

**Action brought on 21 July 2017 — Shindler and Others v Council**

(Case T-458/17)

(2017/C 347/39)

*Language of the case: French***Parties**

*Applicants:* Harry Shindler (Porto d'Ascoli, Italy) and 12 other applicants (represented by: J. Fouchet, lawyer)

*Defendant:* Council of the European Union

**Form of order sought**

The applicants claim that the General Court should:

- annul Council Decision (EU, Euratom) XT 21016/17 of 22 May 2017, together with the annex XT 21016/17, ADD 1 REV 2 to that decision, authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for that Member State's withdrawal from the European Union;
- consequently,
  - order the Council of the European Union to pay the costs of the proceedings in full, including legal fees of EUR 5 000;
  - without prejudice, in particular, to the submission by SCP CORNILLE-POUYANE, lawyers at the Bordeaux Bar, of all relevant observations at the hearing to be fixed by the General Court of the European Union.

**Pleas in law and main arguments**

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

1. First plea in law, alleging formal illegality of Council Decision (EU, Euratom) XT 21016/17 of 22 May 2017, together with the annex XT 21016/17, ADD 1 REV 2, to that decision, authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union ('the contested decision'). That plea is divided into two parts:
  - First part, alleging infringement of the Euratom Treaty in that the contested decision and its annex provide for the automatic withdrawal of the United Kingdom from the European Atomic Energy Community in conjunction with the withdrawal from the European Union without being the subject of a separate withdrawal and negotiation procedure.
  - Second part, alleging interference with the division of powers between the European Union and the Member States in that the contested decision and its annex confer on the European Union an exceptional horizontal competence to institute the negotiations on the agreement for the United Kingdom's withdrawal and exclude the possibility of a mixed agreement, with the result that there is no provision for ratification of the final agreement by the Member States.
2. Second plea in law, alleging substantive illegality of the contested decision; this plea is divided into three parts:
  - First part, alleging infringement of the principle of equality inasmuch as, by adopting the contested decision and its annex, the defendant has allowed a withdrawal procedure to be initiated without expatriate European citizens having had the opportunity to set out their views on the possible loss of their European citizenship. The right to be heard and to express one's opinion by way of a vote in the event of an election with a European scope has thus not been respected. The contested decision therefore validates the existence of a category of second-class citizens, deprived of their right to vote because they have exercised their freedom of movement, and that decision has consequently failed to comply with the principle of equal treatment of citizens. The applicants take the view that discrimination between citizens on the basis of their residence has occurred.

- Second part, alleging infringement of Article 203 TFEU in that the contested decision provides for the withdrawal of the British overseas countries and territories (OCTs), without the inhabitants of those OCTs having been able to vote for withdrawal from the association arrangement laid down by the European Treaty, without reference to the specific procedure under Article 203 TFEU which applies to them, and consequently the freedom of establishment under Article 199 TFEU is infringed by the contested decision.
- Third part, alleging infringement of the principles of legal certainty and of legitimate expectations inasmuch as the applicants consider that the opening of negotiations on the withdrawal agreement, the outcome of which is uncertain, will have a significant impact on the rules governing the rights which they derive from European citizenship, notwithstanding the fact that they have created a private and family life for themselves in another Member State through exercising their freedom of movement. The contested decision and its annex thus do not comply with the requirement of predictability of legal rules imposed by the principles of legal certainty and legitimate expectations, and are also at variance with respect for private and family life.

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**Action brought on 25 July 2017 — TN v ENISA**

(Case T-461/17)

(2017/C 347/40)

*Language of the case: English*

**Parties**

*Applicant:* TN (represented by: L. Levi and A. Blot, lawyers)

*Defendant:* European Union Agency for Network and Information Security (ENISA)

**Form of order sought**

The applicant claims that the Court should:

- annul ENISA's decision of 25 November 2016, withdrawing its offer of employment, according to which the applicant was to be appointed to the position of head of the corporate services and stakeholder relations unit;
- annul ENISA's decision of 20 April 2017, rejecting the applicant's complaint;
- award the applicant damages for the material and non-material damage suffered;
- order ENISA to bear the entire costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the defendant infringed its contractual obligations vis-à-vis the applicant.
    - The applicant alleges that the offer could not be withdrawn as a contract had already been concluded and it contests the defendant's arguments to the contrary.
  2. Second plea in law, alleging undue treatment of the applicant's personal data and infringement of Article 12 of the Conditions of Employment of other servants of the European Union, of the duty of care, and of the right to good administration.
  3. Third plea in law, alleging infringement of the right to be heard.
    - The applicant was not heard before the contested decision to withdraw the offer of employment was taken.
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