Official Journal of the European Union

C 136

English edition

Information and Notices

Volume 59

18 April 2016

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Fourth Chamber) of 21 January 2016 — Alcoa Trasformazioni Srl v European Commission, Italian Republic

(Case C-604/14 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — State aid — Aid granted by the Italian Republic in favour of Alcoa Trasformazioni Srl — Reimbursement by the Equalisation Fund of part of the electricity costs invoiced to that company by its supplier — Incompatibility with the common market — Advantage — European Commission required to undertake an economic analysis)

(2016/C 136/02)

Language of the case: Italian

Parties

Appellant: Alcoa Trasformazioni Srl (represented by: O.W. Brouwer, advocaat, T. Salonico and M. Siragusa, avvocati)

Other parties to the proceedings: European Commission (represented by: V. Di Bucci and É. Gippini Fournier, acting as Agents), Italian Republic

Operative part of the order

1. *The appeal is dismissed.*

2. *Alcoa Trasformazioni Srl shall pay the costs.*

([1]) OJ C 89, 16.3.2015.

Order of the Court (Ninth Chamber) of 21 January 2016 — Internationaler Hilfsfonds eV v European Commission

(Case C-103/15 P) ([1])

(Appeal — Access to EU institution documents — Actions in areas interesting developing countries — Refusal to grant access to certain documents of the file concerning contract 'LIEN 97-2011' — Execution of a judgment of the General Court)

(2016/C 136/03)

Language of the case: German

Parties

Appellant: Internationaler Hilfsfonds eV (represented by: H.-H. Heyland, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: P. Costa de Oliveira and T. Scharf, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Internationaler Hilfsfonds eV shall pay the costs.*

(1) OJ C 302, 14.9.2015.

Order of the Court (Sixth Chamber) of 4 February 2016 (request for a preliminary ruling from the Commissione Tributaria Provinciale di Torino — Italy) — Véronique Baudinet and Others v Agenzia delle Entrate — Direzione Provinciale I di Torino

(Case C-194/15) (1)

(Reference for a preliminary ruling — Articles 63 TFEU and 65 TFEU — Free movement of capital — Article 49 TFEU — Freedom of establishment — Direct taxation — Imposition of dividends — Bilateral agreement on double taxation — Judicial double taxation)

(2016/C 136/04)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Torino

Parties to the main proceedings

Applicants: Véronique Baudinet, Adrien Boyer, Pauline Boyer, Edouard Boyer

Defendant: Agenzia delle Entrate — Direzione Provinciale I di Torino

Operative part of the order

Articles 49 TFEU, 63 TFEU and 65 TFEU must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which, when a resident of that Member State, a shareholder in a company established in another Member State, receives from that company dividends taxed in both States, that double taxation is not remedied by the grant in the shareholder's State of residence of a tax credit at least equal to the amount of tax paid in the State of the source of those dividends.

(1) OJ C 245, 27.7.2015.

Order of the Court (Eighth Chamber) of 4 February 2016 — Emsibeth SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-251/15 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — Community trade mark — Application for registration of the figurative mark Nael — Opposition by the proprietor of prior Community word mark Mc Neal — Refusal of registration — Regulation (EC) No 207/2009 — Article 8(1)(b) — Determination of the relevant public — Assessment of the comparison of the goods, the similarity of the signs and the likelihood of confusion)

(2016/C 136/05)

Language of the case: Italian

Parties

Appellant: Emsibeth SpA (represented by: A. Arpaia, avvocato)

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

Operative part of the order

1. *The appeal is dismissed.*

2. *Emsibeth SpA shall bear its own costs.*

([1]) OJ C 311, 21.9.2015.

Order of the Court (Second Chamber) of 20 January 2016 — Skype Ultd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd

(Case C-382/15 P) ([1])

(Appeal — Community trade mark — No need to adjudicate)

(2016/C 136/06)

Language of the case: English

Parties

Appellant: Skype Ultd (represented by: A. Carboni and M. Browne, Solicitors)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: P. Bullock, acting as Agent), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd (represented by: D. Rose and J. Curry, Solicitors)

Operative part of the order

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

2. *Skype Ultd shall pay the costs of the present proceedings.*

(1) OJ C 354, 26.10.2015.

Order of the Court (Second Chamber) of 20 January 2016 — Skype Ultd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd

(Case C-383/15 P) (1)

(Appeal — Community trade mark — No need to adjudicate)

(2016/C 136/07)

Language of the case: English

Parties

Appellant: Skype Ultd (represented by: A. Carboni and M. Browne, Solicitors)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: P. Bullock, acting as Agent), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd (represented by: D. Rose and J. Curry, Solicitors)

Operative part of the order

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

2. *Skype Ultd shall pay the costs of the present proceedings.*

(1) OJ C 354, 26.10.2015.

Order of the Court (Second Chamber) of 20 January 2016 — Skype Ultd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd

(Case C-384/15 P) (1)

(Appeal — Community trade mark — No need to adjudicate)

(2016/C 136/08)

Language of the case: English

Parties

Appellant: Skype Ultd (represented by: A. Carboni and M. Browne, Solicitors)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: P. Bullock, acting as Agent), Sky plc, formerly British Sky Broadcasting Group plc, Sky IP International Ltd (represented by: D. Rose and J. Curry, Solicitors)

Operative part of the order

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

2. *Skype Ultd shall pay the costs of the present proceedings.*

(1) OJ C 354, 26.10.2015.

Order of the Court (Seventh Chamber) of 13 January 2016 (request for a preliminary ruling from the Landgericht Itzehoe — Germany) — Raffeisen Privatbank Liechtenstein AG v Gerhild Lukath

(Case C-397/15) (1)

(Reference for a preliminary ruling — Rome Convention on the law applicable to contractual obligations — First Protocol concerning the interpretation by the Court of the Rome Convention — Articles 1 and 2(a) and (b) — National courts entitled to make a reference to the Court for a preliminary ruling — Manifest lack of jurisdiction of the Court)

(2016/C 136/09)

Language of the case: German

Referring court

Landgericht Itzehoe

Parties to the main proceedings

Applicant: Raffeisen Privatbank Liechtenstein AG

Defendant: Gerhild Lukath

in the presence of: Rüdiger Boy, Boy Finanzberatung GbhH, Christian Maibaum, Vienna-Life Lebensversicherung AG, Frank Weber

Operative part of the order

The Court of Justice of the European Union manifestly does not have jurisdiction to answer the questions referred by the Landgericht Itzehoe (Regional Court, Itzehoe (Germany)) for a preliminary ruling by decision of 15 June 2015 in Case C-397/15.

(1) OJ C 320, 28.9.2015.

Appeal brought on 14 April 2015 by Enercon GmbH against the judgment of the General Court (Fourth Chamber) of 28 January 2015 in Case T-655/13, *Enercon GmbH* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-170/15 P)

(2016/C 136/10)

Language of the case: German

Parties

Appellant: Enercon GmbH (represented by: R. Böhm, Rechtsanwalt)

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

By order of 21 January 2016 the Court of Justice of the European Union (Sixth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 31 December 2015 — Malpensa Logistica Europa SpA v SEA — Società Esercizi Aeroportuali SpA

(Case C-701/15)

(2016/C 136/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Malpensa Logistica Europa SpA

Defendant: SEA — Società Esercizi Aeroportuali SpA

Question referred

Does Article 7 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]), which requires the application of the EU rules governing the award of public contracts to activities relating to the exploitation of a geographical area for the purpose of the provision of airports to air carriers, as defined in the national case-law referred to in paragraphs 6.4 and 6.5 above, preclude national provisions, such as those set out in Articles 4 and 11 of Legislative Decree No 18/1999, which do not require a prior public selection procedure to be conducted for every allocation, including temporary allocations, of areas within airports for the purpose of such activities?

([1]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 4 January 2016 — Lucio Cesare Aquino v Belgische Staat

(Case C-3/16)

(2016/C 136/12)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: Lucio Cesare Aquino

Respondent: Belgische Staat

Questions referred

1. In the light of the application of the case-law developed by the Court of Justice in the *Köbler* case (judgment of 30 September 2003, Case C-224/01) ([1]), and the *Traghetti del Mediterraneo* case (judgment of 13 June 2006, Case C-173/03) ([2]) on State liability for wrongdoing by courts which constitutes a breach of EU law, should a court whose decision in the context of an appeal in cassation is not assessed because, by application of a national procedural rule, the complainant, who made a submission in the cassation proceedings, is irrefutably deemed to have withdrawn from proceedings, be regarded as a court of last instance?

2. Is it compatible with the third paragraph of Article 267 TFEU, partly in the light of the second paragraph of Article 47 and Article 52(3) of the Charter of Fundamental Rights of the European Union ([3]), read together, that a national court, which under that Treaty provision is obliged to make requests for preliminary rulings to the Court of Justice, rejects a request for such a ruling on the sole ground that the request is formulated in a pleading which, according to the applicable procedural law, should not be taken into account because it was filed late?

3. In a case where the highest of the ordinary courts does not examine a request for a preliminary ruling, should it be assumed that a breach of the third paragraph of Article 267 TFEU has been committed, partly in the light of the second paragraph of Article 47 and Article 52(3) of the Charter of Fundamental Rights of the European Union, read together, when that court rejects the request, with the only reason given being that *'[s]ince the grounds of appeal were not admissible for a reason specific to the proceedings before the Hof'*, the question would not be asked?

([1]) EU:C:2003:513.
([2]) EU:C:2006:391.
([3]) OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 7 January 2016 — Criminal proceedings against A

(Case C-9/16)

(2016/C 136/13)

Language of the case: German

Referring court

Amtsgericht Kehl

Party to the main proceedings

A

Other party: Staatsanwaltschaft Offenburg

Questions referred

1. Must Article 67(2) TFEU and Articles 20 and 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([1]), or any other rules of EU law, be interpreted as precluding national legislation which grants the police authorities of the Member State in question the power to check, within an area of up to 30 km from the land border of that Member State with the States party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement) ([2]), the identity of any person, irrespective of his behaviour and of specific circumstances, with a view to impeding or stopping unlawful entry into the territory of that Member State or to preventing certain criminal acts directed against the security or protection of the border or committed in connection with the crossing of the border, in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?

2. Must Article 67(2) TFEU and Articles 20 and 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), or any other rules of EU law, be interpreted as precluding a rule of national law which grants the police authorities of the Member State in question the power briefly to stop and question any person on a train or on the premises of the railways of that Member State, with a view to impeding or stopping unlawful entry into the territory of that Member State, and to request that person to produce for purposes of checking the identity documents or border crossing papers he is carrying and visually inspect the articles he is carrying, if, on the basis of known facts or border police experience, it may be presumed that such trains or railway premises are used for unlawful entry and that entry is effected from a State party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement), in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?

([1]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

([2]) Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 18 January 2016 — Santogal M-Comércio e Reparação de Automóveis Lda v Autoridade Tributária e Aduaneira

(Case C-26/16)

(2016/C 136/14)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Santogal M-Comércio e Reparação de Automóveis Lda

Defendant: Autoridade Tributária e Aduaneira

Questions referred

(1) Is it contrary to Article 138[2](a) of Council Directive 2006/112/EC ([1]) of 28 November 2006 [on the common system of value added tax] for provisions of national law [Articles 1(e) and 14(b) of the VAT Rules on Intra-Community Transactions — RITI] to require, for the grant of exemption from VAT on the supply for consideration of new means of transport, transported by the purchaser from national territory to another Member State, the purchaser to be established or domiciled in that Member State?

(2) Is it contrary to Article 138[2](a) of Council Directive 2006/112/EC for exemption from the tax in the Member State of commencement of the transport operation to be refused in circumstances in which the means of transport purchased has been transported to Spain, where it has been granted tourist registration, provisionally and subject to the fiscal rules laid down in Articles 8 to 11, 13 and 15 of Spanish Royal Decree 1571/1993 of 10 September 1993?

(3) Is it contrary to Article 138(2)(a) of Council Directive 2006/112/EC to require the payment of VAT by the supplier of a new means of transport in circumstances in which it has not been demonstrated whether or not the tourist registration rules have ceased to apply because of one of the situations provided for in Articles 11 and 15 of Spanish Royal Decree 1571/1993 of 10 September 1993, or whether VAT has been or will be paid by reason of the disapplication of those rules?

(4) Is it contrary to Article 138 [2](a) of Council Directive 2006/112/EC and the principles of legal certainty, proportionality and protection of legitimate expectations to require VAT to be paid by the supplier of a new means of transport dispatched to another Member State, in circumstances in which:

— the purchaser, before dispatch, informs the supplier that he resides in the Member State of destination and produces to him a document proving that he has been assigned a foreign national's identity number in that Member State, indicating a residence in that State different from the residence stated by the purchaser himself;

— the purchaser subsequently gives to the supplier documents proving that the means of transport purchased has undergone a technical inspection in the Member State of destination and that he has been granted a tourist registration in that State;

— it has not been demonstrated that the supplier collaborated with the purchaser to avoid paying VAT;

— the customs authorities have not raised any objection to the cancellation of the customs declaration for the vehicle on the basis of the documents in the possession of the supplier?

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

Request for a preliminary ruling from the Landgericht Stralsund (Germany) lodged on 18 January 2016 — HanseYachts AG v Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Companie Generali IARD SA

(Case C-29/16)

(2016/C 136/15)

Language of the case: German

Referring court

Landgericht Stralsund

Parties to the main proceedings

Applicant: HanseYachts AG

Defendants: Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Companie Generali IARD SA

Question referred

Where the procedural law of a Member State provides for independent proceedings for the taking of evidence in which, by order of the court, an expert report is obtained (in this case the '*expertise judiciaire*' in French law), and where such independent proceedings for the taking of evidence are conducted in that Member State and an action based on the findings of those independent proceedings is subsequently brought in the same Member State between the same parties:

In that case, is the document by which the independent proceedings for the taking of evidence were instituted a 'document instituting the proceedings or an equivalent document' within the meaning of Article 30(1) of Regulation (EC) No 44/2001? ([1]) Or is it only the document by which the action is brought that is to be regarded as being the 'document instituting the proceedings or an equivalent document'?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 18 January 2016 — Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam

(Case C-31/16)

(2016/C 136/16)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Visser Vastgoed Beleggingen BV

Defendant: Raad van de gemeente Appingedam

Questions referred

1. Should the term 'service' in Article 4, paragraph 1, of the Services Directive ([1]) be interpreted as meaning that retail trade consisting of the sale of goods such as shoes and clothing to consumers is a service to which the provisions of the Services Directive apply under Article 2(1) of that Directive?

2. The scheme as referred to under 8 seeks to make impossible certain forms of retail trade, such as the sale of shoes and clothing, in areas outside the city centre with a view to maintaining the viability of the city centre and preventing vacant premises in inner city areas. Does a rule relating to such a scheme, having regard to recital 9 of the Services Directive, fall outside the scope of the Services Directive, because such rules must be regarded as pertaining to 'town and country planning … which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity'?

3. Is it sufficient in order to assume that a cross-border situation exists, that it cannot be excluded that a retail business from another Member State would be able to establish itself locally or that the customers of the retail business could be from another Member State, or should there be actual evidence thereof?

4. Is Chapter III (freedom of establishment) of the Services Directive applicable to purely internal situations, or is the assessment of the question of whether that chapter applies governed by the case-law of the Court of Justice concerning Treaty provisions on freedom of establishment and the free movement of services in purely internal situations?

5. a. Does a scheme as referred to under 8 which is included in a zoning plan fall within the scope of the term 'requirement' as referred to in Article 4, paragraph 7, and Article 14, paragraph 5, of the Services Directive, and not within the scope of the term 'authorisation scheme' as referred to in Article 4, paragraph 6, and Articles 9 and 10 of the Services Directive?

b. Do Article 14, paragraph 5, of the Services Directive — if a scheme as referred to under 8 falls within the scope of the term 'requirement' — or Articles 9 and 10 of the Services Directive — if a scheme as referred to under 8 falls within the scope of the term 'authorisation' — preclude a municipality from adopting a scheme as referred to under 8?

6. Does a scheme as referred to under 8 fall within the scope of Articles 34 to 36, or of Articles 49 to 55 of the TFEU and, if so, do the exceptions recognised by the Court of Justice apply, provided they are proportionate?

(1) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Alicante (Spain) lodged on 21 January 2016 — Manuel González Poyato and Ana Belén Tovar García v Banco Popular Español, S. A.

(Case C-34/16)

(2016/C 136/17)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Alicante

Parties to the main proceedings

Applicants: Manuel González Poyato and Ana Belén Tovar García

Defendant: Banco Popular Español, S.A.

Questions referred

1. In the context of a loan agreement concluded between a seller or supplier and a consumer, containing a standard clause, not individually negotiated, limiting a fall in the ordinary interest rate agreed ('floor clause'), included in that contract insufficiently clearly and comprehensibly for the consumer, to the point of being held unfair by a court, is it compatible with Article 6(1) of Council Directive 93/13/EEC (1) on unfair terms in consumer contracts for the phrase 'shall … not be binding' to be interpreted to the effect that the result of a declaration by a court that that clause is unfair may be that the consumer is not reimbursed the payments he has previously made to the seller or supplier as a result of the application of that clause?

2. If that interpretation should be held to be compatible with Article 6(1) of Directive 93/13, is an interpretation like that set out above, concerning the effects that must flow from a declaration that a clause of the kind described is unfair, compatible with the concept of 'adequate and effective means … to prevent the continued use of unfair terms' in Article 7(1) of Directive 93/13?

3. If those interpretations should be held to be incompatible with Articles 6(1) and 7(1) of Directive 93/13, is it always and at all events contrary to the 'requirement of good faith' to include in a contract concluded between a seller or supplier and a consumer clauses that define the main object of the contract and are worded in insufficiently clearly and comprehensibly, or must that breach of the principle of good faith be examined in the light of other circumstances? In the latter case, what circumstances must the national court take into consideration in order to be able to find that there has been no breach of the principle of good faith when it identifies the existence of a clause defining the main object of the contract that is worded unclearly and incomprehensibly? In particular, may such circumstances include the existence of national legislation with the status of a law or regulation which provides, *in abstracto*, for the validity of that type of 'floor clause'?

4. In the context of proceedings such as those in the instant case, in which an individual action has been brought seeking a declaration of the nullity of a 'floor clause' considered untransparent, is an interpretation based on the risk of serious difficulties for the economic public order that limits the reimbursement of amounts paid by the consumer to the seller or supplier under such a clause, which has been declared unfair by a court, compatible with the phrase 'shall … not be binding on the consumer' in Article 6(1) of Directive 93/13, if the judgment given by the court does not have the force of *res judicata* for other consumers in the same situation?

(1) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Rechtbank van eerste aanleg Antwerpen (Belgium) lodged on 25 January 2016 — Argenta Spaarbank NV v Belgische Staat

(Case C-39/16)

(2016/C 136/18)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Questions referred

1. Does Article 198(10) of the 1992 Income Tax Code, in the version which was in force for the 2000 and 2001 tax years, infringe Article 4(2) of the Parent-Subsidiary Directive of 23 July 1990 (Council Directive 90/435/EEC (1)), in so far as that article of the Income Tax Code provides that interest is not to be regarded as a business expense up to an amount corresponding to the amount of the dividends qualifying for exemption under Articles 202 to 204 where those dividends are derived from shares which, at the time of their transfer, had not been held for an uninterrupted period of at least one year, in which connection no distinction is made according to whether those interest payments relate to (the financing of) the holding from which the dividends qualifying for exemption were derived or not?

2. Does Article 198(10) of the 1992 Income Tax Code, in the version which was in force for the 2000 and 2001 tax years, constitute a provision for the prevention of fraud or abuse within the meaning of Article 1(2) of the Parent-Subsidiary Directive of 23 July 1990 (Council Directive 90/435/EEC), and, if so, does Article 198(10) of the 1992 Income Tax Code go further than is necessary in order to combat such fraud or abuse in so far as it provides that interest is not to be regarded as a business expense up to an amount corresponding to the dividends qualifying for exemption under Articles 202 to 204 where those dividends are derived from shares which, at the time of their transfer, had not been held for an uninterrupted period of at least one year, in which connection no distinction is made according to whether those interest payments relate to (the financing of) the holding from which the dividends qualifying for exemption were derived or not?

(1) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

Request for a preliminary ruling from the Okresný súd Dunajská Streda (Slovak Republic) lodged on 27 January 2016 — ERGO Poisťovňa, a.s. v Alžbeta Barlíková

(Case C-48/16)

(2016/C 136/19)

Language of the case: Slovak

Referring court

Okresný súd Dunajská Streda

Parties to the main proceedings

Applicant: ERGO Poisťovňa, a.s.

Defendant: Alžbeta Barlíková

Questions referred

1. Must the expression '*the contract between the third party and the principal will not be executed*' in Article 11 of Council Directive 86/653/EEC of 18 December 1986 ([1]) on the coordination of the laws of the Member States relating to self-employed commercial agents ('Directive 86/653') be interpreted as meaning:

   (a) complete non-execution of the contract, that is, neither the principal nor the third party even partly performs what is provided for in the contract, or

   (b) even partial non-execution of the contract, that is, the volume of transactions envisaged is not achieved, for example, or the contract will not last for the time envisaged?

2. If the interpretation in indent (b) of Question 1 is correct, must Article 11(2) of Directive 86/653 be interpreted as meaning that a provision in a contract for commercial agency under which the agent is obliged to return a proportionate part of his commission if the contract between the principal and the third party is not executed to the extent envisaged, or to the extent defined by the contract for commercial agency, is not a derogation to the detriment of the agent?

3. In the cases concerned in the main proceedings, when assessing whether '*the principal is to blame*' within the meaning of the second indent of Article 11(1) of Directive 86/653,

   (a) may only legal reasons leading directly to termination of the contract be considered (for example, the contract ceases as a result of the non-performance of an obligation under it by the third party), or

   (b) may it also be considered whether those legal reasons were not the result of the conduct of the principal in the legal relationship with that third party which induced the third party to lose confidence in the principal and consequently to breach an obligation under the contract with the principal?

([1]) OJ 1986 L 382, p. 17.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 27 January 2016 — Unibet International Limited v Nemzeti Adó- és Vámhivatal Központi Hivatala

(Case C-49/16)

(2016/C 136/20)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Unibet International Limited

Defendant: Nemzeti Adó- és Vámhivatal Központi Hivatala

Questions referred

1. Must Article 56 of the Treaty on the Functioning of the European Union ('the TFEU') be interpreted as precluding a national measure in accordance with which the legislation of a Member State which, at the time of issue of a call for tenders for the award of a concession or of acceptance of a tender submitted in order to obtain such a concession, as the case may be, guarantees the theoretical possibility that any operator fulfilling the legal requirements — including an operator established in another Member State — may obtain the concession for the provision of non-liberalised online games of chance, by virtue either of a public call for tenders or of the submission of a tender, with the result that the Member State in question is not actually calling for tenders for the award of the concession and the service provider likewise, in practice, has no opportunity of submitting a tender, and yet the authorities of the Member State declare that the service provider infringed legal rules by providing the service without holding a licence based on the concession and impose on that provider the administrative penalty provided for in the legislation (temporary blocking of access and the imposition of a fine in the event of repeated infringements)?

2. Does Article 56 TFEU prevent a Member State from introducing provisions of higher rank, from the point of view of domestic law, that offer operators of online games of chance the theoretical possibility of providing online games of chance on a cross-border basis, with the result that, for want of any lower-ranking implementing provisions in the Member State, those operators cannot in fact obtain the administrative licences necessary for the provision of the service?

3. In so far as the court hearing the main proceedings may declare, in the light of the answers given to the foregoing questions, that the Member State's measure is contrary to Article 56 TFEU, is that court acting in a manner compatible with EU law if it considers to be contrary to Article 56 TFEU not only the infringement of legal rules found by the decisions of the authorities of the Member State, on the ground that the service was provided without a licence, but also the administrative penalty imposed for that infringement (temporary blocking of access and fine)?

Request for a preliminary ruling from the Rechtbank Noord-Holland (Netherlands) lodged on 28 January 2016 — Stryker EMEA Supply Chain Services BV v Inspecteur van de Belastingdienst/ Douane kantoor Rotterdam Rijnmond

(Case C-51/16)

(2016/C 136/21)

Language of the case: Dutch

Referring court

Rechtbank Noord-Holland

Parties to the main proceedings

Applicant: Stryker EMEA Supply Chain Services BV

Defendant: Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond

Questions referred

1. Should heading 9021 of the CN be interpreted as meaning that implant screws as described in 4 above, which are solely intended to be implanted in the human body for the treatment of fractures or the fixation of prostheses, may be classified thereunder?

2. Is Regulation No 1212/2014 ([1]) valid?

([1]) Commission Implementing Regulation (EU) No 1212/2014 of 11 November 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 329, p. 3).

Request for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 29 January 2016 — 'SEGRO' Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala

(Case C-52/16)

(2016/C 136/22)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: 'SEGRO' Kft.

Defendant: Vas Megyei Kormányhivatal Sárvári Járási Földhivatala

Questions referred

1. Must Articles 49 and 63 of the Treaty on the Functioning of the European Union and Articles 17 and 47 of the Charter of Fundamental Rights of the European Union be interpreted as precluding a Member State's legislation such as that at issue in the main proceedings, which — without considering other criteria — lays down the obligation to cancel the registration of the rights of usufruct and rights of use burdening agricultural land, which have been registered in the name of companies or natural persons who are not close relatives of the proprietor of the land, without at the same time prescribing, in favour of the proprietors of the extinguished rights of usufruct and of use, compensation for the financial losses which, while it cannot be claimed in the context of the settlement of accounts between the parties, does arise from valid contracts?

2. Must Articles 49 and 63 of the Treaty on the Functioning of the European Union and Articles 17 and 47 of the Charter of Fundamental Rights of the European Union be interpreted as precluding a Member State's legislation which — without considering other criteria — lays down the obligation to cancel the registration of the rights of usufruct and of use burdening agricultural land, which have been registered, pursuant to contracts concluded before 30 April 2014, in the name of companies or natural persons who are not close relatives of the proprietor of the land, and at the same time prescribes, in favour of the proprietors of the extinguished rights of usufruct and of use, compensation for the financial losses which, while it cannot be claimed in the context of the settlement of accounts between the parties, does arise from valid contracts?

Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (United Kingdom) made on 10 February 2016 — Prospector Offshore Drilling SA, Prospector Rig 1 Contracting Company SARL, Prospector Rig 5 Contracting Company SARL, Ensco plc, Ensco Offshore UK Limited, Rowan Companies plc, Rowan Cayman Limited, v Her Majesty's Treasury, Commissioners for Her Majesty's Revenue and Customs

(Case C-72/16)

(2016/C 136/23)

Language of the case: English

Referring court

High Court of Justice Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: Prospector Offshore Drilling SA, Prospector Rig 1 Contracting Company SARL, Prospector Rig 5 Contracting Company SARL, Ensco plc, Ensco Offshore UK Limited, Rowan Companies plc, Rowan Cayman Limited

Defendants: Her Majesty's Treasury, Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Do Articles 49, 56 or 63 TFEU preclude legislation, such as Part 8ZA of the Corporation Tax Act 2010, which governs the relief for expenditure available in relation to the UK taxable profits of a company providing drilling services to the oil industry (an 'oil contractor') from activities (the 'affected trade') involving the use of certain types of assets ('relevant assets') leased from a person 'associated' with the oil contractor, that:

   1.1. for the purposes of computing the profits of the affected trade, imposes a pre-determined cap on the deductibility of payments for leasing relevant assets from associated persons, calculated by reference to the original cost of the leased asset;

   1.2. states that the amount of payments that have been so disallowed by the cap may be relieved against UK taxable profits (if any) of the oil contractor or other companies within the same group, which do not arise from an affected trade; and

   1.3. ring-fences profits from the affected trade by preventing UK incurred costs or both UK and non-UK losses from elsewhere in the oil contractor's group from being set off against the profits of the affected trade, but permits them to be set against other profits (if any)?

2. Specifically, do Articles 49, 56 or 63 TFEU preclude such legislation in circumstances where:

   2.1. an oil contractor subject to UK corporation tax leases its asset from an associated company, not subject to UK corporation tax and incorporated and having its registered office in another Member State; and/or

   2.2. the circumstances are as set out in 2.1 above and specifically the oil contractor is also incorporated and with its registered office in that other Member State; and/or

   2.3. the oil contractor subject to UK corporation tax is the subsidiary of a UK parent company which has a further subsidiary, not subject to corporation tax and incorporated and having its registered office in a third country, and the oil contractor leases its asset from that third country subsidiary; and/or

   2.4. any other relevant combination of place of establishment and/or applicable taxation regime for the oil contractor and/or the asset-owning lessor?

3. Would any of the answers above be different if generally, and/or in the specific case of the Claimants, groups owning oil rigs and providing UK drilling services have no significant net UK profits aside from drilling?

4. Would any of the answers above be different if the purpose of the contested Provisions was to prevent the avoidance of tax by implementing an artificially fragmented corporate structure which had no independent economic reality outside of the group?"

Request for a preliminary ruling from the Tribunal administratif de Montreuil (France) lodged on 12 February 2016 — ArcelorMittal Atlantique et Lorraine v Ministère de l'Écologie, du Développement durable et de l'Énergie

(Case C-80/16)

(2016/C 136/24)

Language of the case: French

Referring court

Tribunal administratif de Montreuil

Parties to the main proceedings

Applicant: ArcelorMittal Atlantique et Lorraine

Defendant: Ministère de l'Écologie, du Développement durable et de l'Énergie

Questions referred

1. In its Decision 2011/278/EU ([1]), did the European Commission, by excluding emissions from recycled waste gases used in the production of electricity from the benchmark value for hot metal, contravene Article 10a(1) of Directive 2003/87/EC ([2]) concerning the rules for establishing ex-ante benchmarks, and in particular the objective of efficient energy recovery of waste gases and the option of allocating allowances free of charge in the case of electricity produced from waste gases?

2. By basing its determination of the benchmark for hot metal in that decision on the data in the iron and steel 'BREF' and the 'LDSD 2007', did the Commission infringe the obligation to use the most exact and up-to-date scientific data available and/or the principle of sound administration?

3. In Decision 2011/278/EU, is the European Commission's inclusion, if proven, of a factory producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore such as to vitiate the value of that benchmark on grounds of illegality?

4. Did the Commission, by failing to state specifically the reasons for proceeding in that way in Decision 2011/278/EU, infringe the obligation to state reasons laid down in Article 296 of the Treaty on the Functioning of the European Union?

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

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 12 February 2016 — Heta Asset Resolution Bulgaria OOD v Nachalnik na Mitnitsa Stolichna

(Case C-83/16)

(2016/C 136/25)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Heta Asset Resolution Bulgaria OOD

Defendant: Nachalnik na Mitnitsa Stolichna

Questions referred

1. Must Article 161(5) and Article 210(3) of Council Regulation (EEC) No 2913/92 ([1]) of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that an exporter of goods from the customs territory of the Community is the person established in that territory who is a party to the contract for the sale of the goods to a person established in a third country, where that contract is the basis for placing the goods under the customs export procedure, according to that regulation?

2. Must Article 161(1) and Article 210(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that export takes place and an export customs debt is incurred in circumstances such as those at issue in the main proceedings, in relation to a vessel (yacht) flying the flag of a Member State, only on the basis of a contract of sale to a person established in a third country and removal of that vessel from the shipping register of that Member State?

3. Must subparagraph 3(b) of Article 795(1) of Commission Regulation No 2454/93 ([2]) of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, when exporting a vessel (yacht) flying the flag of a Member State, in circumstances such as those at issue in the main proceedings, a contract for the sale of the vessel to a person established in a third country and removal of that vessel from the shipping register of that Member State constitute sufficient evidence within the meaning of that provision?

4. Does it follow from subparagraph 3(b) and subparagraph 4 of Article 795(1) and subparagraph 4 of Article 795(1) in conjunction with Article 796e(1)(b) of Commission Regulation No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code that the assessment [regarding the existence] of sufficient evidence under Article 796da(4) of that regulation by the relevant competent customs authority, in the circumstances at issue in the main proceedings, is binding and not subject to review by the customs authority competent to issue a retrospective customs declaration within the meaning of the first provision?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 1993 L 253, p. 1.

Appeal brought on 19 February 2016 by the Republic of Poland against the judgment delivered by the General Court on 3 December 2015 in Case T-367/13, *Republic of Poland* v *European Commission*

(Case C-105/16 P)

(2016/C 136/26)

Language of the case: Polish

Parties

Appellant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

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 the European Union of 3 December 2015 in Case T-367/13, *Republic of Poland* v *European Commission*, in so far as that judgment rejected the first complaint relating to the requirement that at least 50 % of the financial assistance be used for restructuring measures, put forward in the context of the first plea in the action seeking annulment of Commission Implementing Decision 2013/214/EU of 2 May 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) (notified under document C(2013) 2436) ([1]);

— annul Commission Implementing Decision 2013/214/EU of 2 May 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) (notified under document C(2013) 2436) in so far as an extrapolated correction of 11 %, in the amounts of EUR 4 583 950,92 and EUR 39 583 726,30, was carried out in that decision in regard to the expenditure notified by the Republic of Poland for support of semi-subsistence farms;

— order the European Commission to pay the costs of both sets of proceedings.

Grounds of appeal and main arguments

The Republic of Poland requests the Court of Justice to set aside the judgment of the General Court of the European Union of 3 December 2015 in Case T-367/13, *Republic of Poland* v *European Commission*, in so far as that judgment rejected the first complaint relating to the requirement that at least 50 % of the financial assistance be used for restructuring measures, put forward in the context of the first plea in the action seeking annulment of Commission Implementing Decision 2013/214/EU of 2 May 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) (notified under document C(2013) 2436) (OJ L 123 of 4.5.2013, p. 11) in so far as an extrapolated correction of 11 %, in the amounts of EUR 4 583 950,92 and EUR 39 583 726,30, was carried out in that decision in regard to the expenditure notified by the Republic of Poland for support of semi-subsistence farms, and to order the European Commission to pay the costs of both sets of proceedings.

In the judgment under appeal the General Court dismissed the action brought by the Republic of Poland seeking annulment of the Commission decision providing for financial corrections of EUR 8 292 783,94 and EUR 71 610 559,39 to be applied to the expenditure notified by the Republic of Poland in respect of support for semi-subsistence farms.

The Commission alleged that the Republic of Poland committed five breaches in regard to the release of funds for the support of semi-subsistence farms, including failure to comply with the requirement under Article 33b of Regulation No 1257/1999 ([2]) that the farmer must use at least 50 % of the support for restructuring measures. This breach formed the basis on which the Commission carried out an extrapolated correction, in the amount of 11 %, of the notified expenditure for the support for semi-subsistence farms, which corresponded to the percentage of applications in which, out of a random check of 100 application documents checked by the Commission, it transpired that there had not been compliance with the requirement that half of the financial assistance had to be used for restructuring.

In that context the Republic of Poland puts forward, as a ground challenging the judgment under appeal, the contention that there was a misinterpretation of Article 33b of Regulation No 1257/1999 consisting in the assumption that the granting of support for semi-subsistence farms presupposes that at least 50 % of the aid would be used for restructuring measures, even though such a requirement finds no support in the provisions of EU law.

The erroneous interpretation of the abovementioned provision, it argues, led to the assumption by the General Court that the Commission had correctly proceeded in the contested decision on the assumption that the Republic of Poland ought to have approved only the original applications for financial assistance in which the farmers seeking to benefit from the support had in particular undertaken to use at least 50 % of the aid for restructuring measures.

The complaint alleging failure to comply with the requirement that the farmer must use at least 50 % of the support for restructuring measures constitutes, according to the appellant, the basis for the extrapolated correction, in the amount of 11 %, of the notified expenditure for the support for semi-subsistence farms.

In the view of the Republic of Poland, the requirement that the farmer must use at least 50 % of the aid for restructuring measures does not follow from EU law. It submits that no provision of EU law in which the conditions for the granting of support for semi-subsistence farms are laid down in detail makes provision for the condition that at least 50 % of the assistance must be used for restructuring measures. Article 33b of Regulation No 1257/1999, it submits, does not provide for any such condition. Nor has such a requirement been set by the Commission in Regulation No 141/2004 ([3]) with implementing provisions for specific measures for rural development provided for in Chapter IXa of Regulation No 1257/1999.

The Polish authorities, it is argued, therefore did not infringe their monitoring obligations with regard to the abovementioned conditions for the granting of support in the context of the measure 'Support for Semi-Subsistence Farms'. There is thus no justification for making a financial correction in regard to any such breach. Consequently, the General Court erred in dismissing the action for a declaration annulling Implementing Decision 2013/214/EU in so far as an extrapolated correction in the amount of 11 % of the expenditure notified by the Republic of Poland for the support for semi-subsistence farms had been carried out in that decision.

([1]) OJ 2013 L 123, p. 11.
([2]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).
([3]) Commission Regulation (EC) No 141/2004 of 28 January 2004 laying down rules for applying Council Regulation (EC) No 1257/1999 as regards the transitional rural development measures applicable to the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 24, p. 25).

Order of the President of the Court of 28 January 2016 — European Commission v Hellenic Republic

(Case C-60/14) ([1])

(2016/C 136/27)

Language of the case: Greek

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

([1]) OJ C 93, 29.3.2014.

Order of the President of the Ninth Chamber of the Court of 18 January 2016 (request for a preliminary ruling from the Okresný súd Prešov — Slovakia) — Helena Kolcunová v Provident Financial s. r. o.

(Case C-610/14) ([1])

(2016/C 136/28)

Language of the case: Slovak

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

([1]) OJ C 118, 13.4.2015.

Order of the President of the Court of 15 January 2016 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — Proceedings brought by Valsts ieņēmumu dienests; other party: SIA Latspas

(Case C-204/15) ([1])

(2016/C 136/29)

Language of the case: Latvian

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

([1]) OJ C 228, 13.7.2015.

Order of the President of the Court of 15 January 2016 — European Commission v Romania

(Case C-306/15) ([1])

(2016/C 136/30)

Language of the case: Romanian

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

([1]) OJ C 311, 21.9.2015.

Order of the President of the Court of 5 February 2016 (request for a preliminary ruling from the High Court of Justice Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, on the application of Nutricia Limited v Secretary of State for Health

(Case C-445/15) ([1])

(2016/C 136/31)

Language of the case: English

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

([1]) OJ C 354, 26.10.2015.

Order of the President of the Court of 18 December 2015 — European Commission v Siderurgica Latina Martin SpA (SLM), Ori Martin SA

(Case C-522/15 P) ([1])

(2016/C 136/32)

Language of the case: Italian

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

([1]) OJ C 406, 7.12.2015.

GENERAL COURT

Judgment of the General Court of 1 March 2016 — Advance Magazine Publishers v OHIM — Selecciones Americanas (VOGUE CAFÉ)

(Case T-40/09) ([1])

(Community trade mark — Opposition proceedings — Community word mark VOGUE CAFÉ — Earlier national figurative marks Vogue and VOGUE studio and application for the Community figurative mark VOGUE — Genuine use of earlier marks — Article 42(2) of Regulation (EC) No 207/2009)

(2016/C 136/33)

Language of the case: English

Parties

Applicant: Advance Magazine Publishers, Inc. (New York, United States) (represented by: T. Alkin, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially R. Pethke and D. Botis, and subsequently I. Harrington, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Selecciones Americanas, SA (Sitges, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 19 November 2008 (Case R 0280/2008-4) relating to opposition proceedings between Selecciones Americanas, SA and Advance Magazine Publishers, Inc.

Operative part of the judgment

The Court:

1. *Declares that there is no longer any need to adjudicate on the application for annulment of the decision of the Fourth Board of Appeal of OHIM of 19 November 2008 (Case R 0280/2008-4), in so far as it concludes that there is a likelihood of confusion between the Community trade mark applied for, VOGUE CAFÉ, and the Spanish figurative mark VOGUE studio registered under number 2529728;*

2. *Dismisses the remainder of the action;*

3. *Orders Advance Magazine Publishers, Inc. to pay the costs.*

([1]) OJ C 82, 4.4.2009.

Judgment of the General Court of 29 February 2016 — EGL and Others v Commission

(Case T-251/12) ([1])

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Price fixing — Surcharges and charging mechanisms affecting the final price — Definition of the market — Effect on trade between Member States — Cooperation — Partial immunity from a fine)

(2016/C 136/34)

Language of the case: English

Parties

Applicants: EGL, Inc. (Houston, Texas, United States), Ceva Freight (UK) Ltd (Ashby de la Zouch, United Kingdom) and Ceva Freight Shanghai Ltd (Shanghai, China) (represented initially by M. Brealey QC, S. Love, Barrister, M. Pullen, D. Gillespie and R. Fawcett-Feuillette, Solicitors, and subsequently by M. Brealey, S. Love, M. Pullen, R. Fawcett-Feuillette and M. Boles, Solicitor, and lastly by M. Brealey and M. Pullen)

Defendant: European Commission (represented by: V. Bottka and P. Van Nuffel, acting as Agents, and by S. Kingston, Barrister)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicants or, in the alternative, for variation of the fines imposed on them in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders EGL, Inc., Ceva Freight (UK) Ltd and Ceva Freight Shanghai Ltd to pay the costs.*

([1]) OJ C 227, 28.7.2012.

Judgment of the General Court of 29 February 2016 — Kühne + Nagel International and Others v European Commission

(Case T-254/12) ([1])

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Surcharges and charging mechanisms affecting the final prices — Whether trade between Member States affected — Errors of assessment — Duration of the infringement — Amount of the fine — Point 13 of the 2006 Guidelines on the method of setting fines — Value of sales — Mitigating circumstances — Proportionality — Rights of the defence)

(2016/C 136/35)

Language of the case: German

Parties

Applicants: Kühne + Nagel International AG (Feusisberg, Switzerland), Kühne + Nagel Management AG (Feusisberg), Kühne + Nagel Ltd (Uxbridge, United Kingdom), Kühne + Nagel Ltd (Shanghai, China), and Kühne + Nagel Ltd (Hong Kong, China) (represented by: U. Denzel, C. Klöppner and C. von Köckritz, lawyers)

Defendant: European Commission (represented initially by C. Hödlmayr, N. von Lingen and G. Meessen, and subsequently by C. Hödlmayr, G. Meessen and A. Dawes, acting as Agents)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicants or, in the alternative, for variation of the fines imposed on them in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kühne + Nagel International AG, Kühne + Nagel Management AG, Kühne + Nagel Ltd (Uxbridge), Kühne + Nagel Ltd (Shanghai) and Kühne + Nagel Ltd (Hong Kong) to pay the costs.*

(1) OJ C 227, 28.7.2012.

Judgment of the General Court of 29 February 2016 — UTi Worldwide and Others v Commission

(Case T-264/12) (1)

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Surcharges and tariff mechanisms having an impact on the final price of services — Errors of assessment — Proof — Whether trade between Member States affected — Appreciable effect on competition — Amount of the fine — Gravity of the infringement — Proportionality — Joint and several liability — Unlimited jurisdiction)

(2016/C 136/36)

Language of the case: English

Parties

Applicants: UTi Worldwide, Inc. (Tortola, British Virgin Islands), UTi Nederland BV (Schiphol, Netherlands), and UTI Worldwide (UK) Ltd (Reading, United Kingdom) (represented by: P. Kirch, lawyer)

Defendant: European Commission (represented by: A. Biolan, V. Bottka and G. Meessen, acting as Agents)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicants, and, in the alternative, for variation of the fine imposed on them in that decision.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as the amount of the fine imposed on UTi Worldwide, Inc. exceeds that of the fines imposed on UTi Nederland BV and UTI Worldwide (UK) Ltd;*

2. *Sets the overall amount of the fine imposed on UTi Worldwide in Article 2(2) of Decision C(2012) 1959 final at EUR 2 965 000, the amount of the fine which is attributable to that undertaking pursuant to the first line of Article 2(2)(j) of that decision being set at EUR 1 692 000;*

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

4. *Orders UTi Worldwide, UTi Nederland and UTI Worldwide (UK) to bear nine tenths of the costs of the European Commission and of their own costs;*

5. *Orders the European Commission to bear one tenth of its own costs and of the costs of UTi Worldwide, UTi Nederland and UTI Worldwide (UK).*

(1) OJ C 235, 4.8.2012.

Judgment of the General Court of 29 February 2016 — Schenker v Commission

(Case T-265/12) ([1])

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Price fixing — Surcharges and charging mechanisms affecting the final price — Evidence contained in an application for immunity — Protection of the confidentiality of communications between lawyers and clients — Code of Conduct rules on duty of loyalty and prohibition on double representation — Fiduciary duties — Whether trade between Member States affected — Whether unlawful conduct can be attributed — Choice of companies — Fines — Proportionality — Gravity of the infringement — Mitigating circumstances — Equal treatment — Cooperation — Settlement — 2006 Guidelines on the method of setting fines)

(2016/C 136/37)

Language of the case: English

Parties

Applicant: Schenker Ltd (Feltham, United Kingdom) (represented by: F. Montag, B. Kacholdt and F. Hoseinian, lawyers, and by D. Colgan and T. Morgan, Solicitors)

Defendant: European Commission (represented initially by A. Dawes and N. von Lingen, and subsequently by A. Dawes and G. Meessen, acting as Agents, and by B. Kennelly and H. Mussa, Barristers)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicant, and for variation of the fine imposed on it in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Schenker Ltd to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 29 February 2016 — Deutsche Bahn and Others v Commission

(Case T-267/12) ([1])

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Price fixing — Surcharges and charging mechanisms affecting the final price — Evidence contained in an application for immunity — Protection of the confidentiality of communications between lawyers and clients — Code of Conduct rules on the duty of loyalty and prohibition on double representation — Fiduciary duties — Whether unlawful conduct can be attributed — Choice of companies — Fines — Proportionality — Gravity of the infringement — Mitigating circumstances — Equal treatment — Cooperation — Partial immunity from a fine — Unlimited jurisdiction — Settlement — 2006 Guidelines on the method of setting fines)

(2016/C 136/38)

Language of the case: English

Parties

Applicants: Deutsche Bahn and Others (Berlin, Germany), Schenker AG (Essen, Germany), Schenker China Ltd (Shanghai, China), and Schenker International (HK) Ltd (Hong Kong, China) (represented by: F. Montag, B. Kacholdt, F. Hoseinian, lawyers, and by D. Colgan and T. Morgan, Solicitors)

Defendant: European Commission (represented by: initially by A. Dawes and N. von Lingen, and subsequently by A. Dawes and G. Meessen, acting as Agents, and by B. Kennelly and H. Mussa, Barristers)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicants, and for variation of the fines imposed on them in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutsche Bahn AG, Schenker AG, Schenker China Ltd and Schenker International (HK) Ltd to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 29 February 2016 — Panalpina World Transport (Holding) and Others v Commission

(Case T-270/12) ([1])

(Competition — Agreements, decisions and concerted practices — International air freight forwarding services — Decision finding an infringement of Article 101 TFEU — Price fixing — Surcharges and charging mechanisms affecting the final price — Fines — Proportionality — Gravity of the infringement — Equal treatment — Obligation to state reasons — Settlement — 2006 Guidelines on the method of setting fines)

(2016/C 136/39)

Language of the case: English

Parties

Applicants: Panalpina World Transport (Holding) Ltd (Basle, Switzerland), Panalpina Management AG (Basle), Panalpina China Ltd (Hong Kong, China) (represented by: S. Mobley, A. Stratakis, T. Grimmer and B. Smith, Solicitors)

Defendant: European Commission (represented by: V. Bottka, G. Meessen and P. Van Nuffel, acting as Agents, and by C. Thomas, Solicitor)

Re:

Application for annulment of Commission Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding), in so far as it concerns the applicants, and for variation of the fines imposed on them in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Panalpina World Transport (Holding) Ltd, Panalpina Management AG and Panalpina China Ltd to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 3 March 2016 — Simet v Commission

(Case T-15/14) ([1])

(State Aid — retroactive public service compensation granted by the Italian authorities — Interregional coach transport services provided between 1987 and 2003 — Decision declaring the aid incompatible with the internal market — Maintenance of a public service obligation — Grant of compensation — Regulation (EEC) No 1191/69)

(2016/C 136/40)

Language of the case: Italian

Parties

Applicant: Simet SpA (Rossano Calabro, Italy) (represented by: A. Clarizia, C. Varrone and P. Clarizia, lawyers)

Defendant: European Commission (represented by: G. Conte, D. Grespan and P.-J. Loewenthal, acting as Agents)

Re:

Application to annul Commission Decision 2014/201/EU of 2 October 2013 on compensation to be paid to SIMET SpA for public transport services provided between 1987 and 2003 (state aid measure SA.33037 (2012/C) — Italy) (OJ 2014 L 114, p. 67).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Simet SpA to bear its own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 52, 22.2.2014.

Judgment of the General Court of 1 March 2016 — Secop v Commission

(Case T-79/14) ([1])

(State aid — Rescuing firms in difficulty — Aid in the form of a State guarantee — Decision declaring the aid compatible with the internal market — Failure to initiate the formal investigation procedure — Serious difficulties — Procedural rights of the interested parties)

(2016/C 136/41)

Language of the case: German

Parties

Applicant: Secop GmbH (Flensburg, Germany) (represented by: U. Schnelle and C. Aufdermauer, lawyers)

Defendant: European Commission (represented by: L. Armati, T. Maxian Rusche and R. Sauer, acting as Agents)

Re:

Action for annulment of Commission Decision C(2013) 9119 final of 18 December 2013, concerning State aid SA.37640 — Rescue aid for ACC Compressors SpA — Italy.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Secop GmbH to pay the costs.*

([1]) OJ C 85, 22.3.2014.

Judgment of the General Court of 1 March 2016 — Peri v OHIM (Multiprop)

(Case T-538/14) ([1])

(Community trade mark — Application for Community word mark Multiprop — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Lack of distinctive character — Article 7(1)(b) of Regulation No 207/2009 — Obligation to state reasons)

(2016/C 136/42)

Language of the case: German

Parties

Applicant: Peri GmbH (Weißenhorn, Germany) (represented by: M. Eck and A. Bognár, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially A. Pohlmann, and subsequently S. Hanne, acting as Agents)

Re:

Action for annulment of the decision of the First Board of Appeal of OHIM of 29 April 2014 (Case R 1661/2013-1), concerning an application for registration of the word sign Multiprop as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Peri GmbH to pay the costs.*

([1]) OJ C 329, 22.9.2014.

Judgment of the General Court of 1 March 2016 — BrandGroup v OHIM — Brauerei S. Riegele, Inh. Riegele (SPEZOOMIX)

(Case T-557/14) ([1])

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

(2016/C 136/43)

Language of the case: German

Parties

Applicant: BrandGroup GmbH (Bechtsrieth, Germany) (represented by: T. Raible, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially G. Schneider and A. Schifko, and subsequently A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Brauerei S. Riegele, Inh. Riegele KG (Augsburg, Germany) (represented by: R. Schlecht, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 May 2014 (Case R 941/2013-1), concerning opposition proceedings between Brauerei S. Riegele, Inh. Riegele KG and BrandGroup GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BrandGroup GmbH to pay the costs.*

([1]) OJ C 339, 29.9.2014.

Judgment of the General Court of 3 March 2016 — Spain v Commission

(Case T-675/14) ([1])

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by the Kingdom of Spain — Flat rate financial corrections — Specific financial corrections — Extension of the financial correction to a period after the communication provided for in Article 11(1) of Regulation (EC) No 885/2006)

(2016/C 136/44)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. J. García-Valdecasas Dorrego, abogado del Estado)

Defendant: European Commission (represented by: I. Galindo Martín and D. Triantafyllou, acting as Agents)

Intervener in support of the applicant: Republic of Latvia (represented by: I. Kalniņš and D. Pelše, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision 2014/458/EU of 9 July 2014 excluding from EU financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 205, p. 62) in so far as it concerns certain expenditure incurred by the Kingdom of Spain in the amount of EUR 2 713 208,07.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to bear its own costs and to pay the costs incurred by the European Commission.*

3. *Orders the Republic of Latvia to bear its own costs.*

(1) OJ C 388, 3.11.2014.

Judgment of the General Court of 3 March 2016 — Ugly v OHIM — Group Lottuss (COYOTE UGLY)

(Case T-778/14) (1)

(Community trade mark — Opposition proceedings — Application for the Community word mark COYOTE UGLY — Relative grounds for refusal — Revocation of the earlier Community word mark — Article 8(1)(a) and (b) of Regulation (EC) No 207/2009 — No non-registered mark — Article 8(4) of Regulation No 207/2009 — No well-known mark within the meaning of Article 6 bis of the Paris Convention — Article 8(2)(c) of Regulation No 207/2009 — Rejection of the opposition)

(2016/C 136/45)

Language of the case: English

Parties

Applicant: Ugly, Inc. (New York, United States) (represented by: T. St Quintin, Barrister, K. Gilbert and C. Mackey, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM: Group Lottuss Corp., SL (Barcelona, Spain)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 16 September 2014 (Case R 1369/2013-5), relating to opposition proceedings between Ugly Inc. and Group Lottuss Corp.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ugly, Inc. to pay the costs.*

(1) OJ C 26, 26.1.2015.

Judgment of the General Court of 21 January 2016 — Spokey v OHIM — Leder Jaeger (SPOKeY)

(Case T-846/14) (1)

(Community trade mark — Invalidity proceedings — Community figurative mark SPOKeY — Earlier Community word mark SPOOKY — Declaration of partial invalidity — Article 53(1)(a) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 — Examination of evidence — Article 76(1) of Regulation No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2016/C 136/46)

Language of the case: Polish

Parties

Applicant: Spokey sp. z o.o. (Katowice, Poland) (represented by: B. Matusiewicz-Kulig, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: K. Zajfert and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Leder Jaeger GmbH (Siegen, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 October 2014 (Case R 525/2014-4), relating to invalidity proceedings between Leder Jaeger GmbH and Spokey sp. z o.o.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Spokey sp. z o.o. to pay the costs.*

([1]) OJ C 65, 23.2.2015.

Judgment of the General Court of 1 March 2016 — 1&1 Internet v OHIM — Unoe Bank (1e1)

(Case T-61/15) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark 1e1 — Earlier national word mark UNO E and earlier figurative mark unoe — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 136/47)

Language of the case: English

Parties

Applicant: 1&1 Internet AG (Montabaur, Germany) (represented by: G. Klopp, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Unoe Bank, SA (Madrid, Spain) (represented by: N. González-Alberto Rodríguez, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 4 December 2014 (Case R 101/2014-5) relating to opposition proceedings between Unoe Bank, SA and 1&1 Internet AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of OHIM of 4 December 2014 (Case R 101/2014-5) relating to opposition proceedings between Unoe Bank, SA and 1&1 Internet AG;*

2. *Orders OHIM to bear its own costs and to pay the costs incurred by 1&1 Internet AG;*

3. *Orders Unoe Bank, SA to bear its own costs.*

(1) OJ C 107, 30.3.2015.

Judgment of the General Court of 23 February 2016 — Pirelli Tyre v OHIM (Tyre treads and Others)

(Joined Cases T-279/15 to T-282/15) (1)

(Community design — Community design representing tyre treads and pneumatic tyres for vehicle wheels — Failure to apply for renewal of the design and cancellation of the design upon expiry of the registration — Application for restitutio in integrum and application for renewal of the design)

(2016/C 136/48)

Language of the case: Italian

Parties

Applicant: Pirelli Tyre SpA (Milan, Italy) (represented by: D. Caneva and G. Fucci, lawyers)

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

Re:

Four actions brought against the decisions of the Third Board of Appeal of OHIM of 8 January 2015 (Cases R 1285/2014-3 and R 1286/2014-3) and of 11 February 2015 (Cases R 1287/2014-3 and R 1288/2014-3) relating to applications for retitutio in integrum.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Pirelli Tyre SpA to pay the costs.*

(1) OJ C 270, 17.8.2015.

Order of the General Court of 15 February 2016 — InAccess Networks Integrated Systems v Commission

(Case T-82/15) (1)

(Seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013) — Grant agreement for the Atraco project — Debit notes and decisions contained in letters — No need to adjudicate in part — Contractual nature of the dispute — Partial inadmissibility)

(2016/C 136/49)

Language of the case: English

Parties

Applicant: InAccess Networks Integrated Systems — Applications Services for Telecommunication and Related Equipment Commercial and Industrial Co. SA (Maroussi, Greece) (represented by: J. Grayston, Solicitor, P. Gjørtler and G. Pandey, lawyers)

Defendant: European Commission (represented by: L. Di Paolo and J. Estrada de Solà, acting as Agents)

Re:

Application for annulment of the Commission decision contained in the letter of 11 December 2014 by which the Commission confirmed its refusal to finance costs invoked by the applicant, of the Commission decision contained in debit note No 3241211514 of 23 October 2012, and of the Commission decision contained in the letter of 7 December 2012 requesting the applicant to return the funds paid and to pay liquidated damages of EUR 12 814,10.

Operative part of the order

The Court:

1. *Rules that there is no longer any need to adjudicate on the claims directed against the Commission decision contained in the letter of 7 October 2012 and the debit note of 23 October 2012;*

2. *Dismisses the action for the remainder, as being manifestly inadmissible;*

3. *Orders InAccess Networks Integrated Systems — Applications Services for Telecommunication and Related Equipment Commercial and Industrial Co. SA to pay the costs.*

([1]) OJ C 155, 11.5.2015.

Order of the General Court of 16 February 2016 — Industrias Químicas del Vallés v Commission

(Case T-296/15) ([1])

(Action for annulment — Plant protection products — Implementing Regulation (EU) 2015/408 — Establishing a list of candidates for substitution — Inclusion of metalaxyl on that list — Lack of individual concern — Regulatory act entailing implementing measures — Inadmissibility)

(2016/C 136/50)

Language of the case: Spanish

Parties

Applicant: Industrias Químicas del Vallés, SA (Mollet del Vallès, Spain) (represented by: C. Fernández Vicién, I. Moreno-Tapia Rivas and C. Vila Gisbert, lawyers)

Defendant: European Commission (represented by: I. Galindo Martín, P. Ondrůšek and G. von Rintelen, acting as Agents)

Re:

Application for annulment in part of Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ 2015 L 67, p. 18).

Operative part of the order

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

2. *Industrias Químicas del Vallés, SA shall bear the costs.*

(1) OJ C 254, 3.8.2015.

Action brought on 26 January 2016 — TestBioTech v Commission

(Case T-33/16)

(2016/C 136/51)

Language of the case: English

Parties

Applicant: TestBioTech eV (Munich, Germany) (represented by: K. Smith, QC, J. Stevenson, Barrister, R. Stein, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul the Commission's decision dated 16 November 2015, which rejected the applicant's request for internal review of the Commission implementing decisions (EU) 2015/686 ([1]), (EU) 2015/696 ([2]) and (EU) 2015/698 ([3]) of 24 April 2015 granting three market authorisations under Regulation (EC) No 1829/2003 ([4]) (the 'GM Regulation') to Monsanto or Pioneer for their genetically modified soybeans MON 87769, MON 87705 and/or 305423;

— order the defendant to pay the applicant's costs; and

— order any other measure deemed appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's conclusion that the vast majority of the request for internal review related to matters falling outside the scope of the Aarhus Regulation ([5]) violates Article 10(1) read in conjunction with Articles 2(f) and (g) and Recitals (11) and (18) to (21) of that Regulation.

   — A qualifying non-governmental organisation is entitled to make a request for internal review of an administrative act made under an environmental law. The GM Regulation is such a law. As a consequence, the organisation may request a review of any administrative act made under that law, including a market authorisation.

   — Taking into account both the terms and object and purpose of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus Convention') and the Aarhus Regulation, as well as the Aarhus Convention's implementation guide, there is no basis for the Commission's conclusions that it can carve up decisions made under the GM Regulation as being partly in-scope and outside the scope of the Aarhus Regulation.

   — Genetically modified organisms are elements of the environment. The Commission's argument that the impact of such organisms on human health is not an environmental matter and therefore not covered by the Aarhus Regulation is fundamentally flawed.

2. Second plea in law, alleging that the Commission's failure to respond to the request for internal review, submitted on 29 May 2015, before 16 November 2015 violated Article 10(3) of the Aarhus Regulation.

— The Commission issued the contested decision on 16 November 2015, some twenty-four weeks after the request for internal review was submitted. The Commission failed to provide an adequate explanation for breaching the normal requirement that a response be provided within twelve weeks and, in any event, failed to meet the absolute deadline for responding within eighteen weeks.

(1) Commission implementing decision (EU) 2015/686 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean MON 87769 (MON-87769-7) pursuant to Regulation (EC) No 1829/2003 (OJ 2015 L 112, p. 16).
(2) Commission implementing decision (EU) 2015/696 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean MON87705 (MON-877Ø5-6) pursuant to Regulation (EC) No 1829/2003 (OJ 2015 L 112, p. 60).
(3) Commission implementing decision (EU) 2015/698 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean 305423 (DP-3Ø5423-1) pursuant to Regulation (EC) No 1829/2003 (OJ 2015 L 112, p. 71).
(4) Regulation of the European Parliament and of the Council (EC) No 1829/2003 of 22 September 2003 on genetically food and feed (OJ 2003 L 268, p. 1).
(5) Regulation of the European Parliament and of the Council (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 23 February 2016 — Shire Pharmaceuticals Ireland v EMA

(Case T-80/16)

(2016/C 136/52)

Language of the case: English

Parties

Applicant: Shire Pharmaceuticals Ireland Ltd (Dublin, Ireland) (represented by: D. Anderson, QC, M. Birdling, Barrister, G. Castle and S. Cowlishaw, Solicitors)

Defendant: European Medicines Agency

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Medicines Agency dated 15 December 2015 and communicated to the applicant on 18 December 2015 refusing to validate an application pursuant to Regulation (EC) No 141/2000 (1) for designation as an orphan medicinal product; and

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the contested decision erred in its interpretation and application of Regulation (EC) No 141/2000. The applicant contends that the defendant:

— misapplied Article 5 of Regulation (EC) No 141/2000 by failing to appreciate the procedural nature of the validation process;

— should not have concluded that the conditions for designation were not (or could not be) established;

— erroneously elided the concepts of 'medicinal product' and 'active substance' contrary to Articles 3 and 5 of Regulation (EC) No 141/2000;

— misapplied and erroneously relied upon the communication from the European Commission on Regulation (EC) No 141/2000 ([2]);

— erroneously placed reliance on the fact that the applicant had previously received protocol assistance pursuant to Article 6 of Regulation (EC) No 141/2000; and

— frustrated the objective of Regulation (EC) No 141/2000 as identified by Article 1 of Regulation (EC) No 141/2000 and its recitals.

([1]) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1).

([2]) Communication (2003/C 178/02) from the Commission on Regulation (EC) No 141/2000 of the European Parliament and of the Council on orphan medicinal products (OJ 2003 C 178, p. 2).

Action brought on 23 February 2016 — International Gaming Projects v EUIPO — adp Gauselmann (TRIPLE EVOLUTION)

(Case T-82/16)

(2016/C 136/53)

Language in which the application was lodged: English

Parties

Applicant: International Gaming Projects Ltd (Valletta, Malta) (represented by: M. Garayalde Niño, A. Alpera Plazas, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: adp Gauselmann GmbH (Espelkamp, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'TRIPLE EVOLUTION' — Application for registration No 11 968 138

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 December 2015 in Case R 725/2015-2

Form of order sought

The applicant claims that the Court should:

— admit the application;

— annul the contested decision in its entirety;

— order the registration of the EU mark TRIPLE EVOLUTION in all the goods and services it seeks protection;

— order EUIPO and/or the opponent to bear the fees and costs.

Plea in law

— The Board of Appeal wrongly concluded that there was a likelihood of confusion between the confronted signs.

Action brought on 17 February 2016 — Shoe Branding Europe v EUIPO — adidas (Position of two parallel stripes on a shoe)

(Case T-85/16)

(2016/C 136/54)

Language in which the application was lodged: English

Parties

Applicant: Shoe Branding Europe BVBA (Oudenaarde, Belgium) (represented by: J. Løje, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: adidas AG (Herzogenaurach, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU position mark consisting of two parallel lines positioned on the outside surface of the upper part of a shoe — Application for registration No 10 477 701

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 November 2015 in Case R 3106/2014-2

Form of order sought

The applicant claims that the Court should:

principally:

— annul the contested decision;

— order EUIPO to pay the costs;

in the alternative:

— remit the case to the Defendant ordering a renewed examination independent of the judgment of the General Court in case No. T-145/14;

in the second alternative:

— remit the case to the Defendant ordering a stay of the proceedings on the outcome of the Applicant's appeal of the General Court's decision in case No. T-145/14 to the Court of Justice of the European Union, case No. C-396/15 P, and on delivery of a judgment from the Court of Justice of the European Union in said case to conduct its own evaluation of the similarities and differences between the marks to be compared.

Pleas in law

— the Defendant erred in not making its own assessment of the similarities and differences between the Applicant's disputed mark and the earlier mark of the Opponent registered under EU trade mark No 3 517 646;

— the Defendant erred in finding that the conditions under Article 8(5) of Regulation No 207/2009 were fulfilled.

Action brought on 23 February 2016 — Codorníu v EUIPO — Bodegas Altun (ANA DE ALTUN)

(Case T-86/16)

(2016/C 136/55)

Language in which the application was lodged: Spanish

Parties

Applicant: Codorníu SA (Esplugues de Llobregat, Spain) (represented by: M. Ceballos Rodríguez and J. Güell Serra, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Bodegas Altun, SL (Baños de Ebro, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'ANA DE ALTUN' — Application for registration No 11 860 913

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 9 December 2015 in Case R 199/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings, should that party intervene, to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) and 8(5) and Articles 75 and 76 of Regulation No 207/2009.

Action brought on 26 February 2016 — Eurofast v Commission

(Case T-87/16)

(2016/C 136/56)

Language of the case: French

Parties

Applicant: Eurofast SARL (Paris, France) (represented by: S.A. Pappas, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's offsetting decision of 17 December 2015;

— declare the debt claimed by the Commission against Eurofast under the ASSET contract to be unfounded;

— declare that all expenditure in respect of the ASSET project, corresponding to EUR 507 574, is eligible and order the Commission to confirm that the funding, as specified in the Grant Agreement, corresponding to EUR 365 639, is lawful;

— order the Commission to pay the sum of EUR 69 923,68 under the EKSISTENZ contract, plus late-payment interest;

— order the Commission to pay contractual compensation;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law, respectively, in support of its application for annulment of the offsetting decision contained in the Commission's letter of 17 December 2015 and in support of its application for a declaration that the contested contractual debt does not exist.

1. First plea in law, alleging infringement of Articles 78 and 80 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, Article II.21 of Annex II to the FP7 Grant agreement (General conditions), the principle of good faith laid down in Article 1134 of the Belgian Civil Code and the principles of legitimate expectations and of legal certainty.

2. Second plea in law, alleging infringement of the contractual rules under the General Conditions of the ASSET grant contract and a manifest error of assessment of the rules relating to eligible costs.

Action brought on 26 February 2016 — Opko Ireland Global Holdings v EUIPO — Teva Pharmaceutical Industries (ALPHAREN)

(Case T-88/16)

(2016/C 136/57)

Language in which the application was lodged: English

Parties

Applicant: Opko Ireland Global Holdings Ltd (Dublin, Ireland) (represented by: S. Malynicz, Barrister, A. Smith and D. Meale, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Teva Pharmaceutical Industries Ltd (Jerusalem, Israel)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'ALPHAREN' — Application for registration No 4 320 297

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 16 December 2015 in Case R 2387/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay its own costs and those of the applicant.

Pleas in law

— Infringement of Article 1(d)(2) of Regulation No 216/96 in that two members of the Board who took the original 2014 Board of Appeal decision (and the June 2015 Board of Appeal revocation decision) were also members of the Board that took the contested decision;

— Infringement of Article 50 of the Implementing Regulation by relying upon new evidence not before EUIPO at the first hearing of the opposition;

— Infringement of Article 8(1)(b) of Regulation No 207/2009 by failing to impose the burden of proof in the opposition to prove the similarity of the goods in issue upon the opponent;

— Infringement of Article 8(1)(b) of Regulation No 207/2009 in that the Board of Appeal erred in relation to the identification of the relevant public and overall in the assessment of the likelihood of confusion.

Action brought on 29 February 2016 — Italy v Commission

(Case T-91/16)

(2016/C 136/58)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul, pursuant to Article 264 TFEU, Commission Decision C(2015)9413 of 17 December 2015, notified on 18 December 2015, concerning the reduction of the contribution from the European Social Fund for the Sicily Operational Programme (Programma Operativo Sicilia) which forms part of the Community Support Framework for Community structural assistance in the regions falling under Objective 1 in Italy (POR Sicilia 2000-2006), and, consequently, find that the final request for payment presented by the Italian authorities should be upheld in its entirety by the Commission. It also asks that the Commission be ordered to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. The decision was adopted as a result of an unlawful duplication of the controls made pursuant to Article 30 of Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), which were re-opened and repeated in the audit of 2008 despite those controls having been undertaken and concluded, at least in so far as all of the expenditure certified on 31 December 2006 is concerned, in the audits of 2005 and 2006.

2. The contested decision is vitiated by an infringement of the principle of proper administration because the Commission communicated the results of the 2008 audit with a delay of 18 months after the task had been completed.

3. The contested decision misrepresents the facts because it ignores the fact that, in the period following the audits of 2005 and 2006, the error rate literally collapsed from 53,13 % to 3,05 % in 2007, and to 1,45 % in 2008 and 2009.

4. The contested decision infringes the principle of proportionality because it fails to take account of the fact that the certified expenditure for the three years 2007 to 2009, affected by a minimal error rate, was equal to approximately half the total value of the programme covered by the ESF.

5. The contested decision is unfounded in fact and in law, because it extends to the following three years the finding of systematic deficiencies which arose and were resolved in the period up to 31 December 2006, without undertaking any specific verification in that regard.

6. The contested decision is also vitiated by a defective statement of reasons. According to the applicant, that decision applies the extrapolation technique, which consists in extending to non-controlled expenditure the error rate found for controlled expenditure, even though that technique is allowed only by regulations relating to the 2007-2013 programme; in any event, for the years 2007-2009, it assumed an error rate of 8,39 %, even though the Italian authorities had explained that the sample referred to in Article 10 of Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21) lacked balance because it had not been compiled randomly, like a genuine statistical sample, but focussed intentionally on projects that presented risk factors.

Action brought on 26 February 2016 — Rheinmetall Waffe Munition v EUIPO (VANGUARD)

(Case T-93/16)

(2016/C 136/59)

Language of the case: German

Parties

Applicant: Rheinmetall Waffe Munition GmbH (Südheide, Germany) (represented by: J. Schmidt, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the mark 'VANGUARD' — Application for registration No 11 166 003

Contested decision: Decision of the Second Board of Appeal of EUIPO of 19 November 2015 in Case R 69/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings.

Pleas in law

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

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

Order of the General Court of 2 March 2016 — Société générale v Commission

(Case T-98/14) ([1])

(2016/C 136/60)

Language of the case: French

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

([1]) OJ C 142, 12.5.2014.

Order of the General Court of 29 February 2016 — Micula and Others v Commission

(Case T-646/14) ([1])

(2016/C 136/61)

Language of the case: English

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

([1]) OJ C 439, 8.12.2014.

Order of the General Court of 15 February 2016 — Gascogne Sack Deutschland and Gascogne v European Union

(Case T-843/14) ([1])

(2016/C 136/62)

Language of the case: French

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

([1]) OJ C 56, 16.2.2015.

Order of the General Court of 16 February 2016 — Ludwig Bertram v OHIM — Seni Vita (Sanivita)

(Case T-58/15) ([1])

(2016/C 136/63)

Language of the case: German

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

([1]) OJ C 118, 13.4.2015.

Order of the General Court of 15 February 2016 — Grandel v OHIM — Beautyge Beauty Group (Beautygen)

(Case T-177/15) ([1])

(2016/C 136/64)

Language of the case: German

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

([1]) OJ C 198, 15.6.2015.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (3rd Chamber) of 2 March 2016 — Frieberger and Vallin v Commission

(Case F-3/15) ([1])

(Civil Service — Officials — Pensions — Reform of the Staff Regulations — Regulation No 1023/2013 — Article 22 of Annex XIII to the Staff Regulations — Raising of the retirement age — Repayment of contributions to the EU pension scheme — Article 26 of Annex XIII to the Staff Regulations — Recalculation of the bonus relating to pension rights)

(2016/C 136/65)

Language of the case: French

Parties

Applicants: Jürgen Frieberger (Woluwe-Saint-Lambert, Belgium) and Benjamin Vallin (Saint-Gilles, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

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

Intervener in support of the defendant: Council of the European Union (represented by: M. Bauer and M. Veiga, agents)

Intervener in support of the defendant: European Parliament (represented by: M. Ecker and E. Taneva, Agents)

Re:

The annulment of the Commission's decisions rejecting the applicants' requests for repayment of a portion of the contributions to the European Union pension scheme which were deducted from their pay and the request for reassessment of the bonus relating to the transfer of pension rights, acquired before their entry into service, to the EU scheme.

Operative part of the judgment

The Tribunal:

1. *Annuls the European Commission's decision of 26 March 2014 rejecting Mr Frieberger's request of 17 December 2013 in so far as he sought by that request to obtain a recalculation of the bonus relating to his pension rights transferred to the European Union pension scheme;*

2. *Declares that there is no need to adjudicate on the action in so far as it was brought by Mr Vallin against the European Commission's decision of 13 March 2014 inasmuch as that decision allegedly rejected a request seeking a recalculation of the bonus relating to pension rights transferred to the European Union pension scheme;*

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

4. *Declares that the parties shall bear their own costs.*

([1]) OJ C 96, 23/3/2015, p. 25.

Judgment of the Civil Service Tribunal (Third Chamber) of 2 March 2016 — FX v Commission

(Case F-59/15) ([1])

(Civil service — Temporary staff — Severance grant — Article 12(2) of Annex VIII to the Staff Regulations — Termination of service)

(2016/C 136/66)

Language of the case: French

Parties

Applicant: FX (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented by: G. Gattinara and F. Simonetti, acting as Agents)

Re:

Application for annulment of the decision not to pay the severance grant requested by the applicant following the termination of his service, and a claim for compensation for the damage the applicant claims to have suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders FX to bear two thirds of his own costs;*

3. *Orders the European Commission to bear its own costs and to pay one third of the costs incurred by FX.*

([1]) OJ C 213, 29.6.2015, p. 48.

Judgment of the Civil Service Tribunal (3rd Chamber) of 2 March 2016 — Ruiz Molina v OHIM

(Case F-60/15) ([1])

(Civil service — Member of the temporary staff — OHIM staff — Fixed-term contract with a termination clause — Clause terminating the contract in the event that the member of staff is not included on a reserve list of a competition — Termination of the contract pursuant to the termination clause — Date on which the termination clause takes effect — Open Competition OHIM/AD/01/13 and OHIM/AST/02/13)

(2016/C 136/67)

Language of the case: French

Parties

Applicant: José Luis Ruiz Molina (San Juan de Alicante, Spain) (represented by: N. Lhoëst, lawyer, then N. Lhoëst and S. Michiels, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially, B. Wägenbaur, lawyer, then A. Lukošiūtė, Agent, and B. Wägenbauer, lawyer)

Re:

Application for annulment of the decision of the President of OHIM of 4 June 2014 terminating the applicant's contract as a member of the temporary staff, seeking reinstatement by OHIM, if possible, and, if not, fair financial compensation for the alleged unlawful termination of his contract, and finally for damages for the non-material harm allegedly suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Mr Ruiz Molina is to bear his own costs and orders him to pay half of the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

3. *Declares that the Office for Harmonisation in the Internal Market (Trade Marks and Designs) is to bear half of its own costs.*

(1) OJ C 213, 29/6/2015, p. 48.

Judgment of the Civil Service Tribunal (Second Chamber) of 1 March 2016 — Pujante Cuadrupani v GSA

(Case F-83/15) (1)

(Civil service — Recruitment — Temporary staff — Dismissal at the end of the probationary period — Action for annulment brought against both the dismissal decision and the confirmatory dismissal decision — Whether admissible — Third paragraph of Article 14 of the CEOS — Misuse of powers and abuse of process — Manifest error of assessment — Rights of the defence — Consultation of the Joint Evaluation Committee — Opinion based on examining written material without hearing the applicant — No infringement of the rights of the defence)

(2016/C 136/68)

Language of the case: French

Parties

Applicant: Antonio Pujante Cuadrupani (Murcia, Spain) (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European GNSS Agency (represented by: O. Lambinet and D. Petrlík, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application for annulment of the applicant's probationary report and the subsequent decision of the Executive Director of the European GNSS Agency to dismiss him at the end of his probationary period.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Pujante Cuadrupani to bear his own costs and to pay the costs incurred by the European GNSS Agency.*

(1) OJ C 279, 24.8.2015, p. 60.

Judgment of the Civil Service Tribunal (3rd Chamber) of 2 March 2016 — Loescher v Council

(Case F-84/15) ([1])

(Civil service — Officials — Union representative — Put at the disposal of a trade union or staff association — 2014 promotion procedure — Decision not to promote the applicant — Article 45 of the Staff Regulations — Comparative merits — No obligation under the Staff Regulations to provide for a specific method for assessing the comparative merits of staff put at the disposal of trade union or professional associations — Taking into account of staff reports — Assessment of the level of responsibilities held — Evidence — Review of a manifest error of assessment)

(2016/C 136/69)

Language of the case: French

Parties

Applicant: Bernd Loescher (Rhode-Saint-Genèse, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

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

Re:

Application for annulment of the decision not to promote the applicant to the next grade (AD 12) in the 2014 Council of the European Union promotion procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Mr Loescher is to bear his own costs and orders him to pay the costs incurred by the Council of the European Union.*

([1]) OJ C 279, 24/8/2015, p. 60.

Order of the Civil Service Tribunal of 26 February 2016 — McArdle v Commission

(Case F-25/13) ([1])

(2016/C 136/70)

Language of the case: French

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

([1]) OJ C 156, 1/6/2013, p. 55.

Order of the Civil Service Tribunal of 26 February 2016 — McArdle v Commission

(Case F-56/13) ([1])

(2016/C 136/71)

Language of the case: French

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

([1]) OJ C 274, 21/9/2013, p. 29.

Order of the Civil Service Tribunal of 26 February 2016 — Wisniewski v Commission

(Case F-29/14) ([1])

(2016/C 136/72)

Language of the case: French

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

([1]) OJ C 184, 16/6/2014, p. 44.

Order of the Civil Service Tribunal of 7 March 2016 — FJ v Parliament

(Case F-38/15) ([1])

(2016/C 136/73)

Language of the case: French

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

([1]) OJ C 178, 1/6/2015, p. 26.

CORRIGENDA

Corrigendum to the Action brought on 22 December 2015 — EDF v Commission

(Case T 747/15)

(Official Journal of the European Union C 78 of 29.2.2016.)

(2016/C 136/74)

The notice in the OJ in Case T-747/15 *EDF* v *Commission* should read as follows:

'Action brought on 22 December 2015 — EDF v Commission

(Case T-747/15)

(2016/C 078/35)

Language of the case: French

Parties

Applicant: Électricité de France (EDF) (Paris, France) (represented by: M. Debroux, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— principally, annul Articles 1, 2, 3, 4 and 5 of the Commission Decision of 22 July 2015 on State aid SA.13869 (C 68/2002) (ex NN 80/2002) — reclassification as capital of the tax-exempt accounting provisions for the renewal of the high-voltage transmission network (RAG) implemented by France in favour of EDF ("the contested decision") for infringement of essential procedural requirements, errors of law and errors of fact;

— in the alternative, annul Articles 1, 2 and 3 of the contested decision, in that the amount that EDF was required to reimburse was very significantly overestimated, and

— in any event, order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea, alleging infringement of Article 266 TFEU.

2. Second plea, alleging infringement of Article 107 TFEU. That plea is composed of two branches:

   — First branch, concerning the applicability of the private investor test, which is divided into five parts.

      — First part, according to which the Commission, without justification or stating reasons, did not take into account numerous documents and pieces of evidence which were duly submitted to it by France and EDF.

— Second part, according to which the Commission systematically confused the elements concerning respectively the applicability and the application of the private investor test.

— Third part, according to which the Commission wrongly ruled out the applicability of the prudent private investor criterion, solely because, in examining the measure, France had taken into account inter alia considerations relating to its status as a public authority, alongside considerations relating to its status as a shareholder.

— Fourth part, according to which the Commission wrongly individuated an obligation on the part of EDF to have a formal business plan in order to justify the applicability of the prudent private investor criterion.

— Fifth part, according to which the Commission disregarded the nature and purpose of that measure, its context, the objective it pursued and the rules to which it was subject.

— Second branch, concerning the application of the private investor test, which is divided into three parts.

— First part, according to which the Commission wrongly concluded that the Oxera Report was not admissible as evidence.

— Second part, according to which the Commission's methodology is vitiated by clear failings. First, the Commission took into account neither the context of the period in question, nor the criteria that investors at that time would have used. Secondly, the Commission's "tax gift" hypothesis not only constitutes an error of law, but also gave rise to errors in the evaluation of the adequacy of the investment. In the third place, the Commission committed multiple methodological errors, each of which suffices to demonstrate clearly that the private investor criterion was not applied.

— Third part, concerning the consequences of the methodological errors committed by the Commission.

3. Third plea, alleging a failure to state reasons for the contested decision.

In support of the action, the applicant also raises two pleas in law in the alternative.

1. First plea raised in the alternative, alleging that recovery of the majority of the aid is time barred. That plea in divided into two branches:

— First branch, according to which the aid in question was mainly existing aid stemming from a measure implemented before the European electricity market was opened to competition.

— Second branch, according to which a significant portion of the alleged aid stems from a measure implemented more than ten years before the first formal action taken in the investigation.

2. Second plea raised in the alternative, alleging errors of calculation committed by the Commission in determining the alleged aid. That plea in divided into three branches:

— First branch, according to which the Commission erred in relation to the total amount of the reserves.

— Second branch, according to which the Commission erred in relation to the applicable tax rate.

— Third branch, according to which the amount of the alleged aid should be reviewed on the basis of the correct information.'

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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