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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 189/01)

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

OJ C 178, 22.6.2013

Past publications

OJ C 171, 15.6.2013

OJ C 164, 8.6.2013

OJ C 156, 1.6.2013

OJ C 147, 25.5.2013

OJ C 141, 18.5.2013

OJ C 129, 4.5.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 26 March 2013 — Holger Forstmann Transporte GmbH & Co. KG v Hauptzollamt Münster

(Case C-152/13)

(2013/C 189/02)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Holger Forstmann Transporte GmbH & Co. KG

Defendant: Hauptzollamt Münster

Questions referred

1. Is the term 'manufacturer', within the meaning of the first indent of Article 24(2) of Council Directive 2003/96/EC [1] of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ 2003 L 283, p. 51, to be interpreted as also including coachbuilders or dealers, when they have fitted the fuel tank as part of a process of producing the vehicle, and the production process was, for technical and/or economic reasons, carried out through division of labour by various independent businesses?

2. If the first question should be answered in the affirmative: What interpretation is to be given, in such cases, to the factual criterion, in the first indent of Article 24(2) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ 2003 L 283, p. 51, whereby the vehicles in question must be 'of the same type'?

[1] OJ L 283, p. 51.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 28 March 2013 — Digibet Ltd., Gert Albers v Westdeutsche Lotterie GmbH & Co. OHG

(Case C-156/13)

(2013/C 189/03)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Digibet Ltd., Gert Albers

Respondent: Westdeutsche Lotterie GmbH & Co. OHG

Questions referred

1. Does it represent an inconsistent restriction on the gambling sector where:

   — on the one hand, in a member state organised as a federal state, the organisation and intermediation of public games of chance on the internet is, in principle, prohibited by the law in force in the overwhelming majority of the Länder (federal states) and — without an established right — can only be allowed, exceptionally, for lotteries and sporting bets in order to provide a suitable alternative to the illegal supply of games of chance as well as to combat the development and spread thereof, but

   — on the other hand, under the law in force in one of that member state's Länder, subject to certain specified objective conditions, an authorisation for the marketing of sporting bets on the internet must be issued to any EU citizen or equivalent legal person, thereby undermining the effectiveness of the restriction on the marketing of games of chance on the internet in force in the rest of the Federal Republic in achieving the legitimate public interest objectives which it pursues?

2. Does the answer to the first question depend on whether the different legal position in one Land removes altogether or significantly undermines the effectiveness of the restrictions on the marketing of games of chance on the internet in force in the other Länder in achieving the legitimate public interest objectives which they pursue?

If the answer to the first question is in the affirmative:

3. Is the inconsistency avoided by the Land with the divergent regulation adopting the restrictions on games of chance in force in the rest of the Länder, ever where, in relation to the administrative licensing contracts already concluded there, the previous more generous rules on internet games of chance in that Land remain in force for a transitional period of several years because those authorisations cannot be revoked, or cannot be revoked without incurring compensation payments which the Land would find difficult to bear?

4. Does the answer to the third question depend on whether, during the transition period of several years, the effectiveness of the restrictions on games of chance in force in the other Länder is removed altogether or significantly undermined?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia (Italy) lodged on 29 March 2013 — Idrodinamica Spurgo Velox and Others v Acquedotto Pugliese SpA

(Case C-161/13)

(2013/C 189/04)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicants: Idrodinamica Spurgo Velox and Others

Defendants: Acquedotto Pugliese SpA

Questions referred

1. Must Articles 1, 2a, 2c and 2f of Directive 1992/13/EEC [1] be interpreted as meaning that time for the purposes of bringing proceedings for a declaration that there has been an infringement of the rules governing the award of public procurements contracts runs from the date on which the applicant became aware — or, through the exercise of ordinary diligence, ought to have become aware — of the existence of that infringement?

2. Do Articles 1, 2a, 2c and 2f of Directive 1992/13/EEC preclude provisions of national procedural law, or interpretative practices, […] which allow the court to declare inadmissible an action for a declaration that there has been an infringement of the rules governing the award of public contracts, where, as a result of the conduct of the contracting authority, the applicant became aware of the infringement after the formal communication of the essential elements of the decision definitively awarding the contract?

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[1] Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ1992 L 76, p. 14).

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 12 April 2013 — Raad van bestuur van de Sociale verzekeringsbank v L.F. Evans

(Case C-179/13)

(2013/C 189/05)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: Raad van bestuur van de Sociale verzekeringsbank (Svb)

Defendant: L.F. Evans

Questions referred

1. Must Article 2 and/or Article 16 of Regulation 1408/71 [1] be construed as meaning that a person like Evans, who is a national of a Member State, who exercised her right of freedom of movement for workers, to whom the social security legislation of the Netherlands was applicable and who then went to work as a member of the service staff of the Consulate General of the United States of America in the Netherlands, from the commencement of such work no longer falls under the personal scope of Regulation 1408/71?

If not:

2. (a) Must Article 3 of Regulation 1408/71 and/or Article 7(2) of Regulation No 1612/68 [2] be construed as meaning that the application of privileged status to Evans, which in this case consists inter alia of not being compulsorily insured for the purposes of social security and of not paying contributions in that regard, should be considered a sufficient justification for discriminating on grounds of nationality?

(b) What significance must be attached in that regard to the fact that in December 1999 Evans, when asked, opted for the continuation of the privileged status?

(1) Council Regulation of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2).

(2) Council Regulation of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475).

Reference for a preliminary ruling from the Industrial Tribunals (Northern Ireland) (United Kingdom) made on 12 April 2013 — Valerie Lyttle, Sarah Louise Halliday, Clara Lyttle, Tanya McGerty v Bluebird UK Bidco 2 Limited

(Case C-182/13)

(2013/C 189/06)

Language of the case: English

Referring court

Industrial Tribunals (Northern Ireland)

Parties to the main proceedings

Applicants: Valerie Lyttle, Sarah Louise Halliday, Clara Lyttle, Tanya McGerty

Defendant: Bluebird UK Bidco 2 Limited

Questions referred

1. In the context of Article 1(1)(a)(ii) of Council Directive 98/59/EC (1), does 'establishment' have the same meaning as it has in the context of Article 1(1)(a)(i) of that Directive?

2. If not, can 'an establishment', for the purposes of Article 1(1)(a)(ii), be constituted by an organisational sub-unit of an undertaking which consists of or includes more than one local employment unit?

3. In Article 1(1)(a)(ii) of the Directive, does the phrase 'at least 20' refer to the number of dismissals across all of the employer's establishments, or does it instead refer to the number of dismissals per establishment? (In other words, is the reference to '20' a reference to 20 in any particular establishment, or to 20 overall?)

(1) Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies OJ L 225, p. 16

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 12 April 2013 — Fazenda Pública v Banco Mais SA

(Case C-183/13)

(2013/C 189/07)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Fazenda Pública

Defendant: Banco Mais SA

Question referred:

In a financial leasing contract under which the customer pays rent, the latter comprising financial payback, interest and other charges, does or does not the rent paid fall to be taken into account, in its entirety, in the denominator of the deductible proportion or, conversely, must only interest be taken into account, since it constitutes the remuneration, the profit, accruing to the bank from the leasing contract?

Request for a preliminary ruling from the Juzgado de lo Social de Barcelona (Spain) lodged on 15 April 2013 — Antonio Márquez Somohano v Universitat Pompeu Fabra

(Case C-190/13)

(2013/C 189/08)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Barcelona

Parties to the main proceedings

Applicant: Antonio Márquez Somohano

Defendant: Universitat Pompeu Fabra

Questions referred

1. Must clause 5 of the Framework Agreement on fixed-term work annexed to Council Directive 1999/70/EC (1) of 28 June 1999 be interpreted as precluding national legislative provisions such as Articles 48 and 53 of Ley Orgánica 6/2001 de Universidades of 21 December 2001, which do not provide for a maximum duration for successive employment contracts, in circumstances where there are no domestic legal measures in place to prevent abuse arising from the use of successive fixed-term employment contracts for university lecturers?

2. Must the definition of 'permanent worker' set out in clause 3 of the Framework Agreement annexed to Council Directive 1999/70/EC be interpreted as precluding a provision such as the second paragraph of additional provision 15(1) of the Estatuto de los Trabajadores which states that the employment contract of such a worker may be terminated where the contracting authority fills the post occupied?

3. In view of the fact that under domestic law it is deemed an appropriate measure, for the purposes of preventing and punishing the misuse of temporary employment contracts in the private sector, for workers that are considered to have a contract of indefinite duration to be entitled to receive compensation where the contract is terminated for a reason unrelated to the individual worker concerned, and that no equivalent measure exists in the public sector, is it an appropriate measure within the terms of clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC for government employees with contracts of indefinite duration to be given the same right to receive compensation as is laid down by law in respect of workers having contracts of indefinite duration in the private sector?

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

Appeal brought on 15 April 2013 by nfon AG against the judgment of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-283/11 Fon Wireless Ltd. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-193/13 P)

(2013/C 189/09)

Language of the case: German

Parties

Appellant: nfon AG (represented by: V. von Bomhard, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fon Wireless Ltd.

Form of order sought

— Set aside the judgment under appeal;

— In the alternative, set aside the judgment in so far as it upholds a likelihood of confusion on the basis of the earlier Community trade mark No 4719738 'fon' (figure);

— Order the applicant in the proceedings at first instance to pay the costs.

Pleas in law and main arguments

The present appeal is directed against the judgment of the General Court of 29 January 2013 in Case T-283/11, by which the General Court altered the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 March 2011 (Case R 1017/2009-4) relating to opposition proceedings between Fon Wireless Ltd. and nfon AG to the effect that nfon AG's appeal to the Board of Appeal was dismissed.

The only ground of appeal relied upon by the appellant is an infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. ([1]) There must, in the examination of the likelihood of confusion under Article 8(1)(b) of Regulation No 207/2009, be a detailed assessment of all the relevant facts of the individual case. The appeal claims that there has been a failure to comply with that requirement in three respects: first, the error of law made in the identification of the distinctive elements of the opposing marks in the comparison of the signs, second, the error made in automatically assuming the existence of a likelihood of confusion and, third, the lack of a comprehensive assessment of the likelihood of confusion on account of the failure to take into account sufficiently the limited distinctiveness of the element 'fon'.

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

Request for a preliminary ruling from the Juzgado de lo Social 1 de Benidorm (Spain) lodged on 16 April 2013 — Victor Manuel Julián Hernández and Others v Puntal Arquitectura S.L. and Others

(Case C-198/13)

(2013/C 189/10)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Benidorm

Parties to the main proceedings

Applicants: Victor Manuel Julián Hernández, Chems Eddine Adel, Jaime Morales Ciudad, Bartolomé Madrid Madrid, Martín Selles Orozco, Alberto Martí Juan and Said Debbaj

Defendants: Puntal Arquitectura S.L., Obras Alteramar, S.L., Altea Diseño y Proyectos, S.L., Ángel Muñoz Sánchez, Vicente Orozco Miro and Subdelegación del Gobierno de España en Alicante

Questions referred

1. Do the rules contained in Article 57 of the Workers' Statute in conjunction with Article 116(2) of the Recast Text of the Law on Employment Procedure, which provide for the practice operated by the Kingdom of Spain of paying directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought before the competent court, fall within the scope of Directive 2008/94/EC [1] of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, in particular Articles 1(1), 2(3), 2(4), 3, 5 and 11 thereof?

2. If the reply is in the affirmative, would the practice operated by the Kingdom of Spain of paying directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought, but of doing so only in the case of dismissals which have been declared by a court to be unfair and not in the case of dismissals which have been declared by a court to be null and void, be regarded as being contrary to Article 20 of the Charter of Fundamental Rights of the European Union [2] and, in any event, the general principle of equality and non-discrimination under European Union law?

3. In connection with the foregoing question, may a court such as the referring court refrain from applying a provision which permits the Kingdom of Spain to pay directly to workers, in the event of the insolvency of their employer, 'salarios de tramitación' falling due beyond the 60th (now the 90th) working day after the date on which the action for unfair dismissal was brought, but only in the case of dismissals which have been declared by a court to be unfair and not in the case of dismissals which have been declared by a court to be null and void, in circumstances where there do not appear to be any objective differences between the two types of dismissal within the context at issue ('salarios de tramitación')?

[1] OJ 2008 L 283, p. 36.
[2] OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 17 April 2013 — Johan Deckmyn, Vrijheidsfonds VZW v Helena Vandersteen and Others

(Case C-201/13)

(2013/C 189/11)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicants: Johan Deckmyn, Vrijheidsfonds VZW

Defendants: Helena Vandersteen, Christiane Vandersteen, Liliana Vandersteen, Isabelle Vandersteen, Rita Dupont, Amoras II CVOH, WPG Uitgevers België

Questions referred

1. Is the concept of 'parody' an independent concept in European Union law?

2. If so, must a parody satisfy the following conditions or conform to the following characteristics:

   — the display of an original character of its own (originality);

   — and such that the parody cannot reasonably be ascribed to the author of the original work;

   — be designed to provoke humour or to mock, regardless of whether any criticism thereby expressed applies to the original work or to something or someone else;

   — mention the source of the parodied work?

3. Must a work satisfy any other conditions or conform to other characteristics in order to be capable of being labelled as a parody?

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) made on 17 April 2013 — Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez v Secretary of State for the Home Department

(Case C-202/13)

(2013/C 189/12)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez

Defendant: Secretary of State for the Home Department

Questions referred

1. Does Article 35 of Directive 2004/38/EC [1] on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Directive') entitle a Member State to adopt a measure of general application to refuse, terminate, or withdraw the right conferred by Article 5(2) of the Directive exempting non-national EU family members who are holders of residence cards issued pursuant to Article 10 of the Directive ('residence card holders') from visa requirements?

2. Can Article 1 of Protocol No. 20 on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland entitle the United Kingdom to require residence card holders to have an entry visa which must be obtained prior to arrival at the frontier?

3. If the answer to question 1 or question 2 is yes, is the United Kingdom's approach to residence card holders in the present case justifiable, having regard to the evidence summarized in the referring court's judgment?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
OJ L 158, p. 77

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 April 2013 — Hauck GmbH & Co. KG v Stokke A/S and Others

(Case C-205/13)

(2013/C 189/13)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Hauck GmbH & Co. KG

Respondents: Stokke A/S, Stokke Nederland BV, Peter Opsvik, Peter Opsvik A/S

Questions referred

1. (a) Does the ground for refusal or invalidity in Article 3(1)(e)(i) of Directive 89/104/EEC, ([1]) as codified in Directive 2008/95/EC, ([2]) namely that shape trade marks may not consist exclusively of a shape which results from the nature of the goods themselves, refer to a shape which is indispensable to the function of the goods, or can it also refer to the presence of one or more substantial functional characteristics of goods which consumers may possibly look for in the goods of competitors?

   (b) If neither of those alternatives is correct, how should the provision then be interpreted?

2. (a) Does the ground for refusal or invalidity in Article 3(1)(e)(iii) of Directive 89/104/EEC, as codified in Directive 2008/95/EC, namely, that (shape) trade marks may not consist exclusively of a shape which gives substantial value to the goods, refer to the motive (or motives) underlying the relevant public's decision to purchase?

   (b) Does a 'shape which gives substantial value to the goods' within the meaning of the aforementioned provision exist only if that shape must be considered to constitute the main or predominant value in comparison with other values (such as, in the case of high chairs for children, safety, comfort and reliability) or can it also exist if, in addition to that value, other values of the goods exist which are also to be considered substantial?

   (c) For the purpose of answering Questions 2(a) and 2(b), is the opinion of the majority of the relevant public decisive, or may the court rule that the opinion of a portion of the public is sufficient in order to take the view that the value concerned is 'substantial' within the meaning of the aforementioned provision?

   (d) If the latter option provides the answer to Question 2(c), what requirement should be imposed as to the size of the relevant portion of the public?

3. Should Article 3(1) of Directive 89/104/EEC, as codified in Directive 2008/95/EC, be interpreted as meaning that the ground for exclusion referred to in subparagraph (e) of that article also exists if the shape trade mark consists of a sign to which the content of sub-subparagraph (i) of subparagraph (e) applies, and which, for the rest, satisfies the contents of sub-subparagraph (iii) of subparagraph (e)?

([1]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

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

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 18 April 2013 — Wagenborg Passagiersdiensten BV and Others v Minister van Infrastructuur en Milieu; other parties: Wagenborg Passagiersdiensten BV, Terschellinger Stoombootmaatschappij BV

(Case C-207/13)

(2013/C 189/14)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Claimants: Wagenborg Passagiersdiensten BV, Eigen Veerdienst Terschelling BV, MPS Stortemelk BV, MPS Willem Barentsz BV, MS Spathoek NV, G.A.F. Lakeman, trading as Rederij Waddentransport

Defendant: Minister van Infrastructuur en Milieu

Other parties: Wagenborg Passagiersdiensten BV, Terschellinger Stoombootmaatschappij BV

Questions referred

1. Does the designation of the Netherlands portion of the Waddenzee as an inland waterway (Zone 2 waterway) in Annex I to Directive 2006/87 [1] preclude the application of the Cabotage Regulation to public passenger transport services over the Waddenzee between the Netherlands mainland and the Wadden islands of Terschelling, Vlieland, Ameland and Schiermonnikoog?

2. Does the applicability of the Cabotage Regulation preclude application of the PSO Regulation, [2] having regard to Article 1(2) of the PSO Regulation?

3. Are Member States free, under Article 1(2) of the PSO Regulation, to declare just one or more specific parts of that regulation, in this case Article 5(3) and, related thereto, Article 5(4), to be applicable to services of public passenger transport by water?

4. Can the exception provided for in Article 5(4) of the PSO Regulation, more particularly the distance criterion of 300 000 kilometres laid down in that provision, (simply) be declared to be applicable to services of public passenger transport by water?

5. If the answer to Question 4 is in the affirmative, what consequences should then be attached to the fact that in the case in question operating licences for services of public passenger transport by water were granted in the absence of compliance with the requirements of Article 7(2) of the PSO Regulation?

[1] Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC (OJ 2006 L 389, p. 1).

[2] Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 18 April 2013 — Glaxosmithline Biologicals SA, Glaxosmithkline Biologicals, Niederlassung der Smithkline Beecham Pharma GmbH & Co. KG v Comptroller-General of Patents, Designs and Trade Marks

(Case C-210/13)

(2013/C 189/15)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Glaxosmithline Biologicals SA, Glaxosmithkline Biologicals, Niederlassung der Smithkline Beecham Pharma GmbH & Co. KG

Defendant: Comptroller-General of Patents, Designs and Trade Marks

Questions referred

1. Is an adjuvant which has no therapeutic effect on its own, but which enhances the therapeutic effect of an antigen when combined with that antigen in a vaccine, an 'active ingredient' within the meaning of Article 1(b) of Regulation 469/2009/EC [1]?

2. If the answer to question 1 is no, can the combination of such an adjuvant with an antigen nevertheless be regarded as a 'combination of active ingredients' within the meaning of Article 1(b) of Regulation 469/2009/EC?

[1] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products OJ L 152, p. 1

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 23 April 2013 — Administrația Finanțelor Publice a Municipiului Alexandria v George Ciocoiu

(Case C-214/13)

(2013/C 189/16)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Administrația Finanțelor Publice a Municipiului Alexandria

Defendant: George Ciocoiu

Question referred

Does Article 110 TFEU preclude the imposition by a Member State of a tax on pollutant emissions upon the first registration in that Member State of second-hand vehicles from another Member State of the European Union, when the levying and payment of that same tax, provided for under a legislative act in respect of second-hand vehicles on the national market of similar age, technical condition and mileage and payable on first transfer of ownership, have subsequently been suspended by a legislative act having the force of law?

Request for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 24 April 2013 — Oberbank AG v Deutscher Sparkassen- und Giroverband e.V.

(Case C-217/13)

(2013/C 189/17)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Appellant: Oberbank AG

Respondent: Deutscher Sparkassen- und Giroverband e.V.

Interested party: Deutsches Patent- und Markenamt

Questions referred

1. Does Article 3(1) and (3) of the directive [1] preclude an interpretation of national law according to which, for an abstract colour mark (in this case: red HKS 13) which is claimed for services in the financial affairs sector, a consumer survey must indicate an adjusted degree of association of at least 70 % in order to form a basis for the assumption that the trade mark has acquired a distinctive character following the use which has been made of it?

2. Is the first sentence of Article 3(3) of the directive to be interpreted to the effect that the time at which the application for the trade mark was filed — and not the time at which it was registered — is also relevant in the case where the trade mark proprietor claims, in his defence against an application for a declaration invalidating the trade mark, that the trade mark acquired a distinctive character, following the use made of it, in any event more than three years after the application, but prior to registration?

3. In the event that, under the abovementioned conditions, the time at which the application was filed is also relevant:

   Is the trade mark to be declared invalid if it is not clarified, and can no longer be clarified, whether it had acquired a distinctive character, following the use made of it, at the time when the application was filed? Or does the declaration of invalidity require the applicant seeking that declaration to prove that the trade mark had not acquired a distinctive character, following the use made of it, at the time when the application was filed?

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

Request for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 24 April 2013 — Banco Santander SA, Santander Consumer Bank AG v Deutscher Sparkassen- und Giroverband e.V.

(Case C-218/13)

(2013/C 189/18)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Appellants: Banco Santander SA, Santander Consumer Bank AG

Respondent: Deutscher Sparkassen- und Giroverband e.V.

Interested party: Deutsches Patent- und Markenamt

Questions referred

1. Does Article 3(1) and (3) of the directive [1] preclude an interpretation of national law according to which, for an abstract colour mark (in this case: red HKS 13) which is claimed for services in the financial affairs sector, a consumer survey must indicate an adjusted degree of association of at least 70 % in order to form a basis for the assumption that the trade mark has acquired a distinctive character following the use which has been made of it?

2. Is the first sentence of Article 3(3) of the directive to be interpreted to the effect that the time at which the application for the trade mark was filed — and not the date on which it was registered — is also relevant in the case where the trade mark proprietor claims, in his defence against an application for a declaration invalidating the trade mark, that the trade mark acquired a distinctive character, following the use made of it, in any event more than three years after the application, but prior to registration?

3. In the event that, also under the abovementioned conditions, the time at which the application was filed is relevant:

   Is the trade mark to be declared invalid if it is not clarified, and can no longer be clarified, whether it had acquired a distinctive character, following the use made of it, at the time when the application was filed? Or does the declaration of invalidity require the applicant seeking that declaration to prove that the trade mark had not acquired a distinctive character, following the use made of it, at the time when the application was filed?

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

Appeal brought on 25 April 2013 by Kalliopi Nikolaou against the judgment delivered by the General Court (Second Chamber) on 20 February 2013 in Case T-241/09 Nikolaou v Court of Auditors of the European Union

(Case C-220/13 P)

(2013/C 189/19)

Language of the case: Greek

Parties

Appellant: Kalliopi Nikolaou (represented by: V. Khristianos, dikigoros)

Other party to the proceedings: Court of Auditors of the European Union

Form of order sought

— set aside the judgment of the General Court of 20 February 2013 in Case T-241/09 and refer the case back to the General Court for judgment;

— order the defendant to pay the costs.

Pleas in law and main arguments

1. The appellant submits that the judgment of the General Court of 20 February 2013 contains legal rulings which clearly infringe rules of European Union law and she challenges them by means of an appeal.

2. According to the appellant, the judgment under appeal must be set aside because of infringement of fundamental rights and principles of European Union law, incorrect interpretation and application of European Union law, and the exceeding of jurisdiction (competence).

   Specifically, the grounds of appeal are as follows:

   — First, infringement of the presumption of innocence.

   — Second, infringement of the principle requiring cooperation in good faith with the Tribunal d'arrondissement, Luxembourg, pursuant to Article 4(3) TEU.

   — Third, exceeding of jurisdiction.

   — Fourth, incorrect interpretation and application of European Union law as regards the conditions for non-contractual liability and as regards Decision 99/50 of the Court of Auditors.

Action brought on 25 April 2013 — Kingdom of the Netherlands v European Commission

(Case C-223/13)

(2013/C 189/20)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M.K. Bulterman, J. Langer, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (OJ 2013 L 33, p. 14) in so far as Article 4(1) of Regulation No 93/2013 cannot be separated from the other provisions of that regulation;

— in the alternative, annul Article 4(1) of Regulation No 93/2013;

— order the European Commission to pay the costs.

Pleas in law and main arguments

First plea:

Infringement of Article 5(3) of Regulation No 2494/95 (1) and/or of the case-law of the Court of Justice as, under Article 4(1) of Regulation No 93/2013, Eurostat is designated the entity that is to establish a legally binding manual, and not the Commission as an EU institution.

Second plea:

Infringement of Article 338(1) TFEU by the use in Article 4(1) of Regulation No 93/2013, for the purposes of the compilation of statistical information, of a handbook instead of one of the legal instruments listed in Article 288 TFEU.

Third plea:

Infringement of Articles 5(3) and 14(3) of Regulation No 2494/95, read in conjunction with Article 5a of Decision 1999/468, [2] in that a different procedure is laid down in Article 4(1) of Regulation No 93/2013 than the regulatory procedure with scrutiny required under Regulation No 2494/95.

Fourth plea:

Infringement of Articles 290 TFEU and 291 TFEU, read in conjunction with Regulation No 182/2011, [3] in that the procedure laid down with regard to the establishment and updating of a handbook is not the procedure under Article 290 TFEU or one of the procedures provided for in Regulation No 182/2011.

[1] OJ 1995 L 257, p. 1.
[2] Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).
[3] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).

Action brought on 29 April 2013 — European Commission v Republic of Estonia

(Case C-240/13)

(2013/C 189/21)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by: O. Beynet, M. Heller and L. Naaber-Kivisoo, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt the laws and regulations to transpose Article 2(21), Article 9(5), (7) and (12), Article 10(5),the first sentence of Article 11(1), Article 11(5)(a) and (b), Article 16(2) and (3), the second, fourth and fifth sentences of Article 26(2)(c), Article 36, Article 37(1)(e), (f), (i), (k) and (p), Article 37(8), the second sentence of Article 37(10), Article 38(3), Article 40(3), and the fifth indent of point 1(a) and point 1(d), (f), (i) and (j) of Annex I of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, [1] or in any event by failing to notify the Commission of the adoption of the necessary provisions for transposition of the directive, the Republic of Estonia has failed to fulfil its obligations under Article 49(1) of the directive;

— impose on the Republic of Estonia, for breaching the obligation to notify the measures transposing the directive, in accordance with Article 260(3) TFEU, a penalty payment of EUR 5 068,8 a day from the date of the judgment of the Court of Justice;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 3 March 2011.

[1] OJ 2009 L 211, p. 55.

Action brought on 29 April 2013 — European Commission v Republic of Estonia

(Case C-241/13)

(2013/C 189/22)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by: O. Beynet, M. Heller and L. Naaber-Kivisoo, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt the laws and regulations to transpose Article 2(10), (20) and (22), Article 3(3) and (4), Article 7(3), Article 9(5), (7) and (12), Article 10(5), Article 11(5)(a) and (b), Articles 12, 13, 15 and 16, Article 26(2)(b), the second, fourth and fifth sentences of Article 26(2)(c), the third and fourth sentences of Article 26(2)(d), Article 26(3), Article 27(2), Article 33, the second and fourth subparagraphs of Article 36(4), Article 36(6) and (8), the third subparagraph of Article 36(9), Article 41(1)(d), (e), (i), (k), (n), (p), (q) and (s), Article 41(6)(c), the second and third sentences of Article 41(9), Article 41(10), Article 44(3), the second, third, fifth and seventh indents of the first subparagraph of point 1(a) of Annex I, the second subparagraph of point 1(a) of Annex I, point 1(b), (d), (f). (h), (i) and (j) of Annex I and point 2 of Annex I of Directive 2009/73/EC of the European Parliament and of

the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, ([1]) or in any event by failing to notify the Commission of the adoption of the necessary provisions for transposition of the directive, the Republic of Estonia has failed to fulfil its obligations under Article 54(1) of the directive;

— impose on the Republic of Estonia, for breaching the obligation to notify the measures transposing the directive, in accordance with Article 260(3) TFEU, a penalty payment of EUR 4224 a day from the date of the judgment of the Court of Justice;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 3 March 2011.

([1]) OJ 2009 L 211, p. 94.

Action brought on 30 April 2013 — European Commission v Kingdom of Sweden

(Case C-243/13)

(2013/C 189/23)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: J. Enegren and S. Petrova, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10, Sweden has failed to fulfil its obligations under Article 260(1) TFEU;

— Order Sweden to pay to the Commission, into the 'European Union own resources' account, a fine of EUR 14 912 per day for each day that the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10 have not been adopted, with effect from the date on which the judgment in that case was delivered until the date on which the judgment in Case C-607/10 is complied with;

— Order Sweden to pay to the Commission, into the same account, a lump sum of EUR 4 893 per day for each day that the measures necessary to comply with the judgment of the Court of Justice in Case C-607/10 have not been adopted, with effect from the date on which the judgment in that case was delivered until the date on which judgment is given in the present case or the date on which the measures necessary to comply with the judgment in Case C-607/10 are adopted, if that is earlier;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

In its judgment of 29 March 2012 in Case C-607/10 *European Commission* v *Kingdom of Sweden*, the Court held that '1. … by failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits issued in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that all existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of that directive, the Kingdom of Sweden has failed to fulfil its obligations under Article 5(1) of that directive.'

The Kingdom of Sweden has not yet adopted any measures to comply with the judgment of the Court of Justice in Case C-607/10. The Commission has therefore brought this action in accordance with Article 260(1) of the Treaty on the Functioning of the European Union and seeks an order imposing economic sanctions on the Kingdom of Sweden.

Reference for a preliminary ruling from High Court of Ireland made on 30 April 2013 — Ewaen Fred Ogieriakhi v Minister for Justice and Equality, Ireland, Attorney General, An Post

(Case C-244/13)

(2013/C 189/24)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Ewaen Fred Ogieriakhi

Defendants: Minister for Justice and Equality, Ireland, Attorney General, An Post

Questions referred

1. Can it be said that the spouse of an EU national who was not at the time himself a national of a Member State has 'legally resided with the Union citizen in the host Member State for a continuous period of five years' for the purposes of Article 16(2) of Directive 2004/38/EC [1], in circumstances where the couple had married in May 1999, where a right of residency was granted in October 1999 and where by early 2002 at the absolute latest the parties had agreed to live apart and where both spouses had commenced residing with entirely different partners by late 2002?

2. If the answer to Question 1 is in the affirmative and bearing in mind that the third country national claiming a right to permanent residence pursuant to Article 16(2) based on five years continuous residence prior to April 2006 must also show that his or her residency was in compliance with, *inter alia*, the requirements of Article 10(3) of Regulation (EEC) No. 1612/68 [2], does the fact that during the currency of that putative five year period the EU national left the family home and the third country national then commenced to reside with another individual in a new family home which was not supplied or provided for by (erstwhile) the EU national spouse mean that the requirements of Article 10(3) of Regulation 1612/68 are not thereby satisfied?

3. If the answer to Question 1 is in the affirmative and the answer to Question 2 is in the negative, then for the purposes of assessing whether a Member State has wrongfully transposed or otherwise failed properly to apply the requirements of Article 16(2) of the 2004 Directive, is the fact that the national court hearing an action for damages for breach of Union law has found it necessary to make a reference on the substantive question of the plaintiff's entitlement to permanent residence is itself a factor to which that court can have regard in determining whether the breach of Union law was an obvious one?

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
OJ L 158, p. 77

[2] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community
OJ L 257, p. 2

Request for a preliminary ruling from the Tribunal administratif de Pau (France) lodged on 6 May 2013 — Khaled Boudjlida v Préfet des Pyrénées-Atlantiques

(Case C-249/13)

(2013/C 189/25)

Language of the case: French

Referring court

Tribunal administratif de Pau

Parties to the main proceedings

Applicant: Khaled Boudjlida

Defendant: Préfet des Pyrénées-Atlantiques

Questions referred

1. What is the extent of the right to be heard laid down by Article 41 of the Charter of Fundamental Rights of the European Union for an illegally staying third-country national in respect of whom a decision falls to be taken as to whether or not he is to be returned? In particular, does that right include the right to be put in a position to analyse the information relied on against him as regards his right of residence, to express his point of view, in writing or orally, with a sufficient period of reflection, and to enjoy the assistance of counsel of his own choosing?

2. If necessary, must the extent of that right be adjusted or limited in view of the general interest objective of the return policy set out in Directive 2008/115? [1]

3. If so, what adjustments or limitations must be made, and on the basis of what criteria should they be established?

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

Action brought on 7 May 2013 — European Commission v Republic of Bulgaria

(Case C-253/13)

(2013/C 189/26)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: M. Heller, O. Beynet and P. Mihaylova, acting as Agents)

Defendant: Republic of Bulgaria

Form of order sought

The Commission claims that the Court should:

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 3(3) of Directive 2009/73/EC ([1]) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and with the second subparagraph of point 1(a) and points 1(b), (d), (f), (h) and (i) of Annex I to that directive, or in any event by failing to notify the Commission of the adoption of those measures, the Republic of Bulgaria has failed to fulfil its obligations under Article 54(1) of that directive;

— Order the Republic of Bulgaria, under Article 260(3) TFEU, to pay a penalty payment in the amount of EUR 8 448 per day as of the day of delivery of the judgment in the present case, for infringement of the duty to notify the Commission of the measures adopted to comply with Directive 2009/73/EC;

— Order the Republic of Bulgaria to pay the costs.

Pleas in law and main arguments

The period for the adoption of measures to comply with the Directive expired on 3 March 2011.

([1]) OJ 2009 L 211, p. 94.

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 13 May 2013 — Peter Flood v Health Service Executive

(Case C-255/13)

(2013/C 189/27)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Peter Flood

Defendant: Health Service Executive

Question referred

Is an insured citizen of a Member State ('the First Member State') who has been gravely ill for eleven years as a result of a serious medical condition which first manifested itself while that person was resident in the First Member State but was on holidays in another Member State ('the Second Member State') to be regarded as 'staying' in that Second Member State for that period for the purpose of either Article 19(1) or, alternatively, Article 20(1) and Article 20(2) of Regulation No 883/2004 ([1]) where the person in question has been effectively compelled by reason of his acute medical illness and the convenient proximity to specialist medical care physically to remain in that Member State for that period?

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

Request for a preliminary ruling from the Verwaltungsgerichts Sigmaringen (Germany) lodged on 13 May 2013 — Sevda Aykul v Land Baden-Württemberg

(Case C-260/13)

(2013/C 189/28)

Language of the case: German

Referring court

Verwaltungsgerichts Sigmaringen

Parties to the main proceedings

Applicant: Sevda Aykul

Defendant: Land Baden-Württemberg

Questions referred

1. Does the obligation concerning the mutual recognition of driving licences issued by Member States which is laid down in Article 2(1) of Directive 2006/126/EC preclude national legislation of the Federal Republic of Germany under which the right to use a foreign driving licence in Germany must be revoked *ex post facto* by the administrative authorities if the holder of the foreign driving licence drives a motor vehicle on that licence in Germany while under the influence of illegal drugs and thereafter under the relevant German provisions is no longer fit to drive?

2. If the answer to question 1 is in the affirmative, is this also the case where the issuing State is aware of the person in question driving while under the influence of drugs but takes no action and the risk represented by the holder of the foreign driving licence therefore persists?

3. If the answer to question 1 is in the negative, can the Federal Republic of Germany make reinstatement of the right to use a foreign driving licence in Germany subject to compliance with the national conditions applicable to such reinstatement?

4. (a) Can the reservation with respect to observance of the principle of territoriality of criminal and police laws laid down in Article 11(2) of Directive 2006/126/EC justify action under its driving licence legislation by a Member State other than the issuing State? For example, does that reservation allow the right to use a foreign driving licence in Germany to be revoked *ex post facto* by means of a preventive measure under criminal law?

(b) If the answer to question 4(a) is in the affirmative, does the competence to reinstate the right to use the foreign driving licence in Germany, taking into account the obligation of recognition, lie with the Member State which imposed the preventive measure or with the issuing State?

GENERAL COURT

Judgment of the General Court of 17 May 2013 — Parker ITR and Parker-Hannifin v Commission

(Case T-146/09) [1]

(Competition — Agreements, decisions and concerted practices — European market for marine hoses — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Price-fixing, market-sharing and the exchange of commercially sensitive information — Attributability of unlawful conduct — Fines — 2006 Guidelines on the method of setting fines — Legal certainty — Ceiling of 10 % — Mitigating circumstances — Cooperation)

(2013/C 189/29)

Language of the case: English

Parties

Applicants: Parker ITR Srl (Veniano, Italy) and Parker-Hannifin Corp. (Mayfield Heights, Ohio, United States) (represented by: B. Amory, F. Marchini Càmia, and F. Amato, lawyers)

Defendant: European Commission (represented: initially by N. Khan, V. Bottka and S. Noë, and subsequently by V. Bottka, S. Noë and R. Sauer, acting as Agents)

Re:

Application for partial annulment of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as that decision concerns the applicants, and, in the alternative, for annulment or a substantial reduction in the fine imposed on them in that decision

Operative part of the judgment

The Court:

1. *Annuls Article 1(i) of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as in that decision the European Commission found that Parker ITR Srl had participated in the infringement in respect of the period before 1 January 2002;*

2. *Annuls Article 2(e) of Decision C(2009) 428 final;*

3. *Sets the amount of the fine imposed on Parker ITR at EUR 6 400 000, of which Parker-Hannifin Corp. is jointly and severally liable for EUR 6 300 000;*

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

5. *Orders the Commission to bear its own costs and to pay those incurred by Parker ITR and Parker-Hannifin.*

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[1] OJ C 141, 20.6.2009.

Judgment of the General Court of 17 May 2013 — Trelleborg Industrie and Trelleborg v Commission

(Joined Cases T-147/09 and T-148/09) [1]

(Competition — Agreements, decisions and concerted practices — European market for marine hoses — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Price-fixing, market-sharing and the exchange of commercially sensitive information — Concept of continuing or repeated infringement — Limitation period — Legal certainty — Equal treatment — Fines — Gravity and duration of the infringement)

(2013/C 189/30)

Language of the case: English

Parties

Applicants: Trelleborg Industrie SAS (Clermont-Ferrand, France) (Case T-147/09); and Trelleborg AB (Trelleborg, Sweden) (Case T-148/09) (represented by: J. Joshua, Barrister, and E. Aliende Rodríguez, lawyer)

Defendant: European Commission (represented by: N. Khan, V. Bottka and S. Noë, acting as Agents)

Re:

Application for partial annulment of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as that decision concerns the applicants, and, in the alternative, for annulment or a substantial reduction in the fine imposed on them in that decision

Operative part of the judgment

The Court:

1. *Annuls Article 1(g) and (h) of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as it applies to the period from 13 May 1997 to 21 June 1999;*

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

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

(1) OJ C 153, 4.7.2009.

Judgment of the General Court of 17 May 2013 — MRI v Commission

(Case T-154/09) (1)

(Competition — Agreements, decisions and concerted practices — European market for marine hoses — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Price-fixing, market-sharing and the exchange of commercially sensitive information — Concept of continuing or repeated infringement — Limitation period — Obligation to state reasons — Equal treatment — Legal certainty — Fines — Gravity and duration of the infringement — Extenuating circumstances — Cooperation)

(2013/C 189/31)

Language of the case: Italian

Parties

Applicant: Manuli Rubber Industries SpA (MRI) (Milan, Italy) (represented by: L. Radicati di Brozolo, M. Pappalardo and E. Marasà, lawyers)

Defendant: European Commission (represented by: V. Di Bucci, S. Noë and L. Prete, acting as Agents)

Re:

Application for partial annulment of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as that decision concerns the applicant, and, in the alternative, for annulment of or a substantial reduction in the fine imposed on it in that decision

Operative part of the judgment

The Court:

1. *Annuls Article 2(f) of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses);*

2. *Sets the amount of the fine imposed on MRI at EUR 4 900 000;*

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

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

(1) OJ C 141, 20.6.2009.

Judgment of the General Court of 16 May 2013 — Gap granen & producten v Commission

(Case T-437/10) (1)

(Non-contractual liability — Import of high-quality durum wheat — Import duties — Regulation (EC) No 919/2009 — Regulation (EC) No 1249/96 — Sufficiently serious breach of a rule of law conferring rights on individuals — Material loss — Causal link)

(2013/C 189/32)

Language of the case: Dutch

Parties

Applicant: Gap granen & producten (Zoersel, Belgium) (represented by: C. Ronse, A. Hansebout, K. Claeyé and J, Muyldermans, lawyers)

Defendant: European Commission (represented by: D. Triantafyllou and B. Burggraaf, Agents)

Re:

Action for compensation under Article 340 TFEU for compensation in respect of the harm allegedly suffered by the applicant as a result of the fixing of import duties on high-quality durum wheat by Commission Regulation (EC) No 919/2009 of 1 October 2009 amending Regulation (EC) No 915/2009 fixing the import duties in the cereals sector applicable from 1 October 2009 (OJ 2009 L 259, p. 5).

Operative part of the judgment

The Court:

1. *The European Commission is ordered to compensate Gap SA granen & producten NV for the loss suffered by it as a result of the application of Commission Regulation (EC) No 919/2009 of 1 October 2009 amending Regulation (EC) No 915/2009 fixing the import duties in the cereals sector applicable from 1 October 2009, in so far as that regulation did not take account of the fob quotation or use a calculation method which was representative of actual freight costs for the fixing of import duties for high-quality durum wheat.*

2. *Gap granen & producten and the Commission are ordered to provide the General Court with the amounts to be paid, established by common agreement, within six months of the date of judgment;*

3. *If the parties fail to reach an agreement, Gap granen & producten and the Commission are to provide the General Court with their forms of order sought, including figures, within the same period;*

4. *Costs are reserved.*

(1) OJ C 317, 20.11.2010.

Judgment of the General Court of 16 May 2013 — Seba Diş Tiçaret ve Nakliyat v OHIM — von Eicken (SEBA TRADITION)

(Case T-508/10) [1]

(Community trade mark — Invalidity proceedings — Community figurative mark SEBA TRADITION — Earlier national figurative mark JOHANN WILHELM VON EICKEN TRADITION — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 189/33)

Language of the case: German

Parties

Applicant: Seba Diş Tiçaret ve Nakliyat AŞ (Maltepe, Turkey) (represented by: H. Wilde, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Joh. Wilh. von Eicken GmbH (Lübeck, Germany) (represented by: C. Rohnke and F. Thiering, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 August 2010 (Case R 559/2009-4), relating to invalidity proceedings between Joh. Wilh. von Eicken GmbH and Seba Diş Tiçaret ve Nakliyat AŞ.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Seba Diş Tiçaret ve Nakliyat AŞ to pay the costs.*

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[1] OJ C 346, 18.12.2010.

Judgment of the General Court of 16 May 2013 — Reber v OHIM — Klusmeier (Wolfgang Amadeus Mozart PREMIUM)

(Case T-530/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark Wolfgang Amadeus Mozart PREMIUM — Earlier national figurative marks W. Amadeus Mozart — No genuine use of the earlier mark — Article 15(1), first subparagraph and second subparagraph(a), and Article 42(2) and (3) of Regulation (EC) No 207/2009)

(2013/C 189/34)

Language of the case: German

Parties

Applicant: Reber Holding GmbH & Co. KG (Bad Reichenhall, Germany) (represented by: O. Spuhler and M. Geitz, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by R. Manea, then by D. Walicka, agents

Other party to the proceedings before the Board of Appeal of OHIM: Anna Klusmeier (Bielefeld, Germany) (represented by: G. Schmitt-Gaedke, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 14 September 2010 (Case R 363/2008-4), relating to opposition proceedings between Reber Holding GmbH & Co. KG and Ms Anna Klusmeier

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Reber Holding GmbH & Co. KG to pay the costs, including the costs necessarily incurred by Mrs Anna Klusmeier for the purpose of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

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[1] OJ C 30, 29.1.2011.

Judgment of the General Court of 16 May 2013 — Nath Kalsi v OHIM — American Clothing Associates (RIDGE WOOD)

(Case T-80/11) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark RIDGE WOOD — Earlier Community figurative mark River Woods North-Eastern Suppliers — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 189/35)

Language of the case: German

Parties

Applicants: Dwarka Nath Kalsi and Ajit Nath Kalsi (Agra, India) (represented by: J. Schmidt, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: American Clothing Associates (Evergem, Belgium) (represented by: C. De Keersmaeker, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 19 November 2010 in Case R 599/2010-1, relating to opposition proceedings between, on the one hand, American Clothing Associates and, on the other hand, Dwarka Nath Kalsi and Ajit Nath Kalsi

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 19 November 2010 (Case R 1073/2010-2) in so far as it concerns goods in Class 24 covered by the mark applied for and the services 'processing and finishing of skins, leather, furs and textiles' in Class 40 and covered by the earlier mark No 2785459;*

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

3. *Orders Dwarka Nath Kalsi and Ajit Nath Kalsi, and OHIM to each pay their own costs;*

4. *Orders American Clothing Associates to pay its own costs.*

([1]) OJ C 103, 2.4.2011.

Judgment of the General Court of 16 May 2013 — Canga Fano v Council

(Case T-281/11 P) ([1])

(Appeal — Civil service — Officials — Promotion — 2009 promotion procedure — Decision not to promote the applicant to grade AD 13 — Comparison of merits — Review by the court of the manifest error of assessment)

(2013/C 189/36)

Language of the case: French

Parties

Appellant: Diego Canga Fano (Brussels, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union (represented by: M. Bauer and J. Herrmann, Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) of 24 March 2011 in Case F-104/09 *Canga Fano* v *Council*, not yet published in the ECR, and seeking that that judgment be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Diego Canga Fano to bear his own costs and to pay those incurred by the Council of the European Union in these proceedings.*

([1]) OJ C 238, 13.8.2011.

Judgment of the General Court of 17 May 2013 — Greece v Commission

(Case T-294/11) ([1])

(EAGGF — 'Guarantee section' — EAGF and EAFRD — Expenditure excluded from financing — Olive oil — Arable crops — Manifest error of assessment — Increase in the correction due to recurrence of the infringement — Effect of the reform of the CAP on the correction — Proportionality — Nature of the expenditure intended for the establishment of the Olive GIS)

(2013/C 189/37)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias and S. Papaïoannou, Agents)

Defendant: European Commission (represented by: D. Triantafyllou and A. Markoulli, Agents)

Re:

Application for annulment of the Commission's Implementing Decision 2011/244/EU of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33) so far as concerns the Hellenic Republic

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 238, 13.8.2011.

Judgment of the General Court of of 17 May 2013 — Bulgaria v Commission

(Case T-335/11) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Single area payment — 'Disadvantaged areas' — Complementary national direct payments — Operation of the geographic information system and of the identification system for agricultural parcels — Article 31 of Regulation (EC) No 1290/2005 — Proportionality — Legal certainty — obligation to state reasons)

(2013/C 189/38)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: E. Petranova and T. Ivanov, acting as Agents)

Defendant: European Commission (represented by: P. Rossi, D. Dimov, G. Koleva and D. Stefanov, acting as Agents)

Re:

Application for annulment of Commission Implementing Decision 2011/244/EU of 15 April 2001, on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33), as regards the Republic of Bulgaria

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the Republic of Bulgaria to pay the costs.*

([1]) OJ C 331, 12.11.2011.

Judgment of the General Court of 16 May 2013 — Restoin v OHIM (EQUIPMENT)

(Case T-356/11) ([1])

(Community trade mark — Application for Community word mark EQUIPMENT — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2013/C 189/39)

Language of the case: French

Parties

Applicant: Restoin (Paris, France) (represented by: A. Alcaraz, lawyer)

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

Re:

Action brought against the decision of the Fourth Chamber of the Board of Appeal of OHIM of 14 April 2011 (Case R 1430/2010-4), concerning an application for registration of the word mark EQUIPMENT as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Restoin to pay the costs.*

([1]) OJ C 269, 1.9.2011.

Judgment of the General Court of 16 May 2013 — Iran Transfo v Council

(Case T-392/11) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Manifest error of assessment)

(2013/C 189/40)

Language of the case: German

Parties

Applicant: Iran Transfo (Tehran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union (represented by: M. Bishop and J.-P. Hix, agents)

Intervener in support of the defendant: European Commission (represented by: F. Erlbacher and T. Scharf, agents)

Re:

Annulment of Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65), in so far as that decision concerns the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns Iran Transfo;*

2. *Orders the effects of Decision 2011/299, in so far as it concerns Iran Transfo, to be maintained for a period which may not exceed two months and ten days from the date of delivery of this judgment;*

3. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Iran Transfo;*

4. *Orders the European Commission to bear its own costs.*

([1]) OJ C 290, 1.10.2011.

Judgment of the General Court of 17 May 2013 — Sanofi Pasteur MSD v OHIM — Mundipharma (Representation of two devices of crossing sickles)

(Case T-502/11) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark representing two devices of crossing sickles — Earlier national and international figurative marks representing two devices of ribbons — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2013/C 189/41)

Language of the case: German

Parties

Applicant: Sanofi Pasteur MSD SNC (Lyon, France) (represented by: T. de Haan, P. Péters and V. Wellens, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Mundipharma AG (Basel, Switzerland) (represented by: F. Nielsen, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 22 July 2011 (Case R 1904/2010-4), relating to opposition proceedings between Sanofi Pasteur MSD SNC and Mundipharma AG

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sanofi Pasteur MSD SNC to pay the costs.*

[1] OJ C 340, 19.11.2011.

Judgment of the General Court of 16 May 2013 — Verus v OHIM — Performance Industries Manufacturing (VORTEX)

(Case T-104/12) [1]

(Community trade mark — Opposition procedure — Application for registration of the Community word mark VORTEX — Earlier Community word mark VORTEX — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Right of priority — Article 29 of Regulation No 207/2009 — Partial surrender — Article 50 of Regulation No 207/2009 — Infringement of the right to be heard — Article 75, second sentence, of Regulation No 207/2009)

(2013/C 189/42)

Language of the case: German

Parties

Applicant: Verus Eood (Sofia, Bulgaria) (represented initially by S. Vykydal, then by F. Henkel, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Performance Industries Manufacturing, Inc. (Odessa, Florida, United States)

Re:

Action brought against the decision of the Fourth Chamber of the Board of Appeal of OHIM of 21 December 2011 (Case R 512/2011-4), relating to opposition proceedings between Verus Eood and Performance Industries Manufacturing Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Verus Eood to pay the costs.*

[1] OJ C 157, 2.6.2012.

Judgment of the General Court of 17 May 2013 — Rocket Dog Brands LLC v OHIM — Julius-K9 (JULIUS K9)

(Case T-231/12) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark JULIUS K9 — Earlier Community figurative marks K9 — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 189/43)

Language of the case: English

Parties

Applicant: Rocket Dog Brands LLC (Hayward, United-States) (represented by: C. Aikens, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: Julius-K9 bt (Szigetszentmiklós, Hungary)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 March 2012 (Case R 1124/2011-4), relating to opposition proceedings between Rocket Dog Brands LLC and Julius-K9 bt.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Rocket Dog Brands LLC to pay the costs.*

([1]) OJ C 227, 28.7.2012.

Judgment of the General Court of 16 May 2013 — Aleris v OHIM — Carefusion 303 (ALARIS)

(Case T-353/12) ([1])

(Community trade mark — Revocation proceedings — Community word mark ALARIS — Genuine use of the mark — Article 51(1)(a) and (2) of Regulation (EC) No 207/2009)

(2013/C 189/44)

Language of the case: English

Parties

Applicant: Aleris Holding AB (Stockholm, Sweden) (represented by: A. Kylhammar and K. Westerberg, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Carefusion 303, Inc. (San Diego, California, United States)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 11 May 2012 (Case R 334/2011-5) relating to revocation proceedings between Aleris Holding AB and Carefusion 303, Inc.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 May 2002 (Case R 334/2011-5) in so far as it rejects the application for revocation of the trade mark ALARIS in respect of the goods falling within Class 10 other than infusion systems, syringe pumps, volumetric pumps, controllers, thermometers and disposable thermometers;*

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

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

([1]) OJ C 311, 13.10.2012.

Order of the General Court of 14 May 2013 — Régie Networks and NRJ Global v Commission

(Case T-273/11) ([1])

(Action for annulment — State aid — State aid scheme implemented by France in favour of radio broadcasting — Decision not to raise objections — Lack of interest in bringing proceedings — Manifest inadmissibility)

(2013/C 189/45)

Language of the case: French

Parties

Applicants: Régie Networks (Lyon, France) and NRJ Global (Paris, France) (represented by: B. Geneste and C. Vannini, lawyers)

Defendant: European Commission (represented by: B. Stromsky and S. Thomas, acting as Agents)

Re:

Annulment of Commission Decision C(2010) 6483 final of 29 September 2010 concerning the State aid scheme No C-4/2009 (ex N 679/97) implemented by the [French Republic] to promote radio broadcasting and declaring that scheme compatible with the internal market, subject to compliance with certain conditions.

Operative part of the order

1. *The action is dismissed.*

2. *Régie Networks and NRJ Global shall pay the costs.*

([1]) OJ C 226, 30.7.2011.

Order of the General Court of 16 May 2013 — BybyOKD v Commission

(Case T-559/11) ([1])

(Action for annulment — State aid — Sale by the Czech Republic of its minority shareholding in the company OKD as part of a privatisation — Decision finding no State aid — Professional association — No individual concern — Concept of party concerned — Inadmissibility)

(2013/C 189/46)

Language of the case: Czech

Parties

Applicant: Sdružení nájemníků BybyOKD.cz (Ostrava, Czech Republic) (represented by: R. Pelikán, lawyer)

Defendant: European Commission (represented by: T. Maxian Rusche and P. Němečková, acting as Agents)

Re:

Action for annulment of Commission Decision C(2011) 4927 final of 13 July 2011 concerning the sale to Karbon Invest a.s. of the minority shareholding of the Czech State in OKD a.s. and declaring that that sale did not constitute State aid (State aid No SA.25076 (2011/NN) (OJ 2011 C 225, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Sdružení nájemníků BybyOKD.cz shall pay the costs.*

3. *There is no need to adjudicate on the application for leave to intervene of RPG Industries Limited.*

([1]) OJ C 13, 14.1.2012.

Order of the General Court of 6 May 2013 — Ethniko kai Kapodistriako Panepistimio Athinon v ECDC

(Case T-577/11) ([1])

(Action for annulment — Public service contracts — Tendering procedure — Provision to the ECDC of systematic review and expert guidance services on the public health effectiveness of molecular typing of viral pathogens — Rejection of a tenderer's bid — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2013/C 189/47)

Language of the case: Greek

Parties

Applicant: Ethniko kai Kapodistriako Panepistimio Athinon (Athens, Greece) (represented by: S. Garipis, lawyer)

Defendant: European Centre for Disease Prevention and Control (ECDC) (represented by: R. Trott, Agent, assisted by D. Waelbroeck and E. Bourtzalas)

Re:

Application for annulment of the ECDC's decision of 25 August 2011 rejecting the bid submitted by the applicant in the tendering procedure PROC/2001/041 concerning the provision of systematic review and expert guidance services on the public health effectiveness of molecular typing of viral pathogens (OJ 2011/S 109-179084).

Operative part of the order

1. *The action is dismissed;*

2. *Ethniko kai Kapodistriako Panepistimio Athinon shall bear its own costs and pay those incurred by the European Centre for Disease Prevention and Control (ECDC).*

([1]) OJ C 25, 28.1.2012.

Order of the President of the General Court of 15 May 2013 — Germany v Commission

(Case T-198/12 R)

(Interim relief — Limit values for antimony, arsenic, barium, lead and mercury in toys — Refusal of the Commission to approve, in their entirety, the national provisions notified by the German authorities maintaining the limit values for those substances — Application for provisional measures — Admissibility — Urgency — Fumus boni juris — Balance of interests)

(2013/C 189/48)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and A. Wiedmann, Agents)

Defendant: European Commission (represented by: M. Patakia and G. Wilms, Agents)

Re:

Application for provisional approval to continue to apply the national provisions notified by the German authorities concerning the limit values for antimony, arsenic, barium, lead and mercury in toys until the General Court has decided on the substance of the case.

Operative part of the order

1. *The European Commission is ordered to authorise the continued application of the national provisions notified by the Federal Republic of Germany concerning the limit values for antimony, arsenic, barium, lead and mercury in toys until the General Court has delivered its judgment in the main proceedings.*

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

3. *The costs are reserved.*

Order of the General Court of 7 May 2013 — Cat Media Pty Ltd v OHIM — Avon Products (RETANEW)

(Case T-246/12) [1]

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

(2013/C 189/49)

Language of the case: English

Parties

Applicant: Cat Media Pty Ltd (Warriewood, Australia) (represented by: I. De Freitas, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Avon Products, Inc. (New York, United States) (represented by: U. Stelzenmüller, lawyer)

Re:

Action brought against the decision of the First Chamber of the Board of Appeal of OHIM of 21 March 2012 (Case R 740/2011-1), concerning opposition proceedings between Avon Products, Inc. and Cat Media Pty Ltd.

Operative part of the order

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

2. *The applicant and the intervener shall bear their own costs and shall each pay half of the costs incurred by the defendant.*

[1] OJ C 243, 11.8.2012.

Order of the General Court of 17 May 2013 — FH v Commission

(Case T-405/12) [1]

(Action for annulment and damages — Decision of the Commission to withdraw from the applicant the documents giving him access to the Commission buildings — Action for annulment — Lack of interest in bringing proceedings — Inadmissibility — Action for damages — Causal link — Harm — Action manifestly unfounded in law)

(2013/C 189/50)

Language of the case: French

Parties

Applicant: FH (Brussels, Belgium) (represented by: É. Boigelot and R. Murru, lawyers)

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

Re:

Firstly, annulment of the Commission decision of 10 July 2012 withdrawing from the applicant the documents giving him access to the Commission buildings and, secondly, an action seeking compensation for the harm allegedly suffered by the applicant following the adoption of the contested decision.

Operative part of the order

1. *The action is dismissed.*

2. *FH shall bear his own costs and pay the costs incurred by the European Commission.*

[1] OJ C 331, 27.10.2012.

Order of the President of the General Court of 29 April 2013 — AbbVie v EMA

(Case T-44/13 R)

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA containing information submitted by an undertaking as part of its application for authorisation to place a medicinal product on the market — Decision to grant a third party access to the documents — Application for suspension of operation of a measure — Urgency — Prima facie case — Weighing up of interests)

(2013/C 189/51)

Language of the case: English

Parties

Applicants: AbbVie, Inc. (Wilmington, Delaware, United States); and AbbVie Ltd (Maidenhead, United Kingdom) (represented by: P. Bogaert and G. Berrisch, lawyers, B. Kelly, G. Castle, Solicitors, D. Anderson QC and D. Scannell, Barrister)

Defendant(s): European Medicines Agency (EMA) (represented by: T. Jablonski, N. Rampal Olmedo and A. Spina, Agents)

Re:

Application, in essence, for suspension of operation of EMA Decision EMA/748792/2012 of 14 January 2013, granting a third party access to certain documents containing information submitted as part of an application for authorisation to place the medicinal product Humira, used to treat Crohn's Disease, on the market, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Operative part of the order

1. *The operation of EMA Decision EMA/748792/2012 of 14 January 2013 of the European Medicines Agency (EMA), granting a third party access to Clinical Study Reports M02-404, M04-691 and M05-769, submitted as part of an application for authorisation to place the medicinal product Humira, used to treat Crohn's Disease, on the market, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, is suspended.*

2. *The EMA is ordered not to disclose the documents referred to in point 1 of the operative part of this order.*

3. *Costs are reserved.*

Order of the President of the General Court of 25 April 2013 — InterMune UK and Others v EMA

(Case T-73/13 R)

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA containing information submitted by an undertaking as part of its application for authorisation to place a medicinal product on the market — Decision to grant a third party access to the documents — Application for suspension of operation of a measure — Urgency — Prima facie case — Weighing up of interests)

(2013/C 189/52)

Language of the case: English

Parties

Applicants: UK Ltd (London (United Kingdom)); InterMune, Inc. (Brisbane, California, United States); and InterMune International AG (Muttenz, Switzerland) (represented by: I. Dodds-Smith, A. Williams, Solicitors, T. de la Mare, QC and F. Campbell, Barrister)

Defendant: European Medicines Agency (EMA) (represented by: T. Jablonski, N. Rampal Olmedo and A. Spina, acting as Agents)

Re:

Application, in essence, for suspension of operation of EMA Decision EMA/24685/2013 of 15 January 2013, granting a third party access to certain documents containing information submitted as part of an application for authorisation to place the medicinal product Esbriet on the market, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), inasmuch as that information is not yet within the public domain

Operative part of the order

1. *The operation of EMA Decision EMA/24685/2013 of 15 January 2013, granting a third party access, under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, to the documents '2.4 Non-clinical Overview; 2.5 Clinical Overview; 2.6 Non-clinical Summary; and 2.7 Clinical Summary', submitted as part of an application for authorisation to place the medicinal product Esbriet on the market, is suspended inasmuch as those documents contain information which is not yet publicly available.*

2. *The EMA is ordered not to disclose the documents referred to in point 1 of the operative part of this order in a version which is more detailed than the edited version of those documents as provided by InterMune UK Ltd, InterMune, Inc., and InterMune International AG to the EMA on 8 October 2012.*

3. *Costs are reserved.*

Action brought on 15 April 2013 — Saf-Holland v OHIM (INTEGRAL)

(Case T-217/13)

(2013/C 189/53)

Language of the case: German

Parties

Applicant: Saf-Holland GmbH (Bessenbach, Germany) (represented by M.-C. Seiler, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2013 in Case R 2087/2011-1;

— Amend the contested decision in such a way that the preceding refusal decision of OHIM of 14 September 2011 is annulled;

— In the alternative, amend the contested decision in such a way that the registration procedure is continued;

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

Pleas in law and main arguments

Community trade mark concerned: the word mark INTEGRAL for goods and services in Classes 9, 12, 35 and 37 — Community trade mark application No 9 508 466

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 18 April 2013 — Nutrexpa v OHIM — Kraft Foods Italia Intellectual Property (Cuétara Maria ORO)

(Case T-218/13)

(2013/C 189/54)

Language in which the application was lodged: Spanish

Parties

Applicant: Nutrexpa, SL (Barcelona, Spain) (represented by: J. Grau Mora, M. Ferrándiz Avendaño and Y. Sastre Canet, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kraft Foods Italia Intellectual Property Srl (Milan, Italy)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 February 2013 in Case R 2455/2011-1, whereby it rejected the application for registration of the figurative Community trade mark No 8 481 863 'Cuétara Maria ORO' for 'Preserved frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; milk products' (Class 29) and 'Coffee, tea, cocoa, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; sauces (condiments); biscuits' (Class 30), which should consequently be registered by OHIM;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark containing the word elements 'Cuétara Maria ORO' — Application for registration of Community trademark No 8 481 863 for goods in Classes 5, 29 and 30

Proprietor of the mark or sign cited in the opposition proceedings: Kraft Foods Italia Intellectual Property Srl

Mark or sign cited in opposition: National and Community figurative marks containing the word element 'ORO' for goods in Classes 29 and 30

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 19 April 2013 — NIIT Insurance Technologies v OHIM (EXACT)

(Case T-228/13)

(2013/C 189/55)

Language of the case: German

Parties

Applicant: NIIT Insurance Technologies Ltd. (London, United Kingdom) (represented by M. Wirtz, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 February 2013 in Case R 1307/2012-4 concerning Community trade mark registration 010355501, Word: EXACT and the previous decision of the Trade Marks Department of OHIM of 29 May 2012 concerning Community trade mark registration 010355501, Word: EXACT, in so far as the trade mark was refused protection;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word Mark EXACT for goods and services in Classes 9, 16 and 42 — Community trade mark registration No 10 355 501

Decision of the Examiner: Partial rejection of the registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

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

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

— Infringement of Article 83 of Regulation No 207/2009 in conjunction with the principle of equal treatment and of Articles 6 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950, in the version of Protocol 11, which entered into force on 1 November 1998;

— Infringement of Article 56 of the Treaty on the Functioning of the European Union.

Action brought on 2 May 2013 — United Kingdom v Commission

(Case T-245/13)

(2013/C 189/56)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: D. Wyatt, QC, V. Wakefield, Barrister, and C. Murrell, agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision 2013/123/EU of 26 February 2013 excluding from EU financing certain expenditure incurred by the Member States, to the extent of an entry in the Annex relating to a 5.19% extrapolated correction of expenditure incurred in Northern Ireland in Financial Year 2010 amounting to EUR 16 513 582,57 (see OJ 2013 L 67, p. 31); and

— Order the Commission to pay the United Kingdom's costs.

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 committed errors of law and of fact, and failed to take into account considerations relevant to the scale of possible loss to EU funds in claim year 2009 resulting from errors in determination of eligible area in 2005 affecting the initial allocation of entitlements, and (in consequence) failed to take into account the fact that in the great majority of cases of over-payments to farmers the risk to the funds was a risk confined to approximately 22 % of expenditure, being the proportion of expenditure comprising the 'area element'.

2. Second plea in law, alleging that the Commission committed errors of law and fact, in that it wrongly concluded that the Northern Ireland Department of Agriculture and Rural Development ('DARD') failed to apply, properly or at all, provisions on recoveries of undue payments, penalties, and intentional non compliance, and that the Commission thus overestimated and/or failed to take into account considerations relevant to the scale of possible loss to the EU funds. In particular, the Commission:

   — wrongly criticised an alleged «systematic» recalculation of payment entitlements by DARD;

   — wrongly claimed that errors in 2005 could have material effects on the historical element of the entitlement value;

   — adopted the wrong method of calculation of overpayments;

   — adopted the wrong approach to penalties, in particular by:

      — adopting the wrong method of calculating penalties; and

      — wrongly claiming that a penalty should be imposed for each year in cases where a penalty was applicable in 2005 but not in subsequent claim years, in this case in 2009, where over-payment resulted from the same error as that penalised in 2005;

   — adopted the wrong approach to intentional non-compliance.

Action brought on 6 May 2013 — Gemeente Nijmegen v Commission

(Case T-251/13)

(2013/C 189/57)

Language of the case: Dutch

Parties

Applicant: Gemeente Nijmegen (Nijmegen, Netherlands) (represented by: H. Janssen and S. van der Heul, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2013) 1152 final of 6 March 2013 in so far as it concerns the alleged aid awarded by the Municipality of Nijmegen to NEC;

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

Pleas in law and main arguments

The Municipality (*Gemeente*) of Nijmegen built the multi-purpose sports complex 'De Eendracht' next to the Goffert football stadium in Goffert Park in 2003. Both the Goffert Stadium and De Eendracht were leased to the Nijmegen professional football association, NEC. The lease agreement in respect of De Eendracht includes an agreed right for NEC to acquire De Eendracht.

In mid-2009 the Municipality drew up a plan to develop a large part of Goffert Park as a top-class sport and innovation park (*Topsport- en Innovatiepark*; TIP). It was expressly intended that, inter alia, the existing (but to be extended) Goffert Stadium and De Eendracht were to be incorporated into the TIP.

In 2008 and 2009 NEC informed the Municipality that it wished to exercise its right to buy De Eendracht from the Municipality. That proposal threatened the Municipality's plans regarding the TIP. NEC appeared to be prepared to surrender its right to acquire De Eendracht in return for payment. On the basis of an independent valuation the purchase price was set at EUR 2.22 million. The Municipality paid that sum to NEC.

The Commission decided, by decision of 6 March 2013, to initiate the procedure under Article 108(2) TFEU, and the Municipality's purchase of the right to acquire De Eendracht was deemed to constitute State aid for the purposes of Article 107(1) TFEU. The Municipality contests that decision.

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

1. First plea, alleging breach of the principles of equality and of legal certainty owing to the fact that the Municipality's use of the Commission's Communication on sales of land [1] in the valuation of the right to acquire De Eendracht was disregarded without any reasons being given.

2. Second plea, alleging that the Commission exceeded its powers and erred in law, made a manifest error of assessment and/or infringed its obligation to state reasons by finding that the purchase of the right to acquire De Eendracht was State aid for the purposes of Article 107(1) TFEU, or at any rate that there were sufficient grounds for initiating the formal procedure under Article 108(2) TFEU.

3. Third plea, alleging unreasonable delay in initiating the formal procedure and breach of the principle of legal certainty and procedural requirements, and/or misapplication of the law.

[1] Commission Communication on State aid elements in sales of land and buildings by public authorities (OJ 1997 C 209, p. 3).

Action brought on 8 May 2013 — Ryanair Holdings v Commission

(Case T-260/13)

(2013/C 189/58)

Language of the case: English

Parties

Applicant: Ryanair Holdings plc (Dublin, Ireland) (represented by: G. Berrisch, lawyer, and D. Hull, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission C(2013) 1106 final of 27 February 2013 declaring a merger to be incompatible with the internal market and the EEA Agreement (Case No COMP/M.6663 — Ryanair/Aer Lingus III);

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the Commission erred in finding, and failed to demonstrate to the requisite legal standard, that the merger, as modified by the commitments offered by the applicant, would significantly impede effective competition in the common market. The applicant also submits that the Commission violated the principle of proportionality, the principle of sound administration, and the obligation to state reasons.

In support of its claims, the applicant pleads that the Commission made manifest errors of assessment and violated the above-mentioned principles with regard to (a) the commitments relating to the divestiture of Aer Lingus's operations on 43 overlap routes to Flybe Group plc; (b) the commitments relating to the Dublin-London, Cork-London, and Shannon-London routes; (c) the commitments relating Aer Arann's operation on the 43 overlap routes on which Flybe would operate, and (d) the commitments relating to the routes on which the Commission identified potential competition concerns.

Action brought on 3 May 2013 — Netherlands v Commission

(Case T-261/13)

(2013/C 189/59)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman and J. Langers, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul Regulation No 119/2013, in so far as Article 1(2) of Regulation No 119/2013 cannot be separated from the other provisions of that regulation. Article 1(2) of Regulation No 119/2013 lies at the core of that regulation, and the other provisions are therefore of no significance without Article 1(2);

— in the alternative, annul Article 1(2) of Regulation No 119/2013;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 5(3) of Regulation No 2494/95 [1] because Eurostat is designated the entity that is to establish and update the guidelines.

2. Second plea in law, alleging infringement of Article 13(2) TEU in that Eurostat has been authorised to establish and update legally binding guidelines.

3. Third plea in law, alleging infringement of Article 338(1) TFEU in that guidelines, instead of one of the legal instruments listed in Article 288 TFEU, are used for the purposes of establishing harmonised indices of consumer prices at constant tax rates (HICP-CT).

4. Fourth plea in law, alleging infringement of Articles 5(3) and 14(3) of Regulation No 2494/95, read in conjunction with Article 5a of Decision 1999/468, [2] in that a different procedure is laid down than the regulatory procedure with scrutiny.

5. Fifth plea in law, alleging infringement of Article 291 TFEU, read in conjunction with Regulation No 182/2011, [3] in relation to the failure to prescribe one of the procedures laid down in Regulation No 182/2011 for the establishment and updating of the guidelines.

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[1] Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices (OJ 1995 L 257, p. 1).

[2] Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

[3] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).

Order of the General Court of 6 May 2013 — Sigla v OHIM (VIPS CLUB)

(Case T-673/11) [1]

(2013/C 189/60)

Language of the case: Spanish

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

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[1] OJ C 65, 3.3.2012.

Order of the General Court of 6 May 2013 — Koinopraxia Touristiki Loutrakiou v Commission

(Case T-498/12) [1]

(2013/C 189/61)

Language of the case: Greek

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

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[1] OJ C 26, 26.1.2013.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 16 May 2013 — de Pretis Cagnodo and Trampuz de Pretis Cagnodo v Commission

(Case F-104/10) [1]

(Civil service — Social security — Serious illness — Concept — Hospitalisation — Reimbursement — Direct payment by the claims settlement office — No upper limit in the general implementing provisions for costs of stay — Obligation to inform the insured beforehand in the event of excessive billing)

(2013/C 189/62)

Language of the case: Italian

Parties

Applicants: Mario Alberto de Pretis Cagnodo and Serena Trampuz (Trieste, Italy) (represented by: C. Falagiani, lawyer)

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

Subject-matter and description of the proceedings

Annulment of the decision refusing to reimburse 100 % of certain medical expenses in connection with the hospitalisation of the applicant's wife.

Operative part of the judgment

The Court:

1. *Annuls the decision of the claims settlement office, Ispra (Italy), as evidenced by payment note No 10 of 1 October 2009, charging Mr de Pretis Cagnodo the amount of EUR 28 800 for costs of stay for Mrs Trampuz de Pretis Cagnodo, considered excessive;*

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

3. *Orders the European Commission to bear all its own costs and to pay all costs incurred by Mr de Pretis Cagnodo and Mrs Trampuz de Pretis Cagnodo.*

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[1] OJ C 13, 15.1.2011, p. 42.

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