions referred

1. Is Article 33(1) of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ([1]) to be interpreted — particularly in the light of the judgment of 27 September 2012 in *Zuckerfabrik Jülich* (C-113/10, C-147/10 and C-234/10) — as meaning that for the purpose of calculating the average loss, it is necessary to divide, for all categories of sugar exported, the total amount of the actual expenditure by the total amount of the quantities exported, regardless of whether refunds have actually been paid for those quantities or not?

2. Is Article 33(2) of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector to be interpreted — particularly in the light of the judgment of 27 September 2012 in *Zuckerfabrik Jülich* (C-113/10, C-147/10 and C-234/10) — as meaning that the carry forward to be taken into account (as a debit or credit item) in the overall calculation of the production levies is to be calculated, for all categories of sugar exported, by dividing the total amount of the actual expenditure by the total amount of the quantities actually exported, regardless of whether or not export refunds have actually been paid for those quantities?

3. If the answer to Question 1 is in the affirmative, are Regulation No 2267/2000 ([2]) and Regulation No 1993/2001 ([3]) invalid?

([1]) OJ 1999 L 252, p. 1.
([2]) Commission Regulation (EC) No 2267/2000 of 12 October 2000 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year (OJ 2000 L 259, p. 29).
([3]) Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the 2000/01 marketing year (OJ 2001 L 271, p. 15).

Request for a preliminary ruling from the Juzgado de Primera Instancia No 1 de Jerez de la Frontera (Spain) lodged on 16 November 2015 — Banco Santander, S.A. v Cristobalina Sánchez López

(Case C-598/15)

(2016/C 038/45)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Jerez de la Frontera

Parties to the main proceedings

Applicant: Banco Santander, S.A.

Defendant: Cristobalina Sánchez López

Questions referred

1. Is it contrary to the abovementioned provisions and the objectives of the Directive ([1]) for legislation such as the Spanish legislation to establish a procedure like that of Article 250.1.7 of the Law of Civil Procedure, requiring the national court to give a ruling ordering the dwelling subject to enforcement to be handed over to the person who acquired it in extrajudicial enforcement proceedings, in which, under the current regime contained in Article 129 of the Law on Mortgages in the version contained in Law 1/2000 of 8 January and Articles 234 to 236-0 of the Mortgage Rules, in the wording of Royal Decree 290/1992, there could be no review *ex officio* of unfair terms and the debtor could not raise an effective objection on those grounds, either in the extrajudicial enforcement procedure or in separate legal proceedings?

2. Is it contrary to the abovementioned provisions and the objectives of the Directive for legislation, such as the Fifth Transitional Provision of Law 1/2013, to allow the notary to suspend extrajudicial enforcement proceedings already commenced when Law 1/2013 came into force only if the consumer establishes that he has lodged a claim concerning the unfairness of a clause in the mortgage loan agreement on which the extrajudicial sale is based, or which determines the amount payable on enforcement, provided that the separate claim has been lodged by the consumer within a period of one month from publication of Law 1/2013, without the consumer having been notified in person of that period, and in any case before the notary has made the award?

3. Are the abovementioned provisions of the Directive, the objective it pursues and the obligation it imposes on national courts to examine of their own motion the unfairness of unfair terms in consumer contracts without the consumer having to request it to be interpreted as allowing the national court, in proceedings such as that established in Article 250. 1.7 of the Law of Civil Procedure or in the 'extrajudicial sale' procedure governed by Article 129 of the Law on Mortgages, to disapply national law when the latter it does not permit that judicial review of the court's own motion, in view of the clarity of the provisions of the Directive and of the affirmations of the CJEU concerning the obligation of national courts to review of their own motion the existence of unfair terms in cases relating to consumer contracts?

4. Is it contrary to the abovementioned provisions and the objectives of the Directive for national legislation, such as Article 129 of the Law on Mortgages, in the wording of Law 1/2013, merely to confer on a notary, as sole effective remedy for protecting the consumer rights enshrined in the Directive, and in respect of extrajudicial enforcement procedures with consumers, the power to warn of the existence of unfair terms; or to give the consumer against whom extrajudicial enforcement is sought an opportunity of lodging a claim in separate legal proceedings before the notary has awarded the property subject to enforcement?

5. Is it contrary to the abovementioned provisions and the objectives of the Directive for national legislation, such as Article 129 of the Law on Mortgages, in the wording provided by Law 1/2013, and Articles 234 to 236 of the Mortgage Rules in the wording given in Royal Decree 290/1992, to establish an extrajudicial procedure for the enforcement of mortgage loan agreements concluded with consumers by sellers or suppliers in which there is no opportunity whatsoever for review *ex officio* of unfair terms?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Appeal brought on 16 November 2015 by Romania against the order of the General Court (Third Chamber) of 14 September 2015 in Case T-784/14, *Romania* v *Commission*

(Case C-599/15 P)

(2016/C 038/46)

Language of the case: Romanian

Parties

Appellant: Romania (represented by: R.-H. Radu, A. Buzoianu, E. Gane and M. Chicu, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— I. declare the appeal admissible, set aside the order of the General Court in Case T-784/14 in its entirety and rule afresh in respect of Case T-784/14 by declaring the application for annulment to be admissible and by annulling letter BUDG/B3/MV D (2014) 3079038 of 19 September 2014;

or

declare the appeal admissible, set aside the order of the General Court in Case T-784/14 in its entirety and refer Case T-784/14 back to the General Court in order that the latter may declare the application for annulment admissible and annul letter BUDG/B3/MV D (2014) 3079038 of 19 September 2014;

— II. order the Commission to pay the costs.

Grounds of appeal and main arguments

1. **First ground — Procedural irregularities before the General Court harming the interests of the Romanian State**

Romania takes the view that the order under appeal was made in breach of Article 130(7) and (8) of the Rules of Procedure of the General Court.

The General Court, it submits, failed to determine, and did not provide proper reasons, whether it was necessary to examine the objection of inadmissibility together with the examination of the substance.

Although the General Court decided that joint examination of the objection of inadmissibility and the substance was not justified, it found that the legal context under which the obligation for Romania to pay arose came under the rules set out in Decision 2007/436 ([1]) and Regulation No 1150/2000, ([2]) and ruled that the Romanian State had an obligation arising under those provisions to determine and pay the amount of EUR 14 883,79 as traditional own resources.

By analysing the nature and basis of the payment obligation, the General Court ruled on the substance of the case and, in doing so, acted at variance with its decision to rule exclusively on the objection of inadmissibility.

2. **Second ground — Breach of EU law by the General Court**

Romania takes the view that the General Court erred in classifying the nature of the obligations attributed to it by letter BUDG/B3/MV D(2014) 3079038 of 19 September 2014, thereby committing an error of law which affected the General Court's analysis of (i) the assessment of the Commission's power and (ii) the nature of the disputed letter.

In the alternative, Romania takes the view that the General Court infringed EU law and misapplied the case-law of the Court of Justice in concluding that it is for the Member States to determine whether there is a loss of traditional own resources, as well as the existence of an obligation to pay such resources.

In addition, Romania disputes the applicability of the mechanism of interim payment in the present case and, in that respect, the related findings of the General Court.

([1]) Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17).

([2]) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ 2000 L 130, p. 1).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 17 November 2015 — J.N.; other party: Staatssecretaris van Justitie en Veiligheid

(Case C-601/15)

(2016/C 038/47)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: J.N.

Other party: Staatssecretaris van Justitie en Veiligheid

Question referred

Is Article 8(3)(e) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96) valid in the light of Article 6 of the Charter of Fundamental Rights of the European Union (OJ 2007 C 303, p. 1):

1. in a situation where a third-country national has been detained pursuant to Article 8(3)(e) of that directive and, under Article 9 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), has the right to remain in a Member State until a decision on his asylum application has been made at first instance, and

2. in view of the Explanation (OJ 2007 C 303, p. [19]) that the limitations which may legitimately be imposed on the rights in Article 6 of the Charter may not exceed those permitted by the European Convention on Human Rights in the wording of its Article 5[(1)](f), and in the light of the interpretation by the European Court of Human Rights of the latter provision in, inter alia, the judgment of 22 September 2015 in *Nabil and Others* v *Hungary*, 62116/12, according to which the detention of an asylum-seeker is contrary to the aforementioned Article 5(1)(f) if such detention was not imposed with a view to removal?

Appeal brought on 15 November 2015 by Ana Pérez Gutiérrez against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-168/14 Pérez Gutierrez v Commission

(Case C-604/15 P)

(2016/C 038/48)

Language of the case: Spanish

Parties

Appellant: Ana Pérez Gutiérrez (represented by: J. Soler Puebla, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should set aside the judgment of the General Court of 9 September and continue the proceedings, giving a new judgment in which it:

1. Declares that when the Commission, using without consent the image of Patrick Johannes Jacquemyn, included his photograph in the picture library of health warnings for tobacco products in the European Union, it infringed the right to honour, to personal and family privacy and to one's own image.

2. Orders the respondent to pay the appellant the sum of EUR 181 104 for loss of earnings.

3. Orders the respondent to pay the appellant the sum of one euro cent (EUR 0,01) per tobacco packet or product bearing the picture of Patrick Jacquemyn, the total amount — presently twenty seven million, five hundred and eighty-eight thousand and five hundred and twenty-four euros (EUR 27 588 524) — to be determined upon enforcement of the judgment.

4. Order the respondent to pay the appellant compensation for the profit derived from the unlawful use of the picture of Patrick Jacquemyn, amounting to EUR 13 790 000 in Spain, the place of residence of the appellant and of Patrick Jacquemyn.

Pleas in law and main arguments

Discrepancies between the conduct of the hearing and the contents of the judgment

The appellant has never accepted the European Commission's statements, but has merely agreed to the production of the unredacted documents out of time, which was not made clear in the judgment.

Infringement of Article 15.3 of the Treaty on the Functioning of the European Union

Breach of the principle of the European standard of EU citizens' access to the documentation used by an EU body in adopting its decisions. The appellant has repeatedly requested documentation on the image rights for the photograph at issue which was never provided to her.

Lack and insufficiency of evidence entailing a failure by the General Court to conduct preparatory inquiries into the matter

The evidence requested by the appellant was not provided, while the evidence produced by the respondent provided not the slightest shred of evidence, for practically all the information was redacted.

Breach of the principles of audi alteram partem and equality of arms

The documents produced by the European Commission were redacted and contained no data; they prevented any adversarial analysis by the applicant, with the result that the appellant does not consider them to be valid evidence or that they could be classified as evidence by the General Court.

Distortion of facts

The redacted documents containing no data led the General Court to believe that the alleged taking of the photographs was in principle lawful, and that presumption could not be rebutted by the appellant because all conclusive evidence in the documents was missing. The redaction of the data in the documents was carried out on the basis of an incorrect application of the principles of data protection under the 1995 directive. ([1])

([1]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Request for a preliminary ruling from the Letrado de la Administración de Justicia del Juzgado de Violencia sobre la Mujer Único de Terrassa (Spain) lodged on 18 November 2015 — María Assumpció Martínez Roges v José Antonio García Sánchez

(Case C-609/15)

(2016/C 038/49)

Language of the case: Spanish

Referring court

Letrado de la Administración de Justicia del Juzgado de Violencia sobre la Mujer Único de Terrasa

Parties to the main proceedings

Applicant: María Assumpció Martínez Roges

Defendant: José Antonio García Sánchez

Questions referred

1. Are Articles 34 and 35 of Law 1/2000 incompatible with Articles 6(1) and 7(2) of Directive [93/13/EEC ([1])] and Articles 6(1)(d), 11 and 12 of Directive 2005/29/EC ([2]) inasmuch as they preclude any examination ex officio of possible unfair terms or unfair commercial practices in contracts concluded between lawyers and natural persons who are acting for purposes which are outside their trade, business or profession?

2. Are Articles 34 and 35 of Law 1/2000 incompatible with Articles 6(1) and 7(2) of, and [point 1(q) of the Annex to], Directive [93/13/EEC] inasmuch as they preclude the production of evidence for the purpose of resolving the dispute in the administrative procedure for recovery of unpaid fees?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

([2]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 23 November 2015 — Hummel Holding A/S v Nike Inc. and Nike Retail B.V.

(Case C-617/15)

(2016/C 038/50)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Hummel Holding A/S

Defendants: Nike Inc., Nike Retail B.V.

Question referred

Under which circumstances is a legally distinct second-tier subsidiary, with its seat in an EU Member State, of an undertaking that itself has no seat in the European Union to be considered as an 'establishment' of that undertaking within the meaning of Article 97(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark? ([1])

([1]) OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 23 November 2015 — Concurrence Sàrl v Samsung Electronics France SAS, Amazon Services Europe Sàrl

(Case C-618/15)

(2016/C 038/51)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Concurrence Sàrl

Defendants: Samsung Electronics France SAS, Amazon Services Europe Sàrl

Question referred

Is Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to be interpreted as meaning that, in the event of an alleged breach of a prohibition on resale outside a selective distribution network and via a marketplace by means of online offers for sale on a number of websites operated in various Member States, an authorised distributor which considers that it has been adversely affected has the right to bring an action seeking an injunction prohibiting the resulting unlawful interference in the courts of the territory in which the online content is or was accessible, or must some other clear connecting factor be present?

([1]) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 24 November 2015 — The Trustees of the BT Pension Scheme v Commissioners for Her Majesty's Revenue and Customs

(Case C-628/15)

(2016/C 038/52)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: The Trustees of the BT Pension Scheme

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Given that the Court, in its answer to Question 4 in the judgment of 12 December 2006 in Case C-446/04 Test Claimants in the FII Group Litigation v Commissioners of Inland Revenue [2006] ECR 1-11753, determined that Articles 43 and 56 of the EC Treaty — now Articles 49 and 63 of the Treaty on the Functioning of the European Union — precluded legislation of a Member State which allows resident companies distributing dividends to their shareholders which have their origin in foreign-sourced dividends received by them to elect to be taxed under a regime which permits them to recover advance corporation tax paid, but, first, obliges those companies to pay that advance corporation tax and subsequently to claim repayment and, secondly, does not provide a tax credit for their shareholders, whereas those shareholders would have received such a tax credit in the case of a distribution made by a resident company which had its origin in nationally-sourced dividends: are any rights under EU law conferred on those shareholders themselves, whether under Article 63 TFEU or otherwise, in cases where they are the recipients of the dividends elected to be paid under that regime; in particular where a shareholder is resident in the same Member State as the company distributing the dividends?

2. If the shareholder referred to in Question 1 does not itself have rights under Article 63 TFEU, is it entitled to rely on any infringement of rights under Article 49 or Article 63 TFEU of the company distributing the dividend?

3. If the answer to Question 1 or Question 2 is that the shareholder has rights under or can rely on EU law, does EU law impose any requirements as to the remedy to be provided to the shareholder under domestic law?

4. Does it make any difference to the Court's answer to the above questions that:

   a) the shareholder is not liable to income tax in the Member State on any dividends received, with the consequence that in the case of a distribution made by a resident company outside the above regime the tax credit to which the shareholder is entitled under domestic legislation may result in a payment of the tax credit to the shareholder by the Member State;

b) the national court has decided that the infringement of EU law by the domestic legislation in question was not sufficiently serious so as to give rise to a liability of the Member State in damages in favour of the company distributing the dividends, under the principles established under Joint Cases C-46/93 and C-48/93 Brasserie due Pecheur SA v Federal Republic of Germany and The Queen v Secretary of State for Transport, ex parte Factortame Limited and Others [1996] ECR 1-1029; or that

c) in some cases but not all, the company distributing the dividends under the above regime may have increased the amount of its distributions paid to all shareholders to provide a cash sum equivalent to that which would be achieved by an exempt shareholder from a payment of dividends outside the regime?

Appeal brought on 24 November 2015 by Novartis Europharm Ltd against the judgment of the General Court (Second Chamber) delivered on 15 September 2015 in Case T-472/12: Novartis Europharm Ltd v European Commission

(Case C-629/15 P)

(2016/C 038/53)

Language of the case: English

Parties

Appellant: Novartis Europharm Ltd (represented by: C. Schoonderbeek, avocate)

Other parties to the proceedings: European Commission, Teva Pharma BV

Form of order sought

The appellant claims that the Court should:

— Set aside the Judgment under appeal in that, by that judgment, the General Court dismissed the action of annulment in case T-472/12,

— Remit the case back to the General Court, if necessary, and

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its application for annulment in Case T-472/12 Novartis requested the General Court to annul the Commission Implementing Decision C(2012) 5894 final of 16 August 2012 granting a marketing authorisation in accordance with Regulation (EC) No. 726/2004 ([1]) for the medicinal product for human use 'Zoledronic acid Teva Pharma — zoledronic acid' because this decision constitutes a violation of Novartis' data exclusivity rights for its medicinal product Aclasta pursuant to Article 13(4) of Regulation (EC) No. 2309/93 ([2]) read in conjunction with Article 14(11) and 89 of Regulation (EC) No. 726/2004 and Article 6(1) of Directive 2001/83/EC ([3]). By the judgment under appeal the application of annulment was dismissed.

In support of this appeal, the appellant claims that the General Court made an error in law in that it incorrectly interpreted Article 6(1) of Directive 2001/83/EC, which lays down the concept of the global marketing authorisation, and because the General Court failed to provide an adequate statement of reasons in the judgment under appeal.

In this respect the appellant claims first that the judgment under appeal is based on a misunderstanding of the wording and purpose of Article 6(1) of Directive 2001/83/EC and of the legal framework for the authorisation of new therapeutic indications and on the incorrect assumption that the appellant's interpretation of the Article 6(1) of Directive 2001/83/EC would facilitate manipulation and circumvention of data protection and indefinite extension of data protection for reference medicinal products.

Second, the appellant claims that the General Court's conclusion that Article 6(1) of Directive 2001/83/EC applies to Aclasta because this medicinal product could have been authorised as variation or extension of the medicinal product Zometa runs counter to the principle of legal certainty and would take away the incentive for pharmaceutical companies to invest in research and development of new treatments and is therefore not in the interest of public health.

It is on the basis of this incorrect interpretation of Article 6(1) of Directive 2001/83 that the General Court failed to recognize that the Commission Implementing Decision constitutes an infringement of Novartis data protection rights for Aclasta under Article 13(4) of Regulation 2309/93, read in conjunction with Article 14(11) and Article 89 of Regulation 726/2004, and that, for this reason, the Commission Implementing Decision had to be annulled.

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

(2) Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products OJ L 214, p. 1

(3) 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 OJ L 311, p. 67

Appeal brought on 24 November 2015 by Novartis Europharm Ltd against the judgment of the General Court (Second Chamber) delivered on 15 September 2015 in Case T-67/13: Novartis Europharm Ltd v European Commission

(Case C-630/15 P)

(2016/C 038/54)

Language of the case: English

Parties

Appellant: Novartis Europharm Ltd (represented by: C. Schoonderbeek, avocate)

Other parties to the proceedings: European Commission, Hospira UK Ltd

Form of order sought

The appellant claims that the Court should:

— Set aside the Judgment under appeal in that, by that judgment, the General Court dismissed the action of annulment in case T-67/13,

— Remit the case back to the General Court, if necessary, and

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its application for annulment in Case T-67/13 Novartis requested the General Court to annul the Commission Implementing Decision C(2012) 8605 final of 19 November 2012 granting a marketing authorisation in accordance with Regulation (EC) No. 726/2004 (1) for the medicinal product for human use 'Zoledronic acid Hospira — zoledronic acid' because this decision constitutes a violation of Novartis' data exclusivity rights for its medicinal product Aclasta pursuant to Article 13(4) of Regulation (EC) No. 2309/93 (2) read in conjunction with Article 14(11) and 89 of Regulation (EC) No. 726/2004 and Article 6(1) of Directive 2001/83/EC (3). By the judgment under appeal the application of annulment was dismissed.

In support of this appeal, the appellant claims that the General Court made an error in law in that it incorrectly interpreted Article 6(1) of Directive 2001/83/EC, which lays down the concept of the global marketing authorisation, and because the General Court failed to provide an adequate statement of reasons in the judgment under appeal.

In this respect the appellant claims first that the judgment under appeal is based on a misunderstanding of the wording and purpose of Article 6(1) of Directive 2001/83/EC and of the legal framework for the authorisation of new therapeutic indications and on the incorrect assumption that the appellant's interpretation of the Article 6(1) of Directive 2001/83/EC would facilitate manipulation and circumvention of data protection and indefinite extension of data protection for reference medicinal products.

Second, the appellant claims that the General Court's conclusion that Article 6(1) of Directive 2001/83/EC applies to Aclasta because this medicinal product could have been authorised as variation or extension of the medicinal product Zometa runs counter to the principle of legal certainty and would take away the incentive for pharmaceutical companies to invest in research and development of new treatments and is therefore not in the interest of public health.

It is on the basis of this incorrect interpretation of Article 6(1) of Directive 2001/83 that the General Court failed to recognize that the Commission Implementing Decision constitutes an infringement of Novartis data protection rights for Aclasta under Article 13(4) of Regulation 2309/93, read in conjunction with Article 14(11) and Article 89 of Regulation 726/2004, and that, for this reason, the Commission Implementing Decision had to be annulled.

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

(2) Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products
OJ L 214, p. 1

(3) 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
OJ L 311, p. 67

Action brought on 2 December 2015 — Slovak Republic v Council of the European Union

(Case C-643/15)

(2016/C 038/55)

Language of the case: Slovak

Parties

Applicant: Slovak Republic (represented by: Ministerstvo spravodlivosti Slovenskej republiky)

Defendant: Council of the European Union

Form of order sought

— annul Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece; (1)

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Slovak Republic puts forward six pleas in law in support of its action:

1. First plea in law: infringement of Article 68 TFEU and of Article 13(2) TEU and the principle of institutional balance

   By adopting the contested decision going beyond the preceding guidelines of the European Council, and hence contrary to its mandate, the Council infringed Article 68 TFEU as well as Article 13(2) TEU and the principle of institutional balance.

2. Second plea in law: infringement of Article 10(1) and (2) TEU, Article 13(2) TEU, Article 78(3) TFEU, Articles 3 and 4 of Protocol No 1 and Articles 6 and 7 of Protocol No 2, and the principles of legal certainty, representative democracy and institutional balance

   An act such as the contested decision cannot be adopted on the basis of Article 78(3) TFEU. In the light of its content, the contested decision has the character of a legislative act, and should therefore have been adopted by the legislative process, which is not however provided for in Article 78(3) TFEU. By adopting the contested decision on the basis of Article 78(3) TFEU, the Council not only infringed that provision but also encroached on the rights of national parliaments and the European Parliament.

3. Third plea in law: breach of essential procedural requirements governing the legislative process, and infringement of Article 10(1) and (2) TEU, Article 13(2) TEU, and the principles of representative democracy, institutional balance and sound administration

   Should the Court of Justice, contrary to the submissions of the Slovak Republic in the second plea in law, reach the conclusion that the contested decision was adopted by the legislative process (*quod non*), the Slovak Republic pleads, in the alternative, infringement of essential procedural requirements laid down in Article 16(8) TEU, Article 15(2) TFEU, Article 78(3) TFEU, Articles 3 and 4 of Protocol No 1, Articles 6 and 7(1) and (2) of Protocol No 2, and also infringement of Article 10(1) and (2) TEU, Article 13(2) TEU, and the principles of representative democracy, institutional balance and sound administration. Specifically, there was a failure to comply with the requirement of publicity of negotiating and voting in the Council, a restriction of the participation of national parliaments in the process of adopting the contested decision, and a breach of the condition of consultation of the European Parliament.

4. Fourth plea in law: breach of essential procedural requirements laid down in Article 78(3) TFEU and Article 293 TFEU, and infringement of Article 10(1) and (2) TEU, Article 13(2) TEU, and the principles of representative democracy, institutional balance and sound administration

   Before adopting the contested decision, the Council made several amendments and additions to the Commission's proposal. It thereby breached essential procedural requirements laid down in Article 78(3) TFEU and Article 293 TFEU, and infringed Article 10(1) and (2) TEU, Article 13(2) TEU, and the principles of representative democracy, institutional balance and sound administration. The European Parliament was not properly consulted and the Council did not decide unanimously on the amendments and additions to the Commission's proposal.

5. Fifth plea in law: infringement of Article 78(3) TFEU because of the non-fulfilment of the conditions of its applicability

   In the alternative to the second plea in law, the Slovak Republic pleads an infringement of Article 78(3) TFEU on the ground of non-fulfilment of the conditions for its applicability, relating to the temporary nature of the measures adopted and to the existence of an emergency situation as a result of the sudden arrival of nationals of third countries.

6. Sixth plea in law: breach of the principle of proportionality

The contested decision is manifestly contrary to the principle of proportionality, since it is manifestly neither appropriate nor necessary for attaining the aim pursued.

(1) OJ 2015 L 248, p. 80.

Action brought on 3 December 2015 — Hungary v Council of the European Union

(Case C-647/15)

(2016/C 038/56)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér, Agent)

Defendant: Council of the European Union

Form of order sought

In its application, Hungary claims that the Court should:

— annul Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece ([1]) ('the contested decision');

— in the alternative, in the event that the first head of claim is not upheld, annul the contested decision in so far as it refers to Hungary;

— order the Council to pay the costs.

Pleas in law and main arguments

1. The Hungarian Government submits that Article 78(3) TFEU does not provide the Council with an adequate legal basis for the adoption of the contested decision. Article 78(3) TFEU does not empower the Council to adopt a legislative act, nor, therefore, to adopt the measures established in the contested decision, specifically those which involve a binding exception in respect of a legislative act, in the present case Regulation (EU) No 604/2013. ([2]) In view of its content, the contested decision constitutes a legislative act — given that it establishes an exception in respect of Regulation No 604/2013 — with the result it could not be adopted on the basis of Article 78(3) TFEU, which solely empowers the Council to adopt acts through a non-legislative procedure, that is to say, non-legislative acts. In the event that, despite the foregoing, it is held that Article 78(3) TFEU may constitute the basis for the adoption of a legal act which entails an exception in respect of a legislative act, the Hungarian Government submits that that exception cannot go so far as to affect the essence of that legislative act and render nugatory its fundamental provisions, as the contested decision does.

2. A measure established for a period of 24 months — and in certain cases, 36 months — the effects of which, moreover, go beyond even that period, is not compatible with the concept of 'provisional measures' referred to in Article 78(3) TFEU. The contested decision exceeds the power granted to the Council by Article 78(3) TFEU, since, in determining its period of validity, account was not taken of the period necessary for the adoption of a legislative act on the basis of Article 78(2) TFEU.

3. In adopting the contested decision, the Council infringed Article 293(1) TFEU, since it departed from the Commission's proposal without reaching unanimity.

4. The contested decision establishes an exception in respect of a legislative act and itself constitutes, in view of its content, a legislative act, with the result that, in order to adopt it — even assuming that it were possible to do so on the basis of Article 78(3) TFEU — the Council would have had to respect the right of the national parliaments to issue an opinion on legislative acts, recognised in Protocols 1 and 2 annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

5. After consulting the European Parliament, the Council substantially amended the text of the proposal, despite which it did not consult the European Parliament again.

6. At the time of the approval by the Council, the linguistic versions of the draft decision in the official languages of the Union were not available.

7. Furthermore, the contested decision is unlawful because its adoption is contrary to Article 68 TFEU and the conclusions reached by the European Council at its meeting on 25 and 26 June 2015.

8. The contested decision infringes the principles of legal certainty and legislative clarity, since it fails to explain various aspects of how its provisions are to be applied and what relation those provisions are to have to the provisions of Regulation No 604/2013. Those unclear aspects include the issue of the application of procedural rules and guarantees in respect of the adoption of the relocation decision, as well as the fact that the contested decision does not clearly establish the selection criteria for the purpose of relocation and fails to regulate adequately the status of applicants in the Member State of relocation. The contested decision is contrary to the Geneva Convention relating to the Status of Refugees, ([3]) since it deprives applicants of their right to remain in the territory of the Member State in which they made their application and allows their relocation to another Member State without it being necessary to show the existence of a material link between the applicant and the Member State of relocation.

9. The contested decision infringes the principles of necessity and of proportionality. Given that, in contrast with the Commission's initial proposal, Hungary is no longer included among the beneficiary Member States, the provision in the contested decision for the relocation of 120 000 applicants for international protection is groundless. In view of the fact that, in the contested decision, provision is no longer made for any relocation from Hungary, the figure of 120 000 applicants proposed initially is now an arbitrary figure, unconnected to the situation set out in the Commission's proposal and which it was actually intended to address. It is unacceptable — particularly in the case of a provisional measure adopted on the basis of Article 78(3) TFEU — that, as regards almost half of the applicants that fall within its scope, a definitive relocation decision be taken in the light of subsequent circumstances.

10. In the alternative, the Hungarian Government submits that the contested decision infringes the principle of proportionality in respect of Hungary, since — despite the well-known fact that a large number of irregular migrants have entered Hungary and a large number of applications for international protection have been made there — obligatory quotas are imposed upon it as a host Member State. The contested decision does not comply, as regards Hungary, with Article 78(3) TFEU, since the requirement laid down in that provision, according to which such measures may be adopted for the benefit of Member States concerned by a sudden inflow of nationals of third countries, is not met by a measure that, as regards one such Member State, merely imposes obligations.

([1]) OJ 2015 L 248, p. 80.

([2]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

([3]) Geneva Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967.

Action brought on 3 December 2015 — Republic of Austria v Federal Republic of Germany

(Case C-648/15)

(2016/C 038/57)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

Defendant: Federal Republic of Germany

Form of order sought

Action under Article 25(5) of the Convention concluded between the Republic of Austria and the Federal Republic of Germany concerning the avoidance of double taxation with respect to taxes on income and capital (öBGBl III 182/2002, dBGBl II 2002, 735, and dBStBl I 2002, 584) ('the German-Austrian Double Taxation Convention'), read in conjunction with Article 273 TFEU, concerning discrepancies between the Republic of Austria and the Federal Republic of Germany in their views on the interpretation and application of Article 11 of that Convention.

The applicant claims that the Court should:

— hold that income from the profit-participation certificates (Genussscheine) at issue in this case is not to be characterised as '*profit participation claims*' within the meaning of Article 11(2) of the German-Austrian Double Taxation Convention. Consequently, under Article 11(1) of that Convention, Austria, as the State of the seat of Bank Austria, has the exclusive right to tax the income from such certificates;

— order the Federal Republic of Germany to refrain from taxing Bank Austria's income from the certificates at issue and to reimburse the taxes already levied on that income;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The Republic of Austria objects to the Federal Republic of Germany characterising the income at issue as interest with a 'profit participation' element within the meaning of Article 11(2) of the German-Austrian Double Taxation Convention. While the return is generally calculated according to a fixed percentage, it is, in the view of the Federal Republic of Germany, profit-dependent in being subject to a condition that there is an adequate amount of profit.

Contrary to the position of the Federal Republic of Germany, the Republic of Austria takes the view that the certificates at issue confer solely an entitlement to interest calculated on the basis of a fixed percentage of the nominal value. This interpretation is, first of all, consistent with the meaning in everyday usage; it is also confirmed by a comparison with the financial instruments referred to, by way of example, in Article 11(2) of the German-Austrian Double Taxation Convention.

In the present case, according to the Republic of Austria, the creditor accordingly merely grants the debtor an additional time for payment, since particularly during its lifespan a profit-participation certificate affords a right to defer payment to a later time. In effect, such certificates therefore correspond to fixed-interest negotiable instruments to which a certain risk of loss is attached.

Order of the President of the Court of 21 October 2015 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Colena AG v Deiters GmbH

(Case C-78/15) ([1])

(2016/C 038/58)

Language of the case: German

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

([1]) OJ C 171, 26.5.2015.

Order of the President of the Court of 23 October 2015 (request for a preliminary ruling from the Korkein oikeus — Finland) — TrustBuddy AB v Lauri Pihjalaniemi

(Case C-311/15) ([1])

(2016/C 038/59)

Language of the case: Finnish

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

([1]) OJ C 294, 7.9.2015.

GENERAL COURT

Judgment of the General Court of 9 December 2015 — Greece and Ellinikos Chrysos v Commission

(Cases T-233/11 and T-262/11) ([1])

(State aid — Mining sector — Aid granted by the Greek authorities to the mining company Ellinikos Chrysos — Contract for the transfer of a mining operation at a price below the real market value and exemption from taxes on that transaction — Decision declaring the aid measures unlawful and ordering recovery of the aid — Concept of advantage — Private investor test)

(2016/C 038/60)

Languages of the case: Greek and English

Parties

Applicant: Hellenic Republic (represented by: P. Mylonopoulos, V. Asimakopoulos, G. Kanellopoulos and A. Iosifidou, acting as Agents) (Case T-233/11); and Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou (Kifissia, Greece) (represented initially by K. Adamantopoulos, E. Petritsi, E. Trova and P. Skouris, and subsequently by K. Adamantopoulos, E. Trova, P. Skouris and E. Roussou, lawyers) (Case T-262/11)

Defendant: European Commission (represented by: É. Gippini Fournier and D. Triantafyllou, acting as Agents)

Re:

Action for annulment of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Chrysos AE (OJ 2011 L 193, p. 27).

Operative part of the judgment

The Court:

1. *Joins Cases T-233/11 and T-262/11 for the purposes of the judgment;*

2. *Dismisses the actions;*

3. *In Case T-233/11, orders the Hellenic Republic to bear its own costs and to pay those incurred by the European Commission;*

4. *In Case T-262/11, orders Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou to bear its own costs and to pay those incurred by the Commission.*

([1]) OJ C 204, 9.7.2011.

Judgment of the General Court of 10 December 2015 — Belgium v Commission

(Case T-563/13) ([1])

(EAGF — Expenditure excluded from financing — Expenditure incurred by Belgium — Fruit and vegetables — Obligation to state reasons — Conditions for recognition of a producer organisation — Outsourcing of core activities by a producer organisation — Amount to be excluded — Proportionality)

(2016/C 038/61)

Language of the case: Dutch

Parties

Applicant: Kingdom of Belgium (represented by: J.-C. Halleux and M. Jacobs, acting as Agents, assisted by F. Tuytschaever and M. Varga, lawyers)

Defendant: European Commission (represented by: H. Kranenborg and P. Rossi, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision 2013/433/EU of 13 August 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ L 219, p. 49), in so far as it concerns certain expenditure incurred by the Kingdom of Belgium or, in any event, limitation of the amount which must be excluded from financing.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *The Kingdom of Belgium is ordered to pay the costs.*

([1]) OJ C 367, 14.12.2013.

Judgment of the General Court of 15 December 2015 — LTJ Diffusion v OHIM — Arthur et Aston (ARTHUR & ASTON)

(Case T-83/14) ([1])

(Community trade mark — Opposition proceedings — Application for word mark ARTHUR & ASTON — Earlier national figurative mark Arthur — No genuine use of the trade mark — Article 15(1)(a) of Regulation (EC) No 207/2009 — Form differing in elements which alter the distinctive character)

(2016/C 038/62)

Language of the case: French

Parties

Applicant: LTJ Diffusion (Colombes, France) (represented initially by S. Lederman, and subsequently by F. Fajgenbaum, 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, intervener before the General Court: Arthur et Aston SAS (Giberville, France) (represented by: N. Boespflug, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 December 2013 (Case R 1963/2012-1), relating to opposition proceedings between LTJ Diffusion and Arthur et Aston SAS.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LTJ Diffusion to pay the costs.*

(1) OJ C 112, 14.4.2014.

Judgment of the General Court of 11 December 2015 — Finland v Commission

(Case T-124/14) (1)

(EAFRD — Expenditure excluded from financing — Rural development — One-off financial correction — Eligibility of expenditure incurred for the purchase of second hand machinery and equipment — Exemption for micro-, small and medium-sized undertakings — Article 55(1) of Regulation (EC) No 1974/2006)

(2016/C 038/63)

Language of the case: Finnish

Parties

Applicant: Republic of Finland (represented by: J. Heliskoski and S. Hartikainen, acting as Agents)

Defendant: European Commission (represented by: P. Aalto, J. Aquilina, P. Rossi and T. Sevón, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision 2013/763/EU on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 338, p. 81), in so far as that decision excludes from European Union financing under the EAFRD certain expenditure of the Republic of Finland, amounting to EUR 92 782,58, as a result of their incompatibility with EU rules.

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision 2013/763/EU on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as that decision excludes from European Union financing under the EAFRD certain expenditure of the Republic of Finland, amounting to EUR 92 782,58, as a result of their incompatibility with EU rules;*

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

(1) OJ C 142, 12.5.2014.

Judgment of the General Court of 9 December 2015 — Comercializadora Eloro v OHIM — Zumex Group (zumex)

(Case T-354/14) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark ZUMEX — Earlier national figurative mark JUMEX — Lack of genuine use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009)

(2016/C 038/64)

Language of the case: Spanish

Parties

Applicant: Comercializadora Eloro, SA (Ecatepec, Mexico) (represented by: J. de Castro Hermida, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Zumex Group, SA (Moncada, Spain) (represented by: M.C. March Cabrelles, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 13 February 2014 (Case R 391/2012-1), relating to opposition proceedings between Comercializadora Eloro, SA and Zumex Group, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Comercializadora Eloro, SA to pay the costs.*

([1]) OJ C 253, 4.8.2014.

Judgment of the General Court of 10 December 2015 — Fútbol Club Barcelona v OHIM (Representation of the outline of a crest)

(Case T-615/14) ([1])

(Community trade mark — Application for a figurative Community trade mark representing the outline of a crest — Absolute grounds for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — No distinctive character acquired through use — Article 7(3)of Regulation No 207/2009)

(2016/C 038/65)

Language of the case: Spanish

Parties

Applicant: Fútbol Club Barcelona (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 May 2014 (Case R 2500/2013-1) concerning an application for registration as a Community trade mark of a figurative sign representing the outline of a crest.

Operative part of the judgment

The Court:

1. *The action is dismissed;*

2. *Fútbol Club Barcelona is ordered to pay the costs.*

([1]) OJ C 372, 20.10.2014.

Judgment of the General Court of 10 December 2015 — Sony Computer Entertainment Europe v OHIM — Marpefa (Vieta)

(Case T-690/14) ([1])

(Community trade mark — Revocation proceedings — Community figurative mark Vieta — Genuine use of the mark — Nature of use — Article 15(1) and Article 51(2) of Regulation (EC) No 207/2009 — Form differing in elements which do not alter the distinctive character of the mark — Proof of use for the registered goods)

(2016/C 038/66)

Language of the case: English

Parties

Applicant: Sony Computer Entertainment Europe Limited (London, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Marpefa, SL (Barcelona, Spain) (represented by: I. Barroso Sánchez-Lafuente, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 July 2014 (Case R 2100/2013-2), relating to revocation proceedings between Sony Computer Entertainment Europe Limited and Marpefa, SL.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 2 July 2014 (Case R 2100/2013-2) in so far as it dismissed the appeal against the decision of the Cancellation Division to reject the application for the revocation of the Community figurative mark Vieta for 'apparatus for the reproduction of sound and images';*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 11 December 2015 — Hikari Miso v OHIM — Nishimoto Trading (Hikari)

(Case T-751/14) ([1])

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

(2016/C 038/67)

Language of the case: English

Parties

Applicant: Hikari Miso Co. Ltd (Simosuwa-machi, Japan) (represented by: D. McFarland, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Nishimoto Trading Co. Ltd (Santa Fe Springs, California, United States) (represented by: G. Pritchard, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 September 2014 (Case R 2394/2013-4), relating to opposition proceedings between Nishimoto Trading Co. Ltd and Hikari Miso Co. Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Hikari Miso Co. Ltd to pay the costs.*

([1]) OJ C 7, 12.1.2015.

Order of the General Court of 1 December 2015 — REWE-Zentral v OHIM — Planet GDZ (PRO PLANET)

(Case T-373/12) ([1])

(Community trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2016/C 038/68)

Language of the case: German

Parties

Applicant: REWE-Zentral AG (Cologne, Germany) (represented initially by M. Kinkeldey and A. Bognár, and subsequently by M. Kinkeldey and C. Schmitt, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Planet GDZ AG (Tagelswangen, Switzerland) (represented initially by M. Nentwig and G.M. Becker, and subsequently by M. Nentwig, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 14 June 2012 (Case R 1350/2011-1), relating to opposition proceedings between Planet GDZ AG and REWE-Zentral AG.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *REWE-Zentral and Planet GDZ AG are ordered to bear their own costs and are each ordered to pay half of the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 319, 20.10.2012.

Order of the General Court of 30 November 2015 — Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo v Commission

(Case T-215/14) ([1])

(Action for annulment — Replacement of the contested act during proceedings — Amendment of the form of order sought — Parallel action against the new decision — No need to adjudicate)

(2016/C 038/69)

Language of the case: Polish

Parties

Applicants: Gmina Miasto Gdynia (Gdynia, Poland) (represented by: T. Koncewicz and K. Gruszecka-Spychała, lawyers) and Port Lotniczy Gdynia Kosakowo sp. Z o.o. (Gdynia) (represented initially by T. Koncewicz and K. Gruszecka-Spychała, and subsequently by P. Rosiak, lawyers)

Defendant: European Commission (represented by: D. Grespan, S. Noë and A. Stobiecka-Kuik, acting as Agents)

Intervener in support of the applicants: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Re:

Initially, an application for the annulment of Commission Decision 2014/883/EU of 11 February 2014 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo Airport (OJ 2014 L 357, p. 51), and, subsequently, an application for the annulment of Commission Decision (EU) 2015/1586 of 26 February 2015 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo airport (OJ 2015 L 250, p. 165) replacing Decision 2014/883.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission shall bear its own costs and shall pay the costs incurred by Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo sp. Z o.o. as regards the main proceedings.*

3. *Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo shall bear their own costs and shall pay the costs incurred by the Commission as regards the proceedings for interim relief.*

4. *The Republic of Poland shall bear its own costs.*

([1]) OJ C 175, 10.6.2014.

Order of the General Court of 30 November 2015 — Gmina Kosakowo v Commission

(Case T-217/14) ([1])

(Action for annulment — Replacement of the contested act during proceedings — No need to adjudicate)

(2016/C 038/70)

Language of the case: Polish

Parties

Applicant: Gmina Kosakowo (Kosakowo, Poland) (represented by: M. Leśny, lawyer)

Defendant: European Commission (represented by: D. Grespan, S. Noë and A. Stobiecka-Kuik, acting as Agents)

Intervener in support of the applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Re:

Application for the annulment of Commission Decision 2014/883/EU of 11 February 2014 on the measure SA.35388 (13/C) (ex 13/NN and ex 12/N) — Poland — Setting up the Gdynia-Kosakowo Airport (OJ 2014 L 357, p. 51).

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission shall bear its own costs and shall pay those incurred by Gmina Kosakowo as regards the main proceedings.*

3. *Gmina Kosakowo shall bear its own costs and shall pay those incurred by the Commission as regards the proceedings for interim relief.*

4. *The Republic of Poland shall bear its own costs.*

(1) OJ C 202, 30.6.2014.

Order of the General Court of 30 November 2015 — Green Pack v OHIM (greenpack)

(Case T-513/14) (1)

(Community trade mark — Refusal of registration — Withdrawal of the application for registration — No need to adjudicate)

(2016/C 038/71)

Language of the case: German

Parties

Applicant: GreenPack GmbH (Berlin, Germany) (represented by: P. Ruess and A. Doepner-Thiele, subsequently by C. Glasemann, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially G. Schneider, then by G. Schneider and D. Botis, Agents)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 April 2014 (Case R2324/2013-1) relating to an application for registration of the word sign greenpack as a Community trade mark.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *GreenPack GmbH is ordered to pay the costs.*

(1) OJ C 303, 8.9.2014.

Order of the General Court of 23 November 2015 — EREF v Commission

(Case T-694/14) ([1])

(Action for annulment — Guidelines on State aid for environmental protection and energy 2014-2020 — Association — Members not directly concerned — Inadmissibility)

(2016/C 038/72)

Language of the case: English

Parties

Applicant: European Renewable Energies Federation (EREF) (Brussels, Belgium) (represented by: U. Prall, lawyer)

Defendant: European Commission (represented by: L. Flynn, K. Herrmann and R. Sauer, acting as Agents)

Re:

ACTION for the annulment of the Communication from the Commission of 28 June 2014, entitled 'Guidelines on State aid for environmental protection and energy 2014-2020' (OJ 2014 C 200, p. 1), concerning the assessment criteria of the compatibility with the internal market of State aid for energy from renewable sources.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *European Renewable Energies Federation (EREF) shall pay its own costs and those incurred by the European Commission.*

([1]) OJ C 409, 17.11.2014.

Order of the General Court of 23 November 2015 — Actega Terra v OHIM — Heidelberger Druckmaschinen (FoodSafe)

(Case T-766/14) ([1])

(Community trade mark — Invalidity proceedings — Community word mark FoodSafe — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2016/C 038/73)

Language of the case: German

Parties

Applicant: Actega Terra GmbH (Lehrte, Germany) (represented by: C. Onken, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Heidelberger Druckmaschinen AG (Heidelberg, Germany) (represented by: I. Lins, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 September 2014 (Case R 2440/2013-4) concerning invalidity proceedings between Heidelberger Druckmaschinen AG and Actega Terra GmbH.

Operative part of the order

1. *The action is dismissed.*

2. *Actega Terra GmbH shall pay the costs.*

([1]) OJ C 46, 9.2.2015.

Order of the General Court of 27 November 2015 — Italy v Commission

(Case T-809/14) ([1])

(Action for annulment — Language regime — Vacancy notice for the post of Director of the Translation Centre for bodies of the European Union — Linguistic requirements in the on-line presentation module for candidates — Alleged discrepancy with the vacancy notice published in the Official Journal — Letter sent by the Commission following the closure of the application procedure — Inadmissible)

(2016/C 038/74)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of a decision allegedly made by the Commission contained in a letter of 2 October 2014, sent to the Director General for the European Union of the Italian Ministry of Foreign Affairs by the Commission Director General of the Directorate-General (DG) for Human Resources and Security.

Operative part of the order

1. *The action is dismissed.*

2. *The Italian Republic is ordered to pay the costs.*

([1]) OJ C 46, 9.2.2015.

Order of the General Court of 1 December 2015 — Banco Espírito Santo v Commission

(Case T-814/14) ([1])

(Action for annulment — State aid — Aid to the Portuguese authorities for the resolution of the financial institution Banco Espírito Santo SA — Creation of a bridge bank — Decision not to raise objections — Commitments made by the Portuguese authorities — Monitoring of compliance with their commitments by a trustee — Payment of the trustee by the bad bank — Application for partial annulment — Inadmissible)

(2016/C 038/75)

Language of the case: Portuguese

Parties

Applicant: Banco Espírito Santo SA (Lisbon, Portugal) (represented by: M. Gorjão-Henriques and L.Bordalo e Sá, lawyers)

Defendant: European Commission (represented by: L. Flynn, M. França and P.-J Loewenthal, Agents)

Re:

Application for annulment of Points 9 and 18 of Annex II to Commission Decision C (2014) 5682 final, of 3 August 2014, State aid No SA.39250 (2014/N) — Portugal, Resolution of Banco Espírito Santo, S.A., in so far as they impose, or may be interpreted as imposing, on the applicant the responsibility for ensuring the remuneration or payment of any other costs of the Monitoring Trustee with respect to the commitments made by the Portuguese Republic:

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to give a ruling on the application for leave to intervene lodged by the Portuguese Republic.*

3. *Banco Espirito Santo SA is ordered to bear its own costs and to pay those incurred by the European Commission.*

4. *Banco Espirito Santo SA, the European Commission and the Portuguese Republic are each ordered to bear their own costs relating for the application for leave to intervene.*

([1]) OJ C 118, 13.4.2015.

Order of the General Court of 30 November 2015 — August Brötje v OHIM (HydroComfort)

(Case T-845/14) ([1])

(Community trade mark — Application for the Community word mark HydroComfort — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2016/C 038/76)

Language of the case: German

Parties

Applicant: August Brötje GmbH (Rastede, Germany) (represented by: S. Pietzcker and C. Spintig, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: W. Schramek, D. Walicka and A. Schifko, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 23 October 2014 (Case R 1302/2014-5), concerning an application for registration of the word sign HydroComfort as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *August Brötje GmbH shall pay the costs.*

(1) OJ C 89, 16.3.2015.

Order of the General Court of 2 December 2015 — Novartis v OHIM– Mabxience (HERTIXAN)

(Case T-41/15) (1)

(Community trade mark — Opposition proceedings — Withdrawal of application for registration — No need to adjudicate)

(2016/C 038/77)

Language of the case: Spanish

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by: M. Douglas, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Mabxience SA (Montevideo, Uruguay)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 31 October 2014 (Case R 2550/2013-1) relating to opposition proceedings between Novartis AG and Mabxience SA.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *Novartis AG is ordered to pay the costs.*

(1) OJ C 107, 30.3.2015.

Order of the General Court of 23 November 2015 — Slovenia v Commission

(Case T-118/15) (1)

(Action for annulment — EAGGF — Guarantee Section — EAGF and EAFRD — Time-limit for bringing an action — Starting point — Out of time — Inadmissibility)

(2016/C 038/78)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: L. Bembič, acting as Agent)

Defendant: European Commission (represented by: B. Rous Demiri and D. Triantafyllou, acting as Agents)

Re:

Action for annulment of Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 369, p. 71), in so far as it excludes certain expenditure incurred by the Republic of Slovenia.

Operative part of the order

The Court:

1. *Dismisses the action as inadmissible.*

2. *Holds that there is no need to rule on the applications for leave to intervene submitted by the Italian Republic, the French Republic and Hungary.*

3. *Orders the Republic of Slovenia to bear its own costs and to pay those incurred by the European Commission.*

4. *Orders the Republic of Slovenia, the Commission, the Italian Republic, the French Republic and Hungary to bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 146, 4.5.2015.

Order of the General Court of 20 November 2015 — Zitro IP v OHIM (WORLD OF BINGO)

(Case T-202/15) ([1])

(Community trade mark — Application for the Community figurative mark WORLD OF BINGO — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2016/C 038/79)

Language of the case: Spanish

Parties

Applicant: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 February 2015 (Case R 1899/2014-4) concerning an application for registration of the figurative sign WORLD OF BINGO as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Zitro IP Sàrl shall pay the costs.*

([1]) OJ C 198, 15.6.2015.

Order of the General Court of 20 November 2015 — Zitro IP v OHIM (WORLD OF BINGO)

(Case T-203/15) ([1])

(Community trade mark — Application for the Community word mark WORLD OF BINGO — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2016/C 038/80)

Language of the case: Spanish

Parties

Applicant: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 February 2015 (Case R 1900/2014-4) concerning an application for registration of the word sign WORLD OF BINGO as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Zitro IP Sàrl shall pay the costs.*

([1]) OJ C 198, 15.6.2015.

Order of the General Court of 2 December 2015 — Lidl Stiftung v OHIM — toom Baumarkt (Super-Samstag)

(Case T-213/15) ([1])

(Community trade mark — Invalidity proceedings — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2016/C 038/81)

Language of the case: German

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Wolter and A.C. Berger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: toom Baumarkt GmbH (Cologne, Germany) (represented by: M. Kinkeldey, S. Brandstätter and J. Rosenhäger, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 16 February 2015 (Case R 657/2014-5), relating to invalidity proceedings between toom Baumarkt GmbH and Lidl Stiftung & Co. KG.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *Lidl Stiftung & Co. KG is ordered to pay the costs.*

([1]) OJ C 205, 22.6.2015.

Order of the General Court of 17 November 2015 — Certuss Dampfautomaten v OHIM — Universal for Engineering Industries (Universal 1800 TC)

(Case T-329/15) ([1])

(Community trade mark — Opposition proceeding — Withdrawal of the opposition — No need to adjudicate)

(2016/C 038/82)

Language of the case: English

Parties

Applicant: Certuss Dampfautomaten GmbH & Co. KG (Krefeld, Germany) (represented by: J. Sroka, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Universal for Engineering Industries SAE (Giza, Egypt)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 April 2015 (Case R 1303/2014-2) relating to opposition proceedings between Universal for Engineering Industries SAE and Certuss Dampfautomaten GmbH & Co. KG.

Operative part of the order

1. *There is no need to adjudicate on the appeal.*

2. *Certuss Dampfautomaten GmbH & Co. KG is ordered to bear its own costs and those incurred by the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 279, 24.8.2015.

Order of the President of the General Court of 10 December 2015 — GGP Italy v Commission

(Case T-474/15 R)

(Interim measures — Directive 2006/42/EC — Protection of the health and safety of consumers and workers against risks arising from the use of machinery — Measure taken by the Latvian authorities prohibiting a type of lawnmower — Commission Decision declaring the measure justified — Application to suspend operation — Lack of urgency)

(2016/C 038/83)

Language of the case: Italian

Parties

Applicant: Global Garden Products Italy SpA (GGP Italy) (Castelfranco Veneto, Italy) (represented by: A. Villani, L. D'Amario and M. Caccialanza, lawyers)

Defendant: European Commission (represented by: G. Braga da Cruz and L. Cappelletti, acting as Agents)

Re:

Application to suspend the operation of Commission Implementing Decision (EU) 2015/902 of 10 June 2015 on a measure taken by Latvia in accordance with Directive 2006/42/EC of the European Parliament and of the Council to prohibit the placing on the market of a lawnmower manufactured by GGP Italy SpA (OJ 2015 L 147, p. 22).

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 6 October 2015 — Flamagas v OHIM — MatMind (CLIPPER)

(Case T-580/15)

(2016/C 038/84)

Language in which the application was lodged: English

Parties

Applicant: Flamagas, SA (Barcelona, Spain) (represented by: I. Valdelomar Serrano, G. Hinarejos Mulliez and D. Gabarre Armengol, lawyers)

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

Other party to the proceedings before the Board of Appeal: MatMind Srl (Formello, Italy)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community tridimensional mark (Shape of lighter containing the word element 'CLIPPER') — Community trade mark No 4 758 652

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 30 July 2015 in Case R 924/2013-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— confirm the decision of 22/03/2013 of the Cancellation Division in Cancellation Proceedings No. C 5642 against Community trademark registration No. 4 758 652;

— order the other party to the proceedings to pay the costs.

Pleas in law

— Infringement of Article 7(1)(a) of Regulation No 207/2009;

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 7(1)(e)(ii) of Regulation No 207/2009.

Action brought on 27 October 2015 — Yieh United Steel v Commission

(Case T-607/15)

(2016/C 038/85)

Language of the case: English

Parties

Applicant: Yieh United Steel Corp. (Kaohsiung City, Taiwan) (represented by: D. Luff, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul articles 1 and 2 of Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan ([1])(the 'Contested Regulation' or the 'Definitive Duty Regulation'), in so far as it relates to the Applicant; and

— order that the Commission pays the Applicant's costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Court has jurisdiction to review Articles 1 and 2 of the Contested Regulation and its conformity with the Basic Regulation and the general principles of European law.

2. Second plea in law, alleging that the Commission violated Article 2(5) of the Basic Regulation because it unduly refused to consider the applicant's cost allocation methods, which the applicant used historically and which correspond to internationally recognised accounting practices. Because of this violation, the Commission wrongly refused a deduction of the recycled scrap from the cost of production of the product concerned, thus artificially inflating the normal value in violation of Article 2(3) of the Basic Regulation.

3. Third plea in law, alleging that the Commission violated Articles 2(1) of the Basic Regulation because it unduly discarded sales of the product concerned in the ordinary course of trade to an independent domestic customer to determine normal value. The Commission did not sufficiently state the reason of such refusal. Furthermore, assuming the reason of such refusal is merely the fact that these sales were exported after the sale (without the applicant knowing), the criteria the Commission applied is illegal. The Commission should have considered the applicant's intention regarding the end destination of these sales at the time of the sale. Thus, the Commission violated Article 2(2) of the Basic Regulation by rejecting domestic sales simply because they were exported by an independent customer after the sale.

([1]) OJ 2015 L 224, p. 10.

Action brought on 29 October 2015 — Azur Space Solar Power v OHIM (Representation of a black line)

(Case T-614/15)

(2016/C 038/86)

Language of the case: English

Parties

Applicant: Azur Space Solar Power GmbH (Heilbronn, Germany) (represented by: J. Nicodemus, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: International registration designating the European Union in respect of the figurative mark (Representation of a black line) — Application for registration No 1 201 652

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 2 September 2015 in Case R 3233/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 23 November 2015 — E-Control v ACER

(Case T-671/15)

(2016/C 038/87)

Language of the case: English

Parties

Applicant: Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) (Vienna, Austria) (represented by: F. Schuhmacher, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)

Form of order sought

The applicant claims that the Court should:

— annul the opinion of the Agency for the Cooperation of Energy Regulators N° 09/2015 of 23 September 2015 on the compliance of national regulatory authorities' decisions approving the methods of allocation of cross-border transmission capacity in the Central-East Europe region with Regulation (EC) N° 714/2009 and the guidelines on the management and allocation of available transfer capacity of interconnections between national systems contained in Annex I thereto; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging the violation of procedural requirements including in particular the lack of procedural rules, the infringement of the right of access to the file, the infringement of the right to be heard, and the absence of a proper justification.

2. Second plea in law, alleging the lack of legal basis for the measures proposed since ACER has not followed the procedure provided for in Article 8 of Regulation (EC) N° 713/2009 but instead based its opinion on article 7(4) of Regulation (EC) N° 713/2009 and therefore overstepped the competence provided for in Article 7(4) of Regulation (EC) N° 713/2009 and acted *ultra vires*.

3. Third plea in law, alleging infringement of Regulation (EC) N° 714/2009 since ACER's conclusion that structural congestion exists on the German-Austrian border is not supported by facts and is incompatible with the definition of congestion. Furthermore, the opinion lacks an impact assessment and a thorough evaluation of alternative solutions. Finally, the capacity allocation procedure as set out in the opinion is neither an appropriate nor a proportionate remedy for the problems identified in the opinion.

4. Fourth plea in law, alleging infringement of Commission Regulation (EU) N° 1222/2015 (CACM Guideline) to the extent that the opinion disregards the binding material and procedural requirements of the CACM Guideline, which entered into force before the opinion was adopted.

5. Fifth plea in law, alleging infringement of Article 101 TFEU and Article 102 TFEU, in conjunction with Article 4(3) TEU, since the opinion violates fundamental principles of the European Internal Energy Market by ordering the national regulatory authorities and the TSO's to artificially split the integrated electricity market between Austria and Germany.

6. Sixth plea in law, alleging infringement of Article 34 TFEU and Article 35 TFE because the regulatory measure would impose artificial barriers of trade between Member States and would interfere with the fundamental principle of Freedom of Goods in the meaning of Article 34 TFEU and Article 35 TFE.

Action brought on 20 November 2015 — Shanxi Taigang Stainless Steel v Commission

(Case T-675/15)

(2016/C 038/88)

Language of the case: English

Parties

Applicant: Shanxi Taigang Stainless Steel Co. Ltd (Taiyuan, China) (represented by: F. Carlin, Barrister, and N. Niejahr, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ 2015 L 224, p. 10), to the extent that it imposes anti-dumping duties on exports by the applicant and collects provisional duties imposed on such exports; and

— order the Commission to pay its own costs and the costs of the applicant in connection with these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the second sub-paragraph of Article 2(7)(a) of Council Regulation (EU) No 1225/2009 ([1]) (the 'Basic Regulation') by identifying and selecting the United States of America ('US') as the appropriate analogue country in this case. This selection was based on an erroneous interpretation and application of the second sub-paragraph of Article 2(7)(a) of the Basic Regulation as well as on manifest errors of appraisal of the facts. Alternatively, the Commission manifestly misapplied Article 2(7)(a) of the Basic Regulation by failing to make certain required adjustments to normal value despite selecting the US as the analogue country.

2. Second plea in law, alleging that the Commission infringed Article 2(10) of the Basic Regulation by failing to make the required adjustment for internal transport costs of a US exporting producer pursuant to section (k) of this provision.

3. Third plea in law, alleging that Commission infringed Articles 3(2), 3(6) and 3(7) of the Basic Regulation. The Commission's analysis of certain injury factors and of causation is vitiated by manifest errors of appraisal of the facts and/or is not in line with the Commission's duty to examine data with care and impartiality.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

Action brought on 20 November 2015 — Les Éclaires v OHIM — L'éclaireur International (L'ECLAIREUR)

(Case T-680/15)

(2016/C 038/89)

Language in which the application was lodged: English

Parties

Applicant: Les Éclaires GmbH (Nürnberg, Germany) (represented by: S. Bund, lawyer)

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

Other party to the proceedings before the Board of Appeal: L'éclaireur International (Luxembourg, Luxembourg)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community word mark 'L'ECLAIREUR' — Community trade mark No 3 494 028

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 3 September 2015 in Case R 2266/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs.

Pleas in law

— Infringement of Article 15(1) Regulation No 207/2009;

— Infringement of Article 51(1)(a) Regulation No 207/2009;

— Discordance with the Guidelines for Examination of the OHIM Part C Section 6.

Action brought on 20 November 2015 — Environmental Manufacturing v OHIM — Société Elmar Wolf (Representation of a wolf's head)

(Case T-681/15)

(2016/C 038/90)

Language in which the application was lodged: English

Parties

Applicant: Environmental Manufacturing LLP (Stowmarket, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal: Société Elmar Wolf SA (Wissembourg, France)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark (Representation of a wolf's head) — Community trade mark application No 4 971 511

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 3 September 2015 in Case R 1252/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and other party to pay their own costs and pay those of the applicant.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 26 November 2015 — Sulayr Global Service v OHIM — Sulayr Calidad (sulayr GLOBAL SERVICE)

(Case T-685/15)

(2016/C 038/91)

Language in which the application was lodged: Spanish

Parties

Applicant: Sulayr Global Service, SL (Valle del Zalabi, Spain) (represented by: P. López Ronda, G. Macías Bonilla, G. Marín Raigal, and E. Armero Lavie, lawyers)

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

Other party to the proceedings before the Board of Appeal: Sulayr Calidad, SL (Granada, Spain)

Details of the proceedings before OHIM

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'sulayr GLOBAL SERVICE' — Application for registration No 11 960 515

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 23 September 2015 in Case R 149/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, in so far as it found a similarity between the services sought in class 40 and the services covered by the earlier mark in class 42 and consequently, a risk of confusion as regards those services;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Article 60 of Regulation No 207/2009 and Rule 49(1) of Regulation No 2868/95.

— Infringement of Article 75 of Regulation No 207/2009.

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 27 November 2015 — Clover Canyon v OHIM — Kaipa Sportswear (CLOVER CANYON)

(Case T-693/15)

(2016/C 038/92)

Language in which the application was lodged: English

Parties

Applicant: Clover Canyon, Inc. (Los Angeles, United States) (represented by: T. Schmitz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kaipa Sportswear GmbH (Heilbronn, Germany)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'CLOVER CANYON' — Application for registration No 1 120 485

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 4 August 2015 in Case R 3018/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— impose the costs of the application on the Defendant including the costs of the appeal proceedings;

or

— impose the costs of the application on the other party to the proceedings before the Board of Appeal of OHIM including the costs of the appeal proceedings.

Plea in law

— Infringement of Article 8(1)(b) Regulation No 207/2009.

Action brought on 30 November 2015 — Micula/Commission

(Case T-694/15)

(2016/C 038/93)

Language of the case: English

Parties

Applicant: Ioan Micula (Oradea, Romania) (represented by: K. Struckmann, lawyer, G. Forwood, Barrister, and A. Kadri, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania [Arbitral award Micula v Romania of 11 December 2013 (notified under document C (2015) 2112)] (OJ 2015 L 232, p. 43);

— alternatively, annul the contested decision insofar as it (a) concerns the applicant, (b) prevents Romania from complying with the award, (c) orders Romania to recover any incompatible aid, (d) orders that the applicant shall be jointly liable to repay aid received by any of the entities identified in Article 2(2) of the contested decision;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision errs in failing to properly apply Article 351 TFEU and general principles of law to the present case.

2. Second plea in law, alleging that the contested decision wrongly found that the measure in question conferred an advantage on the applicant, specifically in incorrectly assessing the time at which the alleged advantage was granted, or alternatively in finding that the payment of damages constitutes an advantage.

3. Third plea in law, alleging that the contested decision wrongly found that the measure in question was imputable to the Romanian State.

4. Fourth plea in law, alleging that the contested decision incorrectly assessed the compatibility of the alleged aid measure.

5. Fifth plea in law, alleging that the contested decision incorrectly identified the beneficiaries of the alleged aid, and failed to state reasons for its conclusion, specifically in identifying the natural or legal persons comprising the alleged beneficiary undertaking.

6. Sixth plea in law, alleging that the contested decision erred in law and exceeded its competence in ordering recovery of the alleged aid.

7. Seventh plea in law, alleging that the contested decision breaches the principle of the protection of legitimate expectations.

8. Eighth plea in law, alleging that the contested decision is vitiated by a failure to observe essential procedural requirements, specifically the right to be heard, Article 108(3) TFEU and Article 6(1) of Regulation 659/1999 ([1]).

([1]) Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 83, p. 1 (as amended).

Action brought on 24 November 2015 — BMB v OHIM — Ferrero (Sweet box, packet)

(Case T-695/15)

(2016/C 038/94)

Language in which the application was lodged: Polish

Parties

Applicant: BMB sp. z o.o. (Grójec, Poland) (represented by: K. Czubkowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ferrero (Alba, Italy)

Details of the proceedings before OHIM

Proprietor of the design at issue: The applicant

Design at issue: Community design No 826 680-0001

Contested decision: Decision of the Third Board of Appeal of OHIM of 8 September 2015 in Case R 1150/2012-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Pleas in law

— Breach of Article 61(1) and (2) of Regulation No 6/2002;

— Breach of Articles 62 and 63(1) of Regulation No 6/2002;

— Breach of Article 25(1)(e) of Regulation No 6/2002;

— Breach of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 1 December 2015 — Bodegas Vega Sicilia v OHIM (TEMPOS VEGA SICILIA)

(Case T-696/15)

(2016/C 038/95)

Language of the case: Spanish

Parties

Applicant: Bodegas Vega Sicilia, SA (Valbuena de Duero, Spain) (represented by: S. Alonso Maruri, lawyer)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'TEMPOS VEGA SICILIA' — Application for registration No 13 066 121

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 30 September 2015 in Case R 285/2015-4

Form of order sought

The applicant claims that the Court should:

— annul and, accordingly, declare inapplicable the decision of the Fourth Board of Appeal of OHIM of 30 September 2015 in Case R 285/2015-4;

— annul and, accordingly, declare inapplicable the refusal decision of OHIM of 8 December 2014;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Article 7(1)(j) of Regulation No 207/2009 in conjunction with Article 118l of Regulation No 491/2009 on the organisation of the wine market.

Action brought on 30 November 2015 — Volfas Engelman v OHIM — Rauch Fruchtsäfte (BRAVORO PINTA)

(Case T-700/15)

(2016/C 038/96)

Language in which the application was lodged: English

Parties

Applicant: Volfas Engelman AB (Kaunas, Lithuania) (represented by: P. Olson, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rauch Fruchtsäfte GmbH (Rankweil, Austria)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'BRAVORO PINTA' — Application for registration No 10 725 381

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 17 September 2015 in Case R 1649/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and allow registration of the CTM 1072538 and;

— order OHIM to bear the costs.

Plea in law

— The Board of Appeal erred in identifying the relevant public;

— The Board of Appeal erred in holding that the relevant public will display an average level of attention;

— The Board of Appeal erred by ignoring the significant visual elements of the applied for mark;

— The Board of Appeal erred by finding phonetic similarity between the marks;

— The Board of Appeal erred in basing the decision on finding that the earlier enjoys enhanced distinctiveness for energy drinks in paragraph 42 of the decision;

— The Board of Appeal erred in finding a likelihood of confusion.

Action brought on 25 November 2015 — Stock Polska v OHIM- Lass & Steffen (LUBELSKA)

(Case T-701/15)

(2016/C 038/97)

Language in which the application was lodged: Polish

Parties

Applicant: Stock Polska Sp. z o.o. (Warsaw, Poland) (represented by: T. Gawrylczyk, lawyer)

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

Other party to the proceedings before the Board of Appeal: Lass & Steffen GmbH Wein- und Spirituosen-Import (Lübeck, Germany)

Details of the proceedings before OHIM

Party applying for the trade mark at issue: the applicant

Trade mark at issue: Community figurative mark containing the word element 'LUBELSKA' — Application No 11 657 459

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 24 September 2015 in Case R 1788/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Plea in law

— Breach of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 2 December 2015 — Makhlouf v Council

(Case T-706/15)

(2016/C 038/98)

Language of the case: French

Parties

Applicant: Ehab Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— declare the applicant's action admissible and well founded;

— as a consequence, order the European Union to pay compensation for all the damage suffered by the applicant in an amount to be determined by the Court on an equitable basis;

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

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, claiming that he has suffered damage for which the Council of the European Union is liable. The plea in law relied on is divided into three parts.

— First part, alleging that the measures taken by the Council are unlawful in that, first, the restrictive measures are unjustified and disproportionate and, secondly, they infringe the applicant's rights to good administration and reputation, and his right to property.

— Second part, claiming that the applicant has suffered non-material damage because of his inclusion on the list of persons and entities covered by the sanctions against Syria.

— Third part, claiming strict liability on the part of the European Union in so far as the measures adopted against the applicant abnormally restrict his fundamental rights.

Action brought on 30 November 2015 — Pharm-a-care Laboratories v OHIM — Pharmavite (VITAMELTS)

(Case T-713/15)

(2016/C 038/99)

Language in which the application was lodged: English

Parties

Applicant: Pharm-a-care Laboratories Pty. Ltd (Sydney, Australia) (represented by: I. De Freitas, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Pharmavite LLC (California, United States)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'VITAMELTS' — Community trade mark No 11 403 581

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of OHIM of 10 September 2015 in Case R 2649/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— confirm the decision of the Cancellation Division in its entirety so that Application for Revocation No. 8627 C is rejected;

— order OHIM and Pharmavite LLC to pay the Appellant's costs in relation to these proceedings.

Pleas in law

— The Board of Appeal infringed Article 52(1)(b) of Regulation No 207/2009. It erred in law in finding that the Appellant has acted in bad faith when filing the application for registration of the contested trade mark;

— The Board of Appeal's decision is based, in part, on an infringement of an essential procedural requirement, namely the failure to provide the Appellant with an opportunity to respond to evidence submitted by the Cancellation Applicant.

Action brought on 4 December 2015 — Drugsrus v EMA

(Case T-717/15)

(2016/C 038/100)

Language of the case: English

Parties

Applicant: Drugsrus Ltd (London, United Kingdom) (represented by: M. Howe and S. Ford, Barristers, and R. Sanghvi, Solicitor)

Defendant: European Medicines Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision contained in the EMA's email dated 8 October 2015, that Drugsrus is not permitted to rebrand as Eklira Genuair, a product imported as Bretaris Genuair; and

— order EMA to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law.

The applicant contends that the EMA has erred in law in concluding that it is impermissible to rebrand centrally authorised medicinal products. It submits that under the rules of the TFUE on the free movement of goods, a parallel importer is permitted to repackage and/or rebrand a product for parallel distribution provided that such repackaging or rebranding is objectively necessary in order that the imported product can gain effective access to the market of the importing Member State.

Order of the General Court of 23 November 2015 — Necci v Commission

(Case T-211/15 P) ([1])

(2016/C 038/101)

Language of the case: French

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

([1]) OJ C 205, 22.6.2015.

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