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IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
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COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2016/C 260/01)

Last publication

OJ C 251, 11.7.2016

Past publications

OJ C 243, 4.7.2016

OJ C 232, 27.6.2016

OJ C 222, 20.6.2016

OJ C 211, 13.6.2016

OJ C 200, 6.6.2016

OJ C 191, 30.5.2016

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 26 May 2016 (requests for a preliminary ruling from the Curtea de Apel Bacău — Romania) — Județul Neamț (C-260/14), Județul Bacău (C-261/14) v Ministerul Dezvoltării Regionale și Administrației Publice

(Joined Cases C-260/14 and C-261/14) ⁽¹⁾

(Reference for a preliminary ruling — Protection of the financial interests of the European Union — Regulation (EC, Euratom) No 2988/95 — European Regional Development Fund (ERDF) — Regulation (EC) No 1083/2006 — Award of a contract by the beneficiary of funds acting as contracting authority for the performance of the action eligible for funding — Definition of ‘irregularity’ — Criterion relating to ‘breach of EU law’ — Tendering procedures contrary to national law — Nature of financial corrections adopted by Member States — Administrative measures or penalties)

(2016/C 260/02)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicants: Județul Neamț (C-260/14), Județul Bacău (C-261/14)

Defendant: Ministerul Dezvoltării Regionale și Administrației Publice

Operative part of the judgment

1. Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests and Article 2(7) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 must be interpreted as meaning that failure to comply with national provisions by a contracting authority, the beneficiary of Structural Funds, in connection with the award of a public contract of an estimated value below the threshold laid down in Article 7(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 1422/2007 of 4 December 2007, may constitute, at the time the contract is awarded, an ‘irregularity’ within the meaning of Article 1(2) of Regulation No 2988/95 or Article 2(7) of Regulation No 1083/2006, if that breach has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure.
2. The second sentence of the first subparagraph of Article 98(2) of Regulation No 1083/2006 is to be interpreted as meaning that financial corrections by Member States, if applied to co-financed expenditure under Structural Funds for failure to comply with rules concerning the award of public contract, are administrative measures within the meaning of Article 4 of Regulation No 2988/95.

3. The principles of legal certainty and protection of legitimate expectations must be interpreted as not precluding a Member State from applying financial corrections governed by an internal legislative measure which entered into force after an alleged breach of the rules governing public contracts occurred, provided that it is a question of the application of new rules to the future effects of situations which arose under the earlier rules, which is a matter to be determined by the national court, taking into account all the relevant circumstances of the proceedings before it.

⁽¹⁾ OJ C 292, 1.9.2014.

**Judgment of the Court (Grand Chamber) of 24 May 2016 (request for a preliminary ruling from
Klagenævnet for Udbud — Denmark) — MT Højgaard A/S, Züblin A/S v Banedanmark**

(Case C-396/14) ⁽¹⁾

(Reference for a preliminary ruling — Article 267 TFEU — Jurisdiction of the Court — Status of the referring body as a court or tribunal — Procurement procedure in railway infrastructure sector — Negotiated procedure — Directive 2004/17/EC — Article 10 — Article 51(3) — Principle of equal treatment of tenderers — Group composed of two companies and admitted as such as a tenderer — Tender submitted by one of the two companies, in its own name, the other company having been declared insolvent — Company considered to be capable, by itself, of being admitted as a tenderer — Contract awarded to that company)

(2016/C 260/03)

Language of the case: Danish

Referring court

Klagenævnet for Udbud

Parties to the main proceedings

Applicants: MT Højgaard A/S, Züblin A/S

Defendant: Banedanmark

Operative part of the judgment

The principle of equal treatment of economic operators, stated in Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, read together with Article 51 of that directive, must be interpreted as meaning that a contracting entity is not in breach of that principle where it permits one of two economic operators who formed part of a group of undertakings that had, as such, been invited to submit tenders by that contracting entity, to take the place of that group following the group's dissolution and to take part, in its own name, in a negotiated procedure for the award of a public contract, provided that it is established, first, that that economic operator by itself meets the requirements laid down by the contracting entity and, second, that the continuation of its participation in that procedure does not mean that other tenderers are placed at a competitive disadvantage.

⁽¹⁾ OJ C 388, 3.11.2014.

Judgment of the Court (Second Chamber) of 26 May 2016 (request for a preliminary ruling from the Østre Landsret — Denmark) — Envirotec Denmark ApS v Skatteministeren

(Case C-550/14) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Reverse charge mechanism — Article 198(2) — Gold material or semi-manufactured products — Meaning — Article 199(1)(d) and Annex VI — Used materials, waste and scrap — Ingots resulting from the melting down of various objects and scrap used to enable the extraction of gold and with a purity in gold of 325 thousandths or greater)

(2016/C 260/04)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Envirotec Denmark ApS

Defendant: Skatteministeren

Operative part of the judgment

Article 198(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it applies to the supply of ingots, such as those at issue in the main proceedings, consisting of a random, rough alloy obtained from the fusion of scrap and various metal objects containing gold, and other metals, materials and substances, and which, depending on the ingot, have a gold content of approximately 500 or 600 thousandths.

⁽¹⁾ OJ C 56, 16.2.2015.

Judgment of the Court (First Chamber) of 25 May 2016 (request for a preliminary ruling from the Augstākās tiesas — Latvia) — Rūdolfs Meroni v Recoletos Limited

(Case C-559/14) ⁽¹⁾

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Recognition and enforcement of provisional and protective measures — Concept of ‘public policy’)

(2016/C 260/05)

Language of the case: Latvian

Referring court

Augstākās tiesas

Parties to the main proceedings

Applicant: Rūdolfs Meroni

Defendant: Recoletos Limited

Third parties: Aivars Lembergs, Olafs Berķis, Igors Skoks, Genādijs Ševcovs

Operative part of the judgment

Article 34(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, considered in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the recognition and enforcement of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, cannot be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought or manifestly contrary to the right to a fair trial within the meaning of those provisions, in so far as that third person is entitled to assert his rights before that court.

⁽¹⁾ OJ C 89, 16.3.2015.

Judgment of the Court (Second Chamber) of 26 May 2016 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Bookit Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-607/14) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Exemption — Article 135(1)(d) — Transactions concerning payments and transfers — Meaning — Purchase of cinema tickets by telephone or via the Internet — Payment by debit card or credit card — ‘Card handling’ services)

(2016/C 260/06)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Bookit Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

Article 135(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the exemption from value added tax provided for therein for transactions concerning payments and transfers is not applicable to a ‘card handling’ service, such as that at issue in the main proceedings, supplied by a taxable person, the provider of that service, where an individual purchases, via that service provider, a cinema ticket which the service provider sells for and on behalf of another entity, and which the individual pays for by debit card or by credit card.

⁽¹⁾ OJ C 81, 9.3.2015.

Judgment of the Court (Second Chamber) of 26 May 2016 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — État belge, SPF Finances v NN (L) International SA, formerly ING International SA, successor to the rights and obligations of ING Dynamic SA

(Case C-48/15) ⁽¹⁾

(Reference for a preliminary ruling — Direct taxation — Free movement of capital — Freedom to provide services — Directive 69/335/EEC — Articles 2, 4, 10 and 11 — Directive 85/611/EEC — Articles 10 and 293 EC — Annual tax on undertakings for collective investment — Double taxation — Penalties applicable to collective investment undertakings governed by foreign law)

(2016/C 260/07)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: État belge, SPF Finances

Defendant: NN (L) International SA, formerly ING International SA, successor to the rights and obligations of ING Dynamic SA

Operative part of the judgment

1. Articles 2, 4, 10 and 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as not precluding legislation of a Member State imposing an annual tax on undertakings for collective investment, such as the tax at issue in the main proceedings, which makes undertakings for collective investment governed by foreign law marketing units in that Member State subject to that tax.
2. Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), read, if appropriate, in conjunction with Article 10 EC and Article 293, second indent, EC, must be interpreted as not precluding the legislation of a Member State imposing an annual tax on UCIs, such as the tax at issue in the main proceedings, which makes UCIs governed by foreign law marketing units in that Member State subject to that tax, provided that that legislation is applied in a non-discriminatory way.
3. Article 56 EC must be interpreted as not precluding the legislation of a Member State imposing an annual tax on UCIs, such as the tax at issue in the main proceedings, which makes UCIs governed by foreign law marketing units in that Member State subject to that tax.
4. Article 49 EC must be interpreted as precluding a national provision, such as Article 162(2) of the Inheritance Tax Code, as amended by the Programme Law of 22 December 2003, by which a Member State imposes a specific penalty, namely the prohibition, ordered by a court, of making future investments of its units in that Member State, on UCIs governed by foreign law in the event of non-compliance by the latter with the obligation to file the annual declaration necessary for the recovery of a tax on UCIs or in the event of non-payment of that tax.

⁽¹⁾ OJ C 138, 27.4.2015.

Judgment of the Court (Second Chamber) of 26 May 2016 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v National Exhibition Centre Limited

(Case C-130/15) ⁽¹⁾

(Preliminary ruling — Common system of value added tax — Sixth Directive 77/388/EEC — Exemption — Article 13B(d)(3) — Transactions in respect of payments and transfers — Concept — Purchase of tickets for shows or other events — Payment by debit or credit card — ‘Card processing’ services)

(2016/C 260/08)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: National Exhibition Centre Limited

Operative part of the judgment

Article 13B(d)(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the exemption from value added tax which is provided for in that article in respect of transactions concerning payments and transfers does not apply to a service described as ‘processing of payment by debit or credit card’, such as that at issue in the main proceedings, carried out by a taxable person, the provider of that service, where an individual buys, via that provider, a ticket for a show or other event which the provider sells in the name and on behalf of another entity, which that individual pays for by debit or credit card.

⁽¹⁾ OJ C 190, 8.6.2015.

Judgment of the Court (Tenth Chamber) of 26 May 2016 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Invamed Group Ltd and Others v Commissioners for Her Majesty's Revenue & Customs

(Case C-198/15) ⁽¹⁾

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Section XVII — Vehicles — Chapter 87 — Vehicles other than railway or tramway rolling stock, and parts and accessories thereof — Headings 8703 and 8713 — Vehicles with battery-powered electric motors — Definition of ‘disabled persons’)

(2016/C 260/09)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Invamed Group Ltd, Invacare UK Ltd, Days Healthcare Ltd, Electric Mobility Euro Ltd, Medicare Technology Ltd, Sunrise Medical Ltd, Invacare International SARL

Defendant: Commissioners for Her Majesty's Revenue & Customs

Operative part of the judgment

1. Heading 8713 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004, must be interpreted as meaning:

- the words 'for disabled persons' mean that the product is designed solely for disabled persons;
- the fact that a vehicle may be used by non-disabled persons is irrelevant to the classification under heading 8713 of the Combined Nomenclature
- the Explanatory Notes to the Combined Nomenclature are not capable of amending the scope of the tariff headings of the Combined Nomenclature.

2. the words 'disabled persons' under heading 8713 of the Combined Nomenclature set out in Annex I to Regulation No 2658/87, as amended by Regulation No 1810/2004, must be interpreted as meaning that they designate persons affected by a non-marginal limit on their ability to walk, the duration of that limitation and the existence of other limitations relating to the capacities of those persons being irrelevant.

⁽¹⁾ OJ C 228, 13.7.2015.

Judgment of the Court (Third Chamber) of 26 May 2016 — Rose Vision, SL v European Commission

(Case C-224/15 P) ⁽¹⁾

(Appeal — Projects funded by the European Union in the field of research — Audits finding irregularities in the implementation of certain projects — Commission decisions suspending payment of the amounts payable under certain projects — Action for compensation — Rejection — Statement of reasons)

(2016/C 260/10)

Language of the case: Spanish

Parties

Appellant: Rose Vision, SL (represented by: J.J. Marín López, abogado)

Other party to the proceedings: European Commission (represented by: R. Lyal and M. Siekierzyńska, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 5 March 2015 in *Rose Vision and Seseña v Commission* (T-45/13, not published, EU:T:2015:138), in so far as it concerns *Rose Vision SL*;

2. Refers the case back to the General Court of the European Union;
3. Reserves the costs.

⁽¹⁾ OJ C 228, 13.7.2015.

Judgment of the Court (Seventh Chamber) of 26 May 2016 — European Commission v Hellenic Republic

(Case C-244/15) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Taxation — Free movement of capital — Article 63 TFEU — Article 40 of the EEA Agreement — Inheritance tax — Legislation of a Member State providing for an exemption from inheritance tax relating to the primary residence on condition that the heir is permanently resident in that Member State — Restriction — Justification)

(2016/C 260/11)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafyllou and W. Roels, acting as Agents)

Defendant: Hellenic Republic (represented by: M. Tassopoulou and V. Karrá, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that, by enacting and maintaining in force legislation which provides for an exemption from inheritance tax relating to the primary residence, which applies solely to nationals of EU Member States who are resident in Greece, the Hellenic Republic has failed to fulfil its obligations under Article 63 TFEU and under Article 40 of the Agreement on the European Economic Area of 2 May 1992;
2. Orders the Hellenic Republic to pay the costs.

⁽¹⁾ OJ C 228, 13.7.2015.

Judgment of the Court (Ninth Chamber) of 26 May 2016 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — GD European Land Systems — Steyr GmbH v Zollamt Eisenstadt Flughafen Wien

(Case C-262/15) ⁽¹⁾

(Reference for a preliminary ruling — Common Customs Tariff — Classification of goods — Regulation (EEC) No 2658/87 — Combined Nomenclature — Heading 8710 and Subheading 9305 91 00 — Note 3 to Section XVII and point (c) of note 1 to Chapter 93 — Tanks and other armoured fighting vehicles — Military weapons — Classification of a turret system)

(2016/C 260/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: GD European Land Systems — Steyr GmbH

Respondent: Zollamt Eisenstadt Flughafen Wien

Operative part of the judgment

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version resulting from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted as meaning that a turret system, such as that at issue in the main proceedings, which was imported for the production of armoured fighting vehicles and was indeed used subsequently for that purpose, comes under heading 8710 of the Common Nomenclature if it is ‘principally’ intended for use on an armoured fighting vehicle, this being a matter for the referring court to determine on the basis of the objective characteristics and properties of the turret system, without the end use to which it is put in the case at hand being determinant for the purpose of its classification. If that is not the case, that turret system must be classified, as a part or accessory of a ‘military weapon’, under subheading 9305 91 00 of the Combined Nomenclature.

⁽¹⁾ OJ C 294, 7.9.2015.

Judgment of the Court (Eighth Chamber) of 26 May 2016 (request for a preliminary ruling from the Augstākās tiesas — Latvia) — ZS ‘Ezernieki’ v Lauku atbalsta dienests

(Case C-273/15) ⁽¹⁾

(Reference for a preliminary ruling — Agriculture — European Agricultural Guidance and Guarantee Fund — Regulations (EC) Nos 1257/1999 and 817/2004 — Support for rural development — Recovery of undue payments — Increase of the area declared during the five-year commitment period above the threshold provided for — Replacement of the original commitment by a new commitment — Non-compliance by the beneficiary with the obligation to submit an annual application for payment of aid — National legislation requiring the repayment of all aid paid over several years — Principle of proportionality — Articles 17 and 52 of the Charter of Fundamental Rights of the European Union)

(2016/C 260/13)

Language of the case: Latvian

Referring court

Augstākās tiesas

Parties to the main proceedings

Applicant: ZS ‘Ezernieki’

Defendant: Lauku atbalsta dienests

Operative part of the judgment

Article 71(2) of Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), must, in the light of the objective of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Council Regulation (EC) No 1783/2003 of 29 September 2003, and of Regulation No 817/2004, in the light of the principle of proportionality and Articles 17 and 52 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, in accordance with which the beneficiary of aid granted in return for agri-environmental commitments covering several years is required to repay all of the aid already received, on the ground that he did not submit an annual application for payment of that aid for the last year of the five-year period of his commitments, where, first, that five-year period replaced an earlier period as a result of an increase in the area of his holding and, secondly, that beneficiary did not cease to fulfil his obligations relating to the use of the area declared prior to that increase.

⁽¹⁾ OJ C 262, 10.8.2015.

Judgment of the Court (Seventh Chamber) of 26 May 2016 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — Valsts ieņēmumu dienests v SIA ‘Latvijas propāna gāze’

(Case C-286/15) ⁽¹⁾

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Heading 2711 — Petroleum gases and other gaseous hydrocarbons — Material giving the essential character — Liquefied petroleum gas)

(2016/C 260/14)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: Valsts ieņēmumu dienests

Defendant: SIA ‘Latvijas propāna gāze’

Operative part of the judgment

1. Rules 2(b) and 3(b) of the general rules for the interpretation of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the versions resulting from Commission Regulation (EC) No 1031/2008 of 19 September 2008 and Commission Regulation (EC) No 948/2009 of 30 September 2009, respectively, must be interpreted as meaning that, where the essential character of a gas mixture, such as the liquefied petroleum gas at issue in the main proceedings, is determined by all the components of that mixture together, so that no component may be identified as the factor giving it its essential character and, in any event, the exact quantity of each of the components of the liquefied petroleum gas at issue may not be determined, a presumption that the factor which gives the goods their essential character, within the meaning of rule 3(b) of those general rules, is the substance which is present in the greatest proportion in the mixture must not be used.

2. That combined nomenclature must be interpreted as meaning that a liquefied petroleum gas, such as that at issue in the main proceedings, containing 0,32 % methane, ethane and ethylene, 58,32 % propane and propylene and no more than 39,99 % butane and butylene, and in respect of which it may not be determined which of its constituent substances gives it its essential character, comes under the sub-heading 2711 19 00, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Other'.
3. Article 218(1)(d) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code must be interpreted as meaning that it does not follow from that provision that a declarant of liquefied petroleum gas, such as that at issue in the main proceedings, is under an obligation to indicate precisely the percentage amount of the substance present in the greatest quantity in that liquefied petroleum gas.

⁽¹⁾ OJ C 270, 17.8.2015.

Judgment of the Court (Tenth Chamber) of 26 May 2016 (request for a preliminary ruling from the Tribunal administratif — Luxembourg) — Charles Kohll, Sylvie Kohll-Schlesser v Directeur de l'administration des contributions directes

(Case C-300/15) ⁽¹⁾

(Reference for a preliminary ruling — Articles 21 and 45 TFEU — Freedom of movement and of residence of persons and workers — Income tax — Retirement pension — Pensioners' tax credit — Conditions for granting — Possession of a tax deduction form issued by national authorities)

(2016/C 260/15)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicants: Charles Kohll, Sylvie Kohll-Schlesser

Defendant: Directeur de l'administration des contributions directes

Operative part of the judgment

Articles 21 and 45 TFEU must be interpreted as precluding a national tax law, such as that at issue in the main proceedings, which restricts the eligibility for the pensioners' tax credit to taxpayers in possession of a tax deduction form.

⁽¹⁾ OJ C 294, 7.9.2015.

Judgment of the Court (Fourth Chamber) of 24 May 2016 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of a European arrest warrant issued against Pawel Dworzecki

(Case C-108/16 PPU) ⁽¹⁾

(Request for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 4a(1) — Surrender procedures between Member States — Conditions of execution — Reasons for optional non-execution — Exceptions — Mandatory execution — Sentence handed down in absentia — Concepts of ‘summons in person’ and ‘official notification by other means’ — Autonomous concepts of EU law)

(2016/C 260/16)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Party to the main proceedings

Pawel Dworzecki

Operative part of the judgment

1. Article 4a(1)(a)(i) of Council Framework Directive 2002/584/JHA of 13 February 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the expressions ‘summoned in person’ and ‘by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial’ in that provision constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union.
2. Article 4a(1)(a)(i) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter’s address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.

⁽¹⁾ OJ C 156, 2.5.2016.

Order of the Court (Second Chamber) of 23 March 2016 (request for a preliminary ruling from the Cour administrative d’appel de Paris — France) — Overseas Financial Limited, Oaktree Finance Limited v Ministre de l’Économie, de l’Industrie et du Numérique

(Case C-319/15) ⁽¹⁾

(Reference for a preliminary ruling — No need to adjudicate)

(2016/C 260/17)

Language of the case: French

Referring court

Cour administrative d’appel de Paris

Parties to the main proceedings

Applicant: Overseas Financial Limited, Oaktree Finance Limited

Defendant: Ministre de l'Économie, de l'Industrie et du Numérique

Re:

There is no need to adjudicate on the request for a preliminary ruling made by the Cour administrative d'appel de Paris (France) by decision of 22 June 2015.

⁽¹⁾ OJ C 279, 24.8.2015.

Order of the Court (Eighth Chamber) of 25 February 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Associazione Italiana delle Unità Dedicate Autonome Private di Day Surgery e dei Centri di Chirurgia Ambulatoriale (Aiudapds) v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute

(Case C-520/15) ⁽¹⁾

(Reference for a preliminary ruling — Rules of Procedure of the Court — Article 53(2) — Charter of Fundamental Rights of the European Union — Second paragraph of Article 47 and Article 54 — European Convention for the Protection of Human Rights and Fundamental Freedoms — Article 6(1) — Extraordinary petition the President of the Italian Republic — Opposition to the petition by a party to the dispute — Modification of that extraordinary petition into judicial proceedings — Implementation of EU law — Absence — Manifest lack of jurisdiction of the Court of Justice)

(2016/C 260/18)

Language of the case: Italian

Referring court

Consiglio di Stato — Italy

Parties to the main proceedings

Applicant: Associazione Italiana delle Unità Dedicate Autonome Private di Day Surgery e dei Centri di Chirurgia Ambulatoriale (Aiudapds)

Defendant: Agenzia Italiana del Farmaco (AIFA), Ministero della Salute

Other party: Roche SpA, Novartis Farma SpA, and Regione Marche

Re:

The Court of Justice of the European Union clearly has no jurisdiction to answer the question referred by the Consiglio di Stato (Council of State, Italy) by decision of 15 July 2015 (Case C-520/15).

⁽¹⁾ OJ C 398, 30.11.2015.

Appeal brought on 4 February 2016 by Actega Terra GmbH against the order of the General Court (Seventh Chamber) delivered on 23 November 2015 in Case T-766/14 Actega Terra GmbH v European Union Intellectual Property Office

(Case C-63/16 P)

(2016/C 260/19)

Language of the case: German

Parties

Appellant: Actega Terra GmbH (represented by: C. Onken, lawyer)

Other party to the proceedings: European Union Intellectual Property Office, Heidelberger Druckmaschinen

By order of 24 May 2016, the Court of Justice of the European Union (Seventh Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Amtsgericht München (Germany) lodged on 29 February 2016 — Criminal proceedings against Ianos Tranca

(Case C-124/16)

(2016/C 260/20)

Language of the case: German

Referring court

Amtsgericht München

Parties to the main proceedings

Ianos Tranca

Other party: Staatsanwaltschaft München I

Questions referred

1. Do Article 2 and Article 6(1) and (3) of Directive 2012/13/EU ⁽¹⁾ of the European Parliament and of the Council of 22 May 2012 preclude a provision of law enacted by a Member State under which, in criminal proceedings, an accused person who is not resident in that Member State must nominate a person authorised to accept service of a penalty order made against him, even though the accused person does not subsequently have the benefit of the whole of the period for lodging an objection to that penalty order, but he also has no address at which the penalty order can verifiably be notified to him, and the nomination of a person authorised to accept service and in possession of an address enables him to keep the authorised person informed of where a penalty order can be sent to him with proof of notification?

2. Do Article 2(1) and Article 6(1) and (3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 preclude a provision of law enacted by a Member State under which, in criminal proceedings, an accused person who is not resident in that Member State must nominate a person authorised to accept service of a penalty order made against him, and service on a person authorised to accept service is automatically sufficient for the purpose of calculating the period within which an objection may be lodged, where, in the event of failure to comply with the period calculated in this way, the accused person can apply to have his position restored to the *status quo ante* and, in those circumstances, an adequate excuse for such failure is that the penalty order was forwarded to him and, after it had been forwarded, he lodged an objection within the prescribed period, that is to say where, by having his position restored to the *status quo ante*, he can retroactively rely on the unreduced period for lodging an objection, even though, by law, a penalty order is generally declared enforceable in the event of failure to comply with the period for lodging an objection?

⁽¹⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Request for a preliminary ruling from the Landgericht München I (Germany) lodged on 4 April 2016 — Criminal proceedings against Ionel Opria

(Case C-188/16)

(2016/C 260/21)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Ionel Opria

Other party: Staatsanwaltschaft München I

Question referred

Must Article 2, Article 3(1)(c) and Article 6(1) and (3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ⁽¹⁾ be interpreted as precluding legislation of a Member State under which, in criminal proceedings against an accused person with no fixed domicile or residence in that Member State, a penalty order made against the accused can be served on a person appointed by him as being authorised to accept service on his behalf, with the result that the penalty order acquires the force of *res judicata* upon expiry of the (two-week) period for lodging an objection, which begins to run from the time of service on the authorised person, even where, in accordance with the legislation of that Member State, any such accused person who lodges a written objection against the penalty order with the court having jurisdiction within two weeks of actually becoming aware of that order must *ex officio* have his position restored to the *status quo ante*, with the result that, following the adoption of the decision to restore the *status quo ante*, proceedings must continue as they would in the case of an objection lodged in good time?

⁽¹⁾ OJ 2012 L 142, p. 1.

Request for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 7 April 2016 — I.**(Case C-195/16)**

(2016/C 260/22)

*Language of the case: German***Referring court**

Amtsgericht Kehl

Parties to the main proceedings*Applicant: I.***Questions referred**

1. Is EU law, in particular Article 2 of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ('Directive 2006/126/EC' ⁽¹⁾) or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State which refuses to recognise an authorisation to drive (*Fahrerlaubnis*) acquired in another Member State, in particular where that authorisation to drive was acquired in accordance with the requirements of Directive 2006/126/EC?
2. Is EU law, in particular Article 2 of Directive 2006/126/EC or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State which refuses to recognise a document evidencing authorisation to drive which another Member State has issued to the holder of such authorisation in accordance with Directive 2006/126/EC, even if that Member State has limited the validity of that authorisation in time and to its own territory and that document does not, moreover, fulfil the requirements of the single European driving licence model of Directive 2006/126/EC?
3. Should the answer to the first question be in the negative: Is EU law, in particular Article 2 of Directive 2006/126/EC or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State which threatens to prosecute as a criminal offence the driving of a vehicle without a right to drive, even if the driver of the vehicle has been authorised to drive in another Member State in accordance with the requirements of that directive, but is unable to provide a document to that effect which corresponds to the single European licence model of Directive 2006/126/EC?
4. Should the answer to the second question be in the negative: Is EU law, in particular Article 2 of Directive 2006/126/EC or Articles 18, 21, 45, 49 and 56 TFEU, to be interpreted as precluding legislation of a Member State — in which an applicant for a driving licence is, as a general rule, issued a definitive driving licence directly after passing the practical driving test — under which prosecution as a minor offence is threatened for driving a vehicle if the driver, who has been licensed to drive in another Member State in accordance with the requirements of Directive 2006/126/EC, drives without a definitive driving licence as evidence of his authorisation to drive because such a licence has not yet been issued to him, yet due to the particularities of the procedure for the issuing of the definitive driving licence in that Member State, over which the driver has no control, the driver is in possession of an official document certifying that the necessary requirements for acquiring authorisation to drive have been fulfilled?

⁽¹⁾ OJ 2006 L 403, p. 18.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 12 April 2016 — Majid (or Madzhdi) Shiri

(Case C-201/16)

(2016/C 260/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Majid (or Madzhdi) Shiri

Defendant: Bundesamt für Fremdenwesen und Asyl

Questions referred

1. Are the provisions of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ⁽¹⁾ that confer the right to an effective remedy against a transfer decision, in particular Article 27(1), to be interpreted as meaning that an applicant for asylum is entitled to claim that responsibility has been transferred to the requesting Member State on the ground that the six month transfer period has expired (Article 29(2) in conjunction with Article 29 (1) of Regulation No 604/2013 in light of the 19th recital)?

If the answer to Question 1 is in the affirmative:

2. Does the transfer of responsibility under the first sentence of Article 29(2) of Regulation No 604/2013 occur by the fact of the expiry of the transfer period without any order or, for responsibility to be transferred because the period has expired, is it also necessary that the obligation to take charge of, or to take back, the person concerned has been refused by the responsible Member State?

⁽¹⁾ OJ 2013 L 180, p. 31.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 14 April 2016 — Wirtschaftsakademie Schleswig-Holstein GmbH v Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein

(Case C-210/16)

(2016/C 260/24)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Defendant and appellant: Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein

Applicant and respondent: Wirtschaftsakademie Schleswig-Holstein GmbH

Joined party: Facebook Ireland Limited

Intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Is Article 2(d) of Directive 95/46/EC ⁽¹⁾ to be interpreted as definitively and exhaustively defining the liability and responsibility for data protection violations, or does scope remain, under the 'suitable measures' pursuant to Article 24 of Directive 95/46/EC and the 'effective powers of intervention' pursuant to the second indent of Article 28(3) of Directive 95/46/EC, in multi-tiered information provider relationships for responsibility of a body that does not control the data processing within the meaning of Article 2(d) of Directive 95/46/EC when it chooses the operator of its information offering?
2. Does it follow *a contrario* from the obligation of Member States under Article 17(2) of Directive 95/46/EC to stipulate, in cases where data processing is carried out on the controller's behalf, that the controller 'must ... choose a processor providing sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out', that, where there are other user relationships not linked to data processing on the controller's behalf within the meaning of Article 2(e) of Directive 95/46/EC, there is no obligation to make a careful choice and no such an obligation can be derived from national law?
3. In cases in which a parent company based outside the European Union has legally independent establishments (subsidiaries) in various Member States, is the supervisory authority of a Member State (in this case, Germany) entitled under Article 4 and Article 28(6) of Directive 95/46/EC to exercise the powers conferred under Article 28(3) of Directive 95/46/EC against the establishment located in its territory even when this establishment is solely responsible for promoting the sale of advertising space and other marketing measures aimed at the inhabitants of this Member State, whereas the independent establishment (subsidiary) located in another Member State (in this case, Ireland) is exclusively responsible within the group's internal division of tasks for collecting and processing personal data throughout the entire territory of the European Union and hence in the other Member State as well (in this case, Germany), if decisions about data processing are in fact taken by the parent company?
4. Are Article 4(1)(a) and Article 28(3) of Directive 95/46/EC to be interpreted as meaning that, in cases in which the controller has an establishment in the territory of one Member State (in this case, Ireland) and there is another, legally independent establishment in the territory of another Member State (in this case, Germany), whose responsibilities include the sale of advertising space and whose activity is aimed at the inhabitants of that State, the competent supervisory authority in this other Member State (in this case, Germany) may direct measures and orders implementing data protection legislation also against the other establishment (in this case, in Germany) not responsible for data processing under the group's internal division of tasks and responsibilities, or are measures and orders only possible by the supervisory body of the Member State (in this case, Ireland) in whose territory the entity with internal responsibility within the group has its registered office?
5. Are Article 4(1)(a) and Article 28(3) and (6) of Directive 95/46/EC to be interpreted as meaning that, in cases in which the supervisory authority in one Member State (in this case, Germany) takes action against a person or entity in its territory pursuant to Article 28(3) of Directive 95/46/EC on the grounds of failing to exercise due care in choosing a third party involved in the data processing process (in this case, Facebook), because this third party is in violation of data protection legislation, the active supervisory authority (in this case, Germany) is bound by the appraisal of data protection legislation by the supervisory authority of the Member State in which the third party responsible for the data processing has its establishment (in this case, Ireland) meaning that it may not arrive at a different legal appraisal, or may the active supervisory authority (in this case, Germany) conduct its own examination of the lawfulness of the data processing by the third party established in another Member State (in this case, Ireland) as a preliminary question prior to its own action?

6. Where the possibility of conducting an independent examination is available to the active supervisory authority (in this case, Germany), is the second sentence of Article 28(6) of Directive 95/46/EC to be interpreted as meaning that this supervisory authority may exercise the effective powers of intervention conferred on it under Article 28(3) of Directive 95/46/EC against a person or entity established in its territory on the grounds of their joint responsibility for data protection violations by a third party established in another Member State only and not until it has first requested the supervisory authority in this other Member State (in this case, Ireland) to exercise its powers?

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

Request for a preliminary ruling from the Amtsgericht München (Germany) lodged on 18 April 2016 — Criminal proceedings against Tanja Reiter

(Case C-213/16)

(2016/C 260/25)

Language of the case: German

Referring court

Amtsgericht München

Parties to the main proceedings

Tanja Reiter

Other party: Staatsanwaltschaft München I

Questions referred

1. Do Article 2 and Article 6(1) and (3) of Directive 2012/13/EU ⁽¹⁾ of the European Parliament and of the Council of 22 May 2012 preclude a provision of law enacted by a Member State under which, in criminal proceedings, an accused person who has no place of residence in that Member State must nominate a person authorised to accept service of a penalty order made against him, even though the accused person does not, as a result, have the benefit of the whole of the period for lodging an objection to that penalty order, but he also has no address at which the penalty order can demonstrably be notified to him, and the nomination of a person authorised to accept service and in possession of an address enables him to keep the authorised person informed of where a penalty order can be sent to him with proof of notification?
2. Do Article 2(1) and Article 6(1) and (3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 preclude a provision of law enacted by a Member State under which, in criminal proceedings, an accused person who has no place of residence in that Member State must nominate a person authorised to accept service of a penalty order made against him, and service on a person authorised to accept service is automatically sufficient for the purpose of calculating the period within which an objection may be lodged, where, in the event of failure to comply with the period calculated in this way, the accused person can apply to have his position restored to the *status quo ante* and, in those circumstances, an adequate excuse for such failure is that the penalty order was forwarded to him and, after it had been forwarded, he lodged an objection within the prescribed period, that is to say where, by having his position restored to the *status quo ante*, he can retroactively rely on the unreduced period for lodging an objection, even though, by law, a penalty order is generally declared enforceable in the event of failure to comply with the period for lodging an objection?

⁽¹⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Request for a preliminary ruling from the Oberlandesgericht Frankfurt am Main (Germany) lodged on 25 April 2016 — Coty Germany GmbH v Parfümerie Akzente GmbH

(Case C-230/16)

(2016/C 260/26)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Coty Germany GmbH

Defendant: Parfümerie Akzente GmbH

Questions referred

1. Do selective distribution systems that have as their aim the distribution of luxury goods and primarily serve to ensure a 'luxury image' for the goods constitute an aspect of competition that is compatible with Article 101(1) TFEU?
2. If the first question is answered in the affirmative:

Does it constitute an aspect of competition that is compatible with Article 101(1) TFEU if the members of a selective distribution system operating at the retail level of trade are prohibited generally from engaging third-party undertakings discernible to the public to handle internet sales, irrespective of whether the manufacturer's legitimate quality standards are contravened in the specific case?

3. Is Article 4(b) of Regulation (EU) No 330/2010⁽¹⁾ to be interpreted as meaning that a prohibition of engaging third-party undertakings discernible to the public to handle internet sales that is imposed on the members of a selective distribution system operating at the retail level of trade constitutes a restriction of the retailer's customer group 'by object'?
4. Is Article 4(c) of Regulation (EU) No 330/2010 to be interpreted as meaning that a prohibition of engaging third-party undertakings discernible to the public to handle internet sales that is imposed on the members of a selective distribution system operating at the retail level of trade constitutes a restriction of passive sales to end users 'by object'?

⁽¹⁾ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ 2010 L 102, p. 1.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 April 2016 — Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Generalitat de Catalunya

(Case C-233/16)

(2016/C 260/27)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Appellant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Respondent: Generalitat de Catalunya

Questions referred

1. Must Articles 49 TFEU and 54 TFEU be interpreted as precluding a regional tax imposed on the use of individual large retail spaces with sales areas covering 2 500 m² or more due to their potential effect on planning, the environment and urban retailing patterns in the region, but which, as a matter of law, applies irrespective of whether or not such retail establishments are actually situated in a consolidated urban area and in practice usually affects undertakings from other Member States, given that: (i) it does not affect traders who own several retail establishments, each with sales areas of less than 2 500 m², whatever the total sales area of all of those establishments together; (ii) it exempts collective retail establishments; (iii) it excludes individual retail establishments which are garden centres and those selling vehicles, building materials, machinery and industrial supplies; and (iv) retail establishments given over essentially to the sale of furniture, sanitary ware and doors and windows and those that are do-it-yourself stores are required to pay the tax on only 40 % of the relevant net tax base?
2. Must Article 107(1) TFEU be interpreted as meaning that the following constitute State aid prohibited under that provision: (i) the full exemption from the IGEC of individual retail establishments whose sales areas are less than 2 500 m², of collective retail establishments and of individual retail establishments which are garden centres and those selling vehicles, building materials, machinery and industrial supplies; and (ii) the partial exemption from the IGEC of individual retail establishments given over essentially to the sale of furniture, sanitary ware and doors and windows and of do-it-yourself stores?
3. If those full and partial exemptions from the IGEC constitute State aid within the meaning of Article 107(1) TFEU, what would the scope *ratione temporis* of such a finding be, in the light of the letter dated 2 October 2013 from the Director for State Aid, Directorate-General for Competition (DG COMP) to the Permanent Representation of Spain to the European Union in connection with case CP 11/01, concerning alleged aid granted by the Autonomous Community of Catalonia under the law passed by the Catalan Parliament?

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 April 2016 —
Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Consejería de Hacienda y
Sector Público de la Administración del Principado de Asturias**

(Case C-234/16)

(2016/C 260/28)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Appellant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Respondent: Consejería de Hacienda y Sector Público de la Administración del Principado de Asturias

Questions referred

1. Must Article 49 TFEU and Article 54 TFEU be interpreted as precluding a regional tax levied on the operation of large retail establishments with a public display and sales area equal to or exceeding 4 000 m² on account of their impact on the territory, environment and urban trading area of that region, but which applies regardless of whether the retail establishments are actually situated inside or outside the consolidated urban area and is borne in most cases by undertakings of other Member States, bearing in mind that the tax (i) does not affect traders who own several retail establishments, whether of an individual or collective nature, with a public display and sales area of less than 4 000 m² irrespective of the total public display and sales area of all their establishments; and (ii) is not levied on large retail establishments of an individual nature, with a public display and sales area not exceeding 10 000 m², which solely and exclusively pursue the business of a garden centre or of selling vehicles, construction materials, machinery or industrial supplies?
2. Must Article 107(1) TFEU be interpreted as meaning that the following constitutes State aid prohibited under that provision: the non-imposition of Asturian IGEC on retail establishments, individual or collective, with a public display and sales area of less than 4 000 m² and individual large retail establishments, with a public display and sales area not exceeding 10 000 m², which solely and exclusively pursue the business of a garden centre or of selling vehicles, construction materials, machinery or industrial supplies?

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 April 2016 —
Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Consejo de Gobierno del
Principado de Asturias**

(Case C-235/16)

(2016/C 260/29)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Appellant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Respondent: Consejo de Gobierno del Principado de Asturias

Questions referred

1. Must Article 49 TFEU and Article 54 TFEU be interpreted as precluding a regional tax levied on the operation of large retail establishments with a public display and sales area equal to or exceeding 4 000 m² on account of their impact on the territory, environment and urban trading area of that region, but which applies regardless of whether the retail establishments are actually situated inside or outside the consolidated urban area and is borne in most cases by undertakings of other Member States, bearing in mind that the tax (i) does not affect traders who own several retail establishments, whether of an individual or collective nature, with a public display and sales area of less than 4 000 m² irrespective of the total public display and sales area of all their establishments; and (ii) is not levied on large retail establishments of an individual nature, with a public display and sales area not exceeding 10 000 m², which solely and exclusively pursue the business of a garden centre or of selling vehicles, construction materials, machinery or industrial supplies?

2. Must Article 107(1) TFEU be interpreted as meaning that the following constitutes State aid prohibited under that provision: the non-imposition of Asturian IGEC on retail establishments, individual or collective, with a public display and sales area of less than 4 000 m² and individual large retail establishments, with a public display and sales area not exceeding 10 000 m², which solely and exclusively pursue the business of a garden centre or of selling vehicles, construction materials, machinery or industrial supplies?

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 April 2016 —
Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Diputación General de Aragón**

(Case C-236/16)

(2016/C 260/30)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Appellant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Respondent: Diputación General de Aragón

Questions referred

1. Must Article 49 TFEU and Article 54 TFEU be interpreted as precluding a regional tax stated to be levied on the environmental damage caused by the use of facilities and amenities attached to the business and trade carried on in retail establishments with large sales and parking areas for their customers, provided that the public sales area exceeds 500 m², but that applies regardless of whether the retail establishments are actually situated outside or inside the consolidated urban area and is borne in most cases by undertakings of other Member States, bearing in mind that the tax (i) is not actually levied on traders who own several retail establishments, irrespective of their total public sales area, if none of them has a public sales area exceeding 500 m², even if one or more of them exceeds that threshold but the basis of assessment does not exceed 2 000 m², while it does apply to traders who own a single retail establishment with a public sales area exceeding those thresholds; and (ii) is not levied on retail establishments engaged in the exclusive sale of machinery, vehicles, tools and industrial supplies; construction materials, plumbing materials, doors and windows, for sale only to professionals; fittings for individual, conventional and specialist establishments; motor vehicles, in dealerships and repair workshops; nurseries for gardening and cultivation; and motor fuel, irrespective of their total public sales area?
 2. Must Article 107(1) TFEU to be interpreted as meaning that the following constitutes State aid prohibited under that provision: the fact that the IDMGAV is not actually levied on retail establishments with a public sales area not exceeding 500 m² or on those exceeding that threshold provided that the basis of assessment does not exceed 2 000 m², or on retail establishments engaged in the exclusive sale of machinery, vehicles, tools and industrial supplies; construction materials, plumbing materials, doors and windows, for sale only to professionals; fittings for individual, conventional and specialist establishments; motor vehicles, in dealerships and repair workshops; nurseries for gardening and cultivation, and motor fuel?
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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 April 2016 —
Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Diputación General de
Aragón**

(Case C-237/16)

(2016/C 260/31)

Language of the case: Spanish

Referring court

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Segunda

Parties to the main proceedings

Appellant: Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Respondent: Diputación General de Aragón

Questions referred

1. Must Article 49 TFEU and Article 54 TFEU be interpreted as precluding a regional tax stated to be levied on the environmental damage caused by the use of facilities and amenities attached to the business and trade carried on in retail establishments with large sales and parking areas for their customers, provided that the public sales area exceeds 500 m², but that applies regardless of whether the retail establishments are actually situated outside or inside the consolidated urban area and is borne in most cases by undertakings of other Member States, bearing in mind that the tax (i) is not actually levied on traders who own several retail establishments, irrespective of their total public sales area, if none of them has a public sales area exceeding 500 m², even if one or more of them exceeds that threshold but the basis of assessment does not exceed 2 000 m², while it does apply to traders who own a single retail establishment with a public sales area exceeding those thresholds; and (ii) is not levied on retail establishments engaged in the exclusive sale of machinery, vehicles, tools and industrial supplies; construction materials, plumbing materials, doors and windows, for sale only to professionals; fittings for individual, conventional and specialist establishments; motor vehicles, in dealerships and repair workshops; nurseries for gardening and cultivation; and motor fuel, irrespective of their total public sales area?
2. Must Article 107(1) TFEU to be interpreted as meaning that the following constitutes State aid prohibited under that provision: the fact that the IDMGAV is not actually levied on retail establishments with a public sales area not exceeding 500 m² or on those exceeding that threshold provided that the basis of assessment does not exceed 2 000 m², or on retail establishments engaged in the exclusive sale of machinery, vehicles, tools and industrial supplies; construction materials, plumbing materials, doors and windows, for sale only to professionals; fittings for individual, conventional and specialist establishments; motor vehicles, in dealerships and repair workshops; nurseries for gardening and cultivation, and motor fuel?

**Appeal brought on 27 April 2016 by Industrias Químicas del Vallés, S.A. against the order of the
General Court (Third Chamber) delivered on 16 February 2016 in Case T-296/15, Industrias
Químicas del Vallés, S.A. v Commission**

(Case C-244/16 P)

(2016/C 260/32)

Language of the case: Spanish

Parties

Appellant: Industrias Químicas del Vallés, S.A. (represented by: C. Fernández Vicién, I. Moreno-Tapia Rivas and C. Vila Gisbert, abogadas)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims the Court should:

- set aside the order of the General Court of the European Union of 16 February 2016 in Case T-296/15, *Industrias Químicas del Vallés, S.A. (IQV) v European Commission*;
- declare as admissible IQV's application for annulment of Commission Implementing Regulation (EU) 2015/408; ⁽¹⁾
- refer the case back to the General Court of the European Union in order to rule on the substance of Case T-296/15;
- order the European Commission to pay the costs of these proceedings.

Pleas in law and main arguments

- (i) The General Court erred in law in holding, in the order under appeal, that the contested regulation is a regulatory act which includes, as regards the applicant, implementing measures for the purposes of Article 263(4) of the Treaty on the Functioning of the European Union.
- (ii) The General Court erred in law in holding, in the order under appeal, that the inadmissibility of IQV's action against the contested regulation did not deprive it of an effective judicial remedy.
- (iii) The General Court erred in law in holding, in the order under appeal, that IQV was not individually affected by the contested regulation.

⁽¹⁾ Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ L 67, p. 18).

**Request for a preliminary ruling from the Commissione tributaria provinciale di Siracusa (Italy)
lodged on 28 April 2016 — Enzo di Maura v Agenzia delle Entrate — Direzione Provinciale di
Siracusa**

(Case C-246/16)

(2016/C 260/33)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Siracusa

Parties to the main proceedings

Applicant: Enzo di Maura

Defendant: Agenzia delle Entrate — Direzione Provinciale di Siracusa

Questions referred

1. Having regard to Article 11(C)(1) and the second sentence of Article 20(1)(b) of Directive 77/388/EEC ⁽¹⁾ in relation to the downward adjustment of the taxable amount and the adjustment of the VAT charged on taxable transactions in cases where the consideration agreed by the parties remains totally or partially unpaid, is it compatible with the principles of proportionality and effectiveness guaranteed by the TFEU, and the principle of neutrality that governs the application of VAT, to impose limits that make it impossible or excessively costly — in terms of time too, in connection with the unforeseeable duration of an insolvency procedure — for the taxable person to recover the tax on the consideration which remains totally or partially unpaid?
2. If the answer to the first question is in the affirmative, is it compatible with the principles set out above that a provision — such as Article 26(2) of Presidential Decree No 633/1972, in the version in force before the amendments introduced by Article 1(126) and (127) of Law No 208 of 28 December 2015 — makes the right to recover the tax contingent on proof that insolvency procedures have previously been unsuccessfully conducted, that is to say, in accordance with case-law and the practice of the tax authority of the EU Member State, following definitive failure to distribute the assets, or, failing that, a final decision closing the insolvency procedure, even where such procedures may reasonably be deemed to be uneconomic because of the amount of the claim, the prospects of recovery and the costs of the insolvency procedures and given that, in any event, those conditions could apply years after the date of opening of the insolvency?

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

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 2 May 2016 —
Austria Asphalt GmbH & Co OG v Bundeskartellanwalt**

(Case C-248/16)

(2016/C 260/34)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Austria Asphalt GmbH & Co OG

Defendant: Bundeskartellanwalt

Question referred

Must Article 3(1)(b) and Article 3(4) of Council Regulation (EC) No 139/2004⁽¹⁾ of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation') be interpreted to mean that a move from sole control to joint control of an existing undertaking, in circumstances where the undertaking previously having sole control becomes an undertaking exercising joint control, constitutes a concentration only where the controlled undertaking has on a lasting basis all the functions of an autonomous entity?

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 3 May 2016 — Flibtravel International SA, Léonard Travel International SA v AAL Renting SA, Haroune Tax SPRL, Saratax SCS and Others

(Case C-253/16)

(2016/C 260/35)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellants: Flibtravel International SA, Léonard Travel International SA

Respondents: AAL Renting SA, Haroune Tax SPRL, Saratax SCS, Ryad SCRI, Taxis Bachir & Cie SCS, Abdelhamid El Barjaji, Abdelouahab Ben Bachir, Sotax SCRI, Mostapha El Hammouchi, Boughaz SPRL, Sahbaz SPRL, Jamal El Jelali, Mohamed Chakir Ben Kadour, Taxis Chalkis SCRL, Mohammed Gheris, Les délices de Fès SPRL, Abderrahmane Belyazid, E.A.R. SCS, Sotrans SPRL, B.M.A. SCS, Taxis Amri et Cie SCS, Aramak SCS, Rachid El Amrani, Mourad Bakkour, Mohamed Agharbiou, Omar Amri, Jmili Zouhair, Mustapha Ben Abderrahman, Mohamed Zahyani, Miltotax SPRL, Lextra SA, Ismael El Amrani, Farid Benazzouz, Imad Zufri, Abdel-Ilah Bokhamy, Ismail Al Bouhali, Bahri Messaoud & Cie SCS, Mostafa Bouzid, BKN Star SPRL, M.V.S. SPRL, A.B.M.B. SCS, Imatrans SPRL, Reda Bouyaknouden, Ayoub Tahri, Moulay Adil El Khatir, Redouan El Abboudi, Mohamed El Abboudi, Bilal El Abboudi, Sofian El Abboudi, Karim Bensbih, Hadel Bensbih, Mimoun Mallouk, Abdellah El Ghaffouli, Said El Aazzoui

Questions referred

1. Must Article 96(1) TFEU be interpreted as being capable of application to rates and conditions imposed by a Member State on taxi service operators where: (a) the taxi journeys concerned are only exceptionally made across national borders; (b) a significant proportion of the customers of those taxis consists of EU nationals or residents who are not nationals or residents of the Member State in question; and (c) in the specific circumstances of the case, the taxi journeys at issue are, for the passenger, very often no more than one stage in a longer trip the final destination or point of departure of which is in an EU country other than the Member State in question?
2. Must Article 96(1) TFEU be interpreted as being applicable to operating conditions other than fare conditions and the criteria for obtaining authorisation to carry on the transport activity in question, such as, in this case, a prohibition preventing taxi operators from making available individual seats rather than the vehicle in its entirety, and a prohibition on those operators determining themselves the final destination of the journey that they are offering to customers, which has the effect of preventing those operators from grouping together customers who are travelling to the same final destination?

3. Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, measures such as those referred to in the second question (a) the general aim of which, among other objectives, is to protect taxi operators from competition from private hire vehicle companies and (b) the specific effect of which, in the particular circumstances of the case, is to protect coach service operators from competition from taxi operators?
4. Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, a measure which prohibits taxi operators from soliciting customers where the effect of that measure in the particular circumstances of the case is to reduce their capacity to attract customers away from a competing coach service?

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 9 May 2016 — Deichmann SE v Hauptzollamt Duisburg

(Case C-256/16)

(2016/C 260/36)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Deichmann SE

Defendant: Hauptzollamt Duisburg

Question referred

Is Commission Implementing Regulation (EU) 2016/223 ⁽¹⁾ of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 valid?

⁽¹⁾ OJ 2016 L 41, p. 3.

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 9 May 2016 — Finnair Oyj v Keskinäinen Vakuutusyhtiö Fennia

(Case C-258/16)

(2016/C 260/37)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Finnair Oyj

Defendant: Keskinäinen Vakuutusyhtiö Fennia

Questions referred

1. Is Article 31(4) of the Montreal Convention to be interpreted as meaning that, to preserve a right of action, it is necessary, in addition to giving notice of a complaint in due time, that the complaint be made in writing within the times provided for under Article 31(3)?
2. If, to preserve a right of action, a complaint must be made in writing in due time, is Article 31(3) of the Montreal Convention to be interpreted as meaning that the requirement of writing may be fulfilled in an electronic procedure and also by the registration of the damage in the information system of the carrier?
3. Does the Montreal Convention preclude an interpretation by which the requirement of writing is regarded as fulfilled where, with the knowledge of the passenger, a representative of the carrier records in writing the notice of complaint/the complaint either on paper or electronically in the carrier's system?
4. Does Article 31 of the Montreal Convention subject a complaint to further substantive requirements than that of giving notice to the carrier of the damage sustained?

Reference for a preliminary ruling from Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) made on 12 May 2016 – Shields & Sons Partnership v The Commissioners for Her Majesty's Revenue and Customs

(Case C-262/16)

(2016/C 260/38)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: Shields & Sons Partnership

Defendant: The Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. With regard to the common flat-rate scheme for farmers which is established by Chapter 2 of Title XII of Council Directive (EC) 2006/112/EC ⁽¹⁾, is Article 296(2) to be interpreted as providing an exhaustive regime as to when a Member State is able to exclude a farmer from the common agricultural flat-rate scheme? In particular:
 - 1.1. Is a Member State only able to exclude farmers from the common flat-rate scheme for farmers pursuant to Article 296(2)?
 - 1.2. Is a Member State also able to exclude a farmer from the common flat-rate scheme for farmers using Article 299?
 - 1.3. Does the principle of fiscal neutrality give a Member State a right to exclude a farmer from the common flat-rate scheme for farmers?
 - 1.4. Do Member States have an entitlement to exclude farmers from the common flat-rate scheme for farmers on any other grounds?

2. How is the term 'categories of farmers' in Article 296(2) of Council Directive (EC) 2006/112/EC to be interpreted? In particular:
 - 2.1. Must a relevant category of farmers be capable of being identified by reference to objective characteristics?
 - 2.2. Can a relevant category of farmers be capable of being identified by reference to economic considerations?
 - 2.3. What level of precision is required in identifying a category of farmers which a Member State has purported to exclude?
 - 2.4. Does it entitle a Member State to treat as a relevant category 'farmers who are found to be recovering substantially more as members of the flat-rate scheme than they would if they were registered for VAT'?

(¹) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ L 347, p. 1

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) made on 13 May 2016 – Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs

(Case C-266/16)

(2016/C 260/39)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Western Sahara Campaign UK

Defendants: Commissioners for Her Majesty's Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs

Questions referred

1. In the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one part, and the Kingdom of Morocco, on the other part (OJ 1170/2 18 March 2000) ('the Association Agreement'), approved, by Commission and Council Decision 2000/204/EC (¹), ECSC, do the references to 'Morocco' in Articles 9, 17 and 94 and Protocol 4 refer only to the sovereign territory of Morocco as recognised by the United Nations and the European Union ('EU') and therefore preclude products originating in Western Sahara from being imported into the EU free of customs duties pursuant to the Association Agreement?
2. If products originating in Western Sahara may be imported into the EU free of customs duties pursuant to the Association Agreement, is the Association Agreement valid, having regard to the requirement under Article 3(5) of the Treaty on European Union to contribute to the observance of any relevant principle of international law and respect for the principles of the United Nations Charter and the extent to which the Association Agreement was concluded for the benefit of the Saharawi people, on their behalf, in accordance with their wishes and/or in consultation with their recognised representatives.

3. Is the Fisheries Partnership Agreement between the EU and the Kingdom of Morocco (as approved and implemented by Council Regulation 764/2006 ⁽²⁾, Council Decision 2013/785/EU ⁽³⁾, and Council Regulation 1270/2013 ⁽⁴⁾) valid, having regard to the requirement under Article 3(5) of the Treaty on European Union to contribute to the observance of any relevant principle of international law and respect for the principles of the United Nations Charter and the extent to which the Fisheries Partnership Agreement was concluded for the benefit of the Saharawi people, on their behalf, in accordance with their wishes, and/or in consultation with their recognised representatives.
4. Is the Claimant entitled to challenge the validity of EU acts based on alleged breach of international law by the EU, having regard, in particular, to:
- a) the fact that, although the Claimant has standing under national law to impugn the validity of the EU acts, it does not assert any rights under EU law; and/or
 - b) the principle in Case of the Monetary Gold Removed from Rome in 1943 (ICJ Reports 1954) that the International Court of Justice may not make findings that impugn the conduct of, or affect the rights of, a State that is not before the Court and has not consented to be bound by the decisions of the Court.

⁽¹⁾ 2000/204/EC, ECSC: Council and Commission Decision of 24 January 2000 on the conclusion of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

OJ L 70, p. 1

⁽²⁾ Council Regulation (EC) No 764/2006 of 22 May 2006 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco

OJ L 141, p. 1

⁽³⁾ 2013/785/EU: Council Decision of 16 December 2013 on the conclusion, on behalf of the European Union, of the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco

OJ L 349, p. 1

⁽⁴⁾ Council Regulation (EU) No 1270/2013 of 15 November 2013 on the allocation of fishing opportunities under the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco

OJ L 328, p. 40

Reference for a preliminary ruling from Supreme Court of Gibraltar (United Kingdom) made on 13 May 2016 – Albert Buhagiar, Wayne Piri, Stephanie Piri, Arthur Taylor, Henry Bonifacio, Colin Tomlinson, Darren Sheriff v The Hon. Gilbert Licudi QC MP Minister for Justice

(Case C-267/16)

(2016/C 260/40)

Language of the case: English

Referring court

Supreme Court of Gibraltar

Parties to the main proceedings

Applicants: Albert Buhagiar, Wayne Piri, Stephanie Piri, Arthur Taylor, Henry Bonifacio, Colin Tomlinson, Darren Sheriff

Defendant: The Hon. Gilbert Licudi QC MP Minister for Justice

Questions referred

1. If the EFP provisions in the Directive ⁽¹⁾ concern only the free movement of goods, can they nonetheless apply to Gibraltar on the basis that they do not involve a trade or commercial transaction and are therefore outside the scope of the derogations granted to Gibraltar under the 1972 Act of Accession?
2. Are the provisions of the Directive concerning the EFP, as regards hunters and sports target shooters, applicable to Gibraltar on the ground that they concern the free movement of services?
3. Are the provisions of the Directive concerning the EFP, as regards hunters and sports target shooters, invalid on the ground that they concern the free movement of persons and have therefore been adopted under the wrong legal basis?

⁽¹⁾ Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons
OJ L 256, p. 51

Appeal brought on 17 May 2016 by Società cooperativa Amrita arl and Others against the order of the General Court (Eighth Chamber) delivered on 11 March 2016 in Case T-439/15, Amrita and Others v Commission

(Case C-280/16 P)

(2016/C 260/41)

Language of the case: Italian

Parties

Appellants: Soc. coop. Amrita arl; Cesi Marta; Comune Agricola Lunella — Soc. mutua coop. arl; Rollo Olga; Borrello Claudia; Società agricola Merico Maria Rosa di Consiglia, Marta e Vito Lisi; Marzo Luigi; Stasi Anna Maria; Azienda Agricola Crie di Miggiano Gianluigi; Castriota Maria Grazia; Azienda Agricola di Cagnoni Fiorella; Azienda Agricola Spirido ss agr.; Impresa Agricola Stefania Stamerra; Azienda Agricola Clemente Pezzuto di Pezzuto Francesco; Simone Cosimo Antonio; Masseria Alti Pareti Soc. agr. arl (represented by: L. Paccione, V. Stamerra, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the order under appeal and refer the case back to the General Court, if appropriate with a declaration confirming that the appellants are fully entitled to bring proceedings;
- order the Commission to pay the costs.

Grounds of appeal and main arguments

In support of the appeal, the appellants rely on the following grounds:

1. **First ground of appeal: error in law. Incorrect assessment of the relevant facts. Inadequate and erroneous reasoning in relation to paragraphs 12 to 22 of the order under appeal**

The order under appeal is based on the erroneous premise that the appellants requested the annulment of Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ 2015 L 125, p. 36) in its entirety, rather than, as was in fact the case, the annulment only of the specific parts described in greater detail in the application initiating the proceedings and in the reply to the objection of inadmissibility.

2. Second ground of appeal: Error in law. Incorrect assessment of the relevant facts. Insufficient, contradictory and erroneous nature of the reasoning

The order under appeal wrongly states that the Commission decision requires enforcement measures on the part of the Italian State in relation to the boundaries of the zone infected by *Xylella fastidiosa*. The undisputed fact that the decision classifies in a binding manner, as an affected area, the entire administrative province of Lecce, the territorial boundaries of which are already marked on the map, gainsays that argument.

3. Third ground of appeal: Unlawfulness of paragraph 25, also in relation to paragraph 21, of the order under appeal: contradictory, erroneous and manifestly unfounded nature of the reasoning

The reasoning of the General Court in paragraph 21 of the order under appeal states that, in order to assess whether a regulatory act entails implementing measures, it is necessary to refer to the position of the party relying on the right to bring an action. The General Court derogates from that interpretative criterion in the subsequent paragraph 25 by rejecting the arguments regarding the appellants' entitlement to bring proceedings.

4. Fourth ground of appeal: Error in law. Incorrect assessment of the relevant facts. Insufficient, contradictory and erroneous nature of the reasoning

The General Court, on the one hand, holds that the Ministero delle Politiche Agricole italiano (Italian Ministry of Agricultural Policy) adopted enforcement measures in relation to Articles 4, 6 and 7 of the Commission decision by way of decree, whereas, on the other hand, in contradiction to this, it notes that certain measures in the Commission decision are not included in that decree.

5. Fifth ground of appeal: Error in law. Incorrect assessment of the relevant facts. Insufficient, contradictory and erroneous nature of the reasoning

Paragraph 24 of the order under appeal fails to address the actual content of the first-instance proceedings in which the appellants challenge Article 6(4) and Article 7(4) of the decision, in relation to the obligation to use phytosanitary treatments banned in organic farming, this being an obligation that involves a self-implementing measure causing direct harm to the appellant companies, which would lose their organic certification as a result.

6. Sixth ground of appeal: Error in law. Incorrect assessment of the relevant facts. Insufficient, contradictory and erroneous nature of the reasoning

Paragraphs 33 and 34 of the order under appeal ignore the documentary evidence produced in the course of the proceedings regarding the individual harm suffered by the appellants as a result of the measures under appeal.

7. Seventh ground of appeal: Error in law. Failure to rule on the direct harm resulting from the measures under appeal

The General Court failed to rule on the objective existence of the direct harm suffered by the appellant companies as a result of the Commission's self-implementing measures under appeal.

Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 23 May 2016 — IK ‘L.Č.’**(Case C-288/16)**

(2016/C 260/42)

*Language of the case: Latvian***Referring court**

Augstākā tiesa

Parties to the main proceedings*Applicant:* IK ‘L.Č.’*Other party:* Valsts ieņēmumu dienests**Questions referred**

1. Must Article 146(1)(e) of Council Directive 2006/112/EC ⁽¹⁾ of 28 November 2006 on the common system of value added tax be interpreted as meaning that the exemption laid down therein is applicable only where there is a direct legal connection or a reciprocal contractual relationship between the services provider and the consignee or the consignor of the goods?
2. What criteria must be met by the direct connection referred to in the abovementioned provision in order for a service connected with the importation or exportation of goods to be exempt?

⁽¹⁾ OJ 2006 L 347, p. 1.

Appeal brought on 26 May 2016 by European Commission against the judgment of the General Court (Second Chamber) delivered on 16 March 2016 in Case T-103/14: Frucona Košice a.s. v European Commission**(Case C-300/16 P)**

(2016/C 260/43)

*Language of the case: English***Parties***Appellant:* European Commission (represented by: L. Armati, T. Maxian Rusche, B. Stromsky, K. Walkerová, agents)*Other party to the proceedings:* Frucona Košice a.s.**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Second Chamber) of 16 March 2016, notified to the Commission the same day, in Case T-103/14 Frucona Košice v Commission;
- rule itself on the application at first instance and reject the application as unfounded in law; and
- order the respondent and applicant at first instance to pay the costs of the proceedings.

In the alternative, the Commission requests that the Court

- set aside the judgment of the General Court (Second Chamber) of 16 March 2016, notified to the Commission the same day, in Case T-103/14 Frucona Košice v Commission; and
- refer the case back to the General Court for consideration of the second, and, to the extent necessary, third and fourth pleas at first instance; and
- reserve the costs of the proceedings at first instance and on.

Pleas in law and main arguments

According to the Commission the contested judgment should be set aside on the following grounds concerning, first, the applicability of the private creditor test, and, second, the application of the private creditor test.

With regard to the applicability of the private creditor test, the Commission raises three grounds of appeal. First, a misinterpretation of the contested decision; second, an error in law in the interpretation of Article 107(1) TFEU concerning the applicability of the private creditor test; and third, a misapplication of *res iudicata*.

The judgment under appeal takes the view that the private creditor test is applicable, even where the Member State argues in the administrative procedure on the basis of detailed arguments that the public authority has not acted on the basis of considerations that would guide a private market participant, as long as an interested party claims the opposite. The Commission's understanding of the case-law is that the position of the Member State is of fundamental importance when it comes to the applicability of the private creditor test.

With regard to the application of the private creditor test, the Commission will raise two grounds of appeal. First, a violation of Article 107(1) TFEU concerning the application of the private creditor test. Second, the General Court erred in the interpretation of the obligation to conduct a diligent and impartial investigation into alleged State aid pursuant to Article 107(1) TFEU.

The General Court requires the Commission to reconstruct *ex officio* the behaviour of the ideal, rational and fully informed hypothetical private creditor. What is more, that requirement exists independently of what the Member State concerned actually did or said. The Commission's understanding of the case law is that it requires the Commission not to itself gather the evidence and information a rational private creditor would have gathered before making its assessment where the public authority in question has not done so. Rather, its task is limited to verify whether, subjectively, the public authority, on the basis of its behaviour and the evidence and information it actually had at its disposal when taking its decision, behaved like a private creditor in a situation as close as possible to that of the public authority in coming to the decision to grant the measure in question.

Order of the President of the Court of 16 March 2016 — European Commission v Republic of Poland

(Case C-545/15) ⁽¹⁾

(2016/C 260/44)

Language of the case: Polish

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

⁽¹⁾ OJ C 16, 18.1.2016.

Order of the President of the Court of 10 March 2016 — European Commission v Federal Republic of Germany

(Case C-546/15) ⁽¹⁾

(2016/C 260/45)

Language of the case: German

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

⁽¹⁾ OJ C 7, 11.1.2016.

Order of the President of the Court of 17 March 2016 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Hans-Peter Offenböck, in the presence of: Unabhängiger Verwaltungssenat im Land Niederösterreich

(Case C-565/15) ⁽¹⁾

(2016/C 260/46)

Language of the case: German

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

⁽¹⁾ OJ C 38, 1.2.2016.

GENERAL COURT

Judgment of the General Court of 2 June 2016 — Moreda-Riviere Trefilerías and Others v Commission**(Joined Cases T-426/10 to T-429/10, T-438/12 to T-441/12) ⁽¹⁾**

(Competition — Agreements, decisions and concerted practices — European market for prestressing steel — Price fixing, market sharing and the exchange of commercially sensitive information — Decision finding an infringement of Article 101 TFEU — Economic unit — Direct participation in the infringement — Secondary liability of parent companies — Succession of undertakings — Complex infringement — Single and continuous infringement — 2006 Guidelines on the method of setting fines — Principle of non-retroactivity and principle that penalties must be lawful — Mitigating circumstances — Ability to pay — Rights of the defence — Obligation to state reasons — Request for reconsideration — No change in the factual circumstances — Letter of rejection — Inadmissibility)

(2016/C 260/47)

Language of the case: Spanish

Parties

Applicants: Moreda-Riviere Trefilerías, SA (Gijón, Spain) (Cases T-426/10 and T-440/12); Trefilerías Quijano, SA (Los Corrales de Buelna, Spain) (Cases T-427/10 and T-439/12); Trenzas y Cables de Acero PSC, SL (Santander, Spain) (Cases T-428/10 and T-441/12) (represented by: in Cases T-426/10 to T-429/10, F. González Díaz and A. Tresandi Blanco, and, in Cases T-438/12 to T-441/12, initially by F. González Díaz and P. Herrero Prieto, and subsequently by F. González Díaz and A. Tresandi Blanco, lawyers)

Defendant: European Commission (represented by: in Cases T-426/10, T-427/10, T-429/10 and T-438/12 to T-441/12, V. Bottka, F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents, and by L. Ortiz Blanco and A. Lamadrid de Pablo, lawyers, and, in Case T-428/10, by V. Bottka and F. Castillo de la Torre, and by L. Ortiz Blanco and A. Lamadrid de Pablo)

Re:

Application for annulment and variation of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/38344 — Prestressing Steel), as amended by Commission Decision C(2010) 6676 final of 30 September 2010 and Commission Decision C(2011) 2269 final of 4 April 2011, and also by the letter of 25 July 2012 from the Director-General of the Directorate-General for Competition of the Commission.

Operative part of the judgment*The Court:*

1. Dismisses the actions;
2. Orders Moreda-Riviere Trefilerías, SA, Trefilerías Quijano, SA, Trenzas y Cables de Acero PSC, SL and Global Steel Wire, SA to pay the costs.

⁽¹⁾ OJ C 317, 20.11.2010.

Order of the General Court of 25 May 2016 — Stagecoach Group v EUIPO (MEGABUS.COM)**(Case T-805/14) ⁽¹⁾**

(European Union trade mark — Application for a European Union word mark MEGABUS.COM — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 — Article 7(3) of Regulation No 207/2009 — Article 75 of Regulation No 207/2009 — Action manifestly inadmissible and manifestly lacking any foundation in law)

(2016/C 260/48)

Language of the case: English

Parties

Applicant: Stagecoach Group plc (Perth, United Kingdom) (represented by: G. Jacobs, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 7 October 2014 (Case R 1894/2013-4) concerning an application for registration of the word sign MEGABUS.COM as a European Union trade mark.

Operative part of the order

1. The action is dismissed as being in part manifestly inadmissible and in part manifestly lacking any foundation in law.
2. Stagecoach Group plc shall pay the costs.

⁽¹⁾ OJ C 34, 2.2.2015.

Order of the President of the General Court of 23 May 2016 — Pari Pharma v EMA**(Case T-235/15 R)**

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA concerning information submitted by an undertaking as part of its application for authorisation to place a medicinal product on the market — Order granting suspension of operation of the decision to grant a third party access to the documents — Application for cancellation — No change in circumstances — Article 159 of the Rules of Procedure of the General Court)

(2016/C 260/49)

Language of the case: English

Parties

Applicant: Pari Pharma GmbH (Starnberg, Germany) (represented by: M. Epping and W. Rehmann, lawyers)

Defendant: European Medicines Agency (represented by: T. Jabłoński, N. Rampal Olmedo, A. Spina, A. Rusanov and S. Marino, acting as Agents)

Intervener in support of the defendant: Novartis Europharm Ltd (Camberley, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Re:

Application based on Article 159 of the Rules of Procedure of the General Court seeking the cancellation of the order of 1 September 2015 in *Pari Pharma v EMA* (T-235/15 R, EU:T:2015:587), by which it granted the suspension of operation of Decision EMA/271043/2015 of the EMA of 24 April 2015, granting to a third party, 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), access to certain documents containing information submitted in the context of an application for marketing authorisation for the medicinal product Vantobra.

Operative part of the order

1. *The request seeking the cancellation of the order of 1 September 2015 in Pari Pharma v EMA (T-235/15 R, EU:T:2015:587) is rejected.*
2. *The costs are reserved.*

Order of the General Court of 10 May 2016 — Volkswagen v EUIPO — Andră (BAG PAX)

(Case T-324/15) ⁽¹⁾

(EU trade mark — Revocation proceedings — EU word mark BAG PAX — Genuine use of the mark — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Action manifestly lacking any foundation in law)

(2016/C 260/50)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: U. Sander, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. Kunz, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, formerly BAGPAX Cargo Systems e.K.: Marvin Dominic Andră (Saarlouis, Germany) (represented by: T. Dohmen, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 23 April 2015 (Case R 1971/2014-4) concerning revocation proceedings between Volkswagen and BAGPAX Cargo Systems.

Operative part of the order

1. *The action is dismissed.*
2. *Volkswagen AG shall pay the costs.*

⁽¹⁾ OJ C 270, 17.8.2015.

Order of the General Court of 25 May 2016 — Syndial v Commission(Case T-581/15) ⁽¹⁾

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an infringement procedure against Italy — Possible non-compliance with Directives 2011/92/EU and 1999/13/EC — Reclamation of a former industrial site (Cengio-Saliceto) — Refusal of access — Action manifestly lacking any foundation in law)

(2016/C 260/51)

*Language of the case: Italian***Parties**

Applicant: Syndial SpA — Attività Diversificate (San Donato Milanese, Italy) (represented by: L. Acquarone and S. Grassi, lawyers)

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

Re:

Action based on Article 263 TFEU and seeking annulment of the Commission's decision of 3 August 2015 refusing to grant the applicant access to the documents concerning the procedure relating to a possible failure on the part of the Italian Republic to comply with its obligations under Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) and under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1).

Operative part of the order

1. *The action is dismissed.*
2. *Syndial SpA — Attività Diversificate shall bear its own costs and pay those incurred by the European Commission.*

⁽¹⁾ OJ C 398, 30.11.2015.

Action brought on 4 May 2016 – Caviro Distillerie and others v Commission

(Case T-211/16)

(2016/C 260/52)

*Language of the case: English***Parties**

Applicants: Caviro Distillerie Srl (Faenza, Italy), Distillerie Bonollo SpA (Formigine, Italy), Distillerie Mazzari SpA (Sant'Agata sul Santerion, Italy), Industria Chimica Valenzana (ICV) SpA (Borgoricco, Italy) (represented by: R. MacLean, Solicitor, and A. Bochon, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare the appeal admissible;
- annul Article 1 of Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd on the grounds of manifest errors of assessment of fact and law vitiating the measure and violations of Articles 3(2), 3(3), 3(5) and 17(1) of the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community;
- order the defendant and any interveners to pay the applicant's legal costs and expenses of the procedure.

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 contested decision should be annulled on the grounds that the defendant made a manifest error of assessment and appraisal of the facts when it selected an unrepresentative sample of EU producers for the purpose of assessing the injury and in doing so also infringed Articles 3(2), 3(3), 3(5) and 17(1) of the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community by incorrectly assuming that the criterion of the largest EU sales volumes equates to the sample being sufficiently representative.
2. Second plea in law, alleging that the contested decision should be annulled on the grounds that the defendant made manifest errors of assessment and appraisal of the facts in assessing the impact of the dumped imports on the economic situation of the EU industry and in so doing also infringed Articles 3(2), 3(3), 3(5) and 17(1) of the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Action brought on 11 May 2016 – C & J Clark International v Commission

(Case T-230/16)

(2016/C 260/53)

Language of the case: English

Parties

Applicant: C & J Clark International Ltd (Somerset, United Kingdom) (represented by: A. Willems, S. De Knop and J. Charles, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Declare the application admissible;
- Annul Commission Implementing Regulation (EU) 2016/223 of 17 February 2016 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14; and

— Order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission violated the principle of conferral under Articles 5(1) and 5(2) TEU by proceeding on an incorrect legal basis;
2. Second plea in law, alleging that the European Commission violated Article 266 TFEU by failing to take the necessary measures to comply with the judgment of the Court of Justice in C & J Clark International, C-659/13 and C-34/14, EU: C:2016:74;
3. Third plea in law, alleging that the European Commission violated Articles 5(1) and 5(4) TEU by adopting an act that exceeds what is necessary to achieve its objective; and
4. Fourth plea in law, alleging that the European Commission misused its powers by using its competences for a purpose other than that for which they were conferred upon it.

Action brought on 17 May 2016 — NI v EDPS

(Case T-237/16)

(2016/C 260/54)

Language of the case: Spanish

Parties

Applicant: NI (Madrid, Spain) (represented by: A. Gómez-Acebo Dennes, lawyer)

Defendant: European Data Protection Supervisor

Form of order sought

The applicant claims that the Court should:

- Annul and declare inapplicable the decision of the European Data Protection Supervisor of 18 March 2016, rejecting the applicant's request for review of the decision of that Supervisor of 08 December 2015, and order the cessation by the European Ombudsman of the current or future processing of personal data contained in a contract entered with the applicant.
- Order the European Ombudsman to refrain from publishing any personal data of the applicant or data that makes the applicant identifiable. In particular, it should order the European Ombudsman not to make any reference to the position held by the applicant.
- Order the European Ombudsman to process and to comply completely and thoroughly with the right to object to the processing of his personal data in the Own Initiative Inquiry 2/2014 proceedings or any other proceedings that have the same purpose and to which the applicant may be a party.
- Order the European Data Protection Supervisor to pay the costs.

Pleas in law and main arguments

The present action is directed, in substance, against the decision of the defendant not to uphold the applicant's complaint regarding the refusal to conceal certain personal data relating to the processing, before the European Ombudsman, of two investigations concerning the authorisation given to the applicant to carry out a professional activity in the private sector, after he had finished his duties as a member of the European Commission.

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

1. The activity of the applicant, the procedure followed by the Commission when authorising his activity subsequent to carrying out his duties as a member of the Commission, the first investigation carried out by the European Ombudsman concerning that authorisation, and the reopening of the case investigated by the new European Ombudsman, together with the intention of the latter to publish personal data of the applicant, which make him directly and indirectly identifiable, have not been duly taken into consideration by the defendant in the light of the statutory provisions and case-law applicable to its decisions.
2. The anonymous collection of data does not make it possible to ensure the traceability necessary to determine whether the processing of data by the European Ombudsman is lawful, given that that data has been obtained anonymously and processed unlawfully.
3. According to the applicant, the processing of the data that is the subject of the present proceedings must be regarded as excessive, inappropriate and irrelevant to the purpose for which it was collected, even if this was done anonymously. The contract delivered concerns, solely and exclusively, the relationship between the applicant and a private company, after the applicant had left his post as a member of the Commission, and the subject of that contract is unrelated to his duties in the Commission.
4. There is no new information or facts that justify the processing and publication of the applicant's personal data, which, moreover, were considered confidential in the first investigation carried out by the previous European Ombudsman. A change in the confidential treatment of the data in question has no legal basis nor have grounds been given for this at any time by the European Ombudsman.
5. The publication of the personal data in the present case does not contribute in any way to a better investigation, given that the European Ombudsman can investigate the authorisation given to the applicant to carry out private employment without using data concerning his private life and, in particular, without publishing that data.

Action brought on 17 May 2016 – Clean Sky 2 Joint Undertaking v Scouring Environnement
(Case T-238/16)

(2016/C 260/55)

Language of the case: English

Parties

Applicant: Clean Sky 2 Joint Undertaking (CSJU) (represented by: B. Mastantuono, agent, assisted by M. Velardo, lawyer)

Defendant: Scouring Environnement SARL (Tauriac, France)

Form of order sought

The applicant claims that the Court should:

- order the defendant to pay the CSJU the amount of 60 000,00 euros in relation to the Grant Agreement No 287071 'BiMed – Bicarbonate media blasting for paint-varnish removal and dry surface treatment', plus the amount of 3 600,00 euros as late payment interest calculated at a rate of 3,65 % for the period between 12 September 2014 and 3 May 2016; and
- order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

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

The applicant contends that the defendant has breached its contractual obligations, by failing to submit the required reports, financial statements and deliverables of period 1, in accordance with Article 3 of the Grant Agreement, Article II.2(3) and Article II.4 Annex II to the Grant Agreement. Accordingly, the applicant terminated the Grant Agreement on the basis of Article II.38 Annex II to the Grant Agreement and issued debit note for the pre-financing of 60 000,00 euros that had already been paid to the coordinator in compliance with the provisions of the Grant Agreement. Consequently, the Applicant issued debit note for the recovery of the pre-financing, which remains the property of the applicant until final payment.

The facts giving rise to Scouring Environnement SARL's obligations, as coordinator, are widely undisputed in the present case, as no objection were raised by the defendant in relation to the circumstances of the termination and about the calculation of the amount to be re-paid to the applicant.

Accordingly, the applicant is entitled to ask for the recovery and the reimbursement of the amount paid to the defendant as pre-financing, increased by default interest.

**Action brought on 20 May 2016 — Director-General of the European Anti-Fraud Office v
Commission**

(Case T-251/16)

(2016/C 260/56)

Language of the case: French

Parties

Applicant: Director-General of the European Anti-Fraud Office (Brussels, Belgium) (represented by: L. Jelinek, staff member, assisted by G.M. Roberti and I. Perego, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Decision C(2016)1449 final of the European Commission of 2 March 2016 concerning an application for waiver of immunity, with the exception of Article 1(2);
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringements of law and manifest errors of assessment committed by the European Commission. The contested decision does not comply with the legal requirements governing waiver of immunity from legal proceedings of the Director-General of the European Anti-Fraud Office (OLAF) and is based on a manifestly erroneous reading of the documents in the case-file. Moreover, the contested decision did not correctly assess the EU's interest and compromises the independence of the Director-General of OLAF.

2. Second plea in law: infringements of law and distortion of the decision-making process.
3. Third plea in law: infringement of the obligation to state reasons.
4. Fourth plea in law: infringement of the principle of sincere cooperation and of procedural guarantees.

Action brought on 23 May 2016 — Globo Media v EUIPO — Globo Comunicação e Participações (GLOBO MEDIA)

(Case T-262/16)

(2016/C 260/57)

Language in which the application was lodged: Spanish

Parties

Applicant: Globo Media, SA (Madrid, Spain) (represented by: L. Estropá Navarro y J. Calderón Chavero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Globo Comunicação e Participações S/A (Rio de Janeiro, Brazil)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: European Union word mark 'GLOBO MEDIA' — Application for registration No 8 957 169

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14/03/2016 in Case R 561/2014-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- As a consequence of the above, reject opposition No B1697179 and grant registration of the contested mark as regards the services requested in classes 35, 38 and 41;
- Order EUIPO and the other interveners to pay the costs of these proceedings if they oppose them and reject their claims.

Pleas in law

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

Appeal brought on 28 May 2016 by Petrus Kerstens against the judgment of the Civil Service Tribunal of 18 March 2016 in Case F-23/15, Kerstens v Commission

(Case T-270/16 P)

(2016/C 260/58)

Language of the case: French

Parties

Appellant: Petrus Kerstens (Overijse, Belgium) (represented by C. Mourato, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the General Court should:

- set aside the judgment of the Second Chamber of the Civil Service Tribunal of 18 March 2016 in *Kerstens v Commission* (Case F-23/15);
- refer the case back to the Civil Service Tribunal of the European Union;
- order the respondent to pay the costs.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on five grounds.

1. First ground of appeal, alleging distortion of the facts and evidence and inconsistent reasoning as regards the absence of an administrative inquiry report within the meaning of Articles 2 to 4 of the 2004 general implementing provisions concerning the conduct of administrative inquiries and disciplinary procedures ('the 2004 GIPs').
2. Second ground of appeal, alleging an error of law linked to the lack of annulment of a disciplinary decision not based on an administrative inquiry report within the meaning of the 2004 GIPs.
3. Third ground of appeal, alleging inconsistency in the grounds of the judgment, breach of the obligation to state reasons, distortion of the facts and evidence, infringement of Article 4(4) of the 2004 GIPs and Article 91 of the Staff Regulations, breach of the principle of the separation of powers between the judicial and administrative authorities, breach of the prohibition on ruling *ultra petita*, of the adversarial principle and of the principle of non-discrimination, as well as errors of law in relation to the examination by the Civil Service Tribunal of the consequences of the irregularities committed by the Commission.
4. Fourth ground of appeal, alleging an error of law and breach of the adversarial principle linked to a misinterpretation of Article 24 of the Staff Regulations and of Article 10 of Annex IX thereto.
5. Fifth ground of appeal, put forward in the alternative, alleging distortion of the facts and evidence, breach of the obligation to state reasons and an error of law in respect of the principle that disciplinary matters must be dealt with within a reasonable period of time.

Action brought on 26 May 2016 — GeoClimaDesign v EUIPO — GEO Gesellschaft für ENERGIE und Oekologie (GEO)**(Case T-280/16)**

(2016/C 260/59)

*Language in which the application was lodged: German***Parties***Applicant:* GeoClimaDesign AG (Fürstenwalde/Spree, Germany) (represented by: B. Lanz, lawyer)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other party to the proceedings before the Board of Appeal:* GEO Gesellschaft für ENERGIE und Oekologie GmbH (Langenhorn, Germany)**Details of the proceedings before EUIPO***Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal*Trade mark at issue:* European Union word mark 'GEO' — European Union trade mark No 8 331 076*Procedure before EUIPO:* Proceedings for a declaration of invalidity*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 29 March 2016 in Case R 1679/2015-4**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- annul the mark in question or, in the alternative, the mark for the organisational preparation of building projects in the field of renewable energies, in particular wind power stations and wind parks of Class 35, real estate management and brokerage services in the realisation of projects in the area of renewable energies, in particular wind energy plants and wind parks; the repair and maintenance of wind energy plants in Class 37 and the technical project design of projects in the field of energy supply; the technical project design of projects in the field of renewable energies, in particular the field of wind energy plants and wind parks; services of engineers in the field of renewable energies, in particular in the field of wind energy plants; the drawing up of technical and academic opinions in Class 42;
- order the defendant to pay the costs.

Plea in law

- Infringement of Article 52(1)(a) in conjunction with Article 7(1)(b) and Article 7(1)(c) of Regulation No 207/2009.

Action brought on 2 June 2016 — Solelec and Others v Parliament**(Case T-281/16)**

(2016/C 260/60)

*Language of the case: French***Parties***Applicants:* Solelec SA (Esch-sur-Alzette, Luxembourg), Mannelli & Associés SA (Bertrange, Luxembourg), Paul Wagner et fils SA (Luxembourg, Luxembourg), Socom SA (Foetz, Luxembourg) (represented by: S. Marx, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

- Annul Decision No D(2016)14480 of 27 May 2016 of the Directorate-General for Infrastructure and Logistics of the European Parliament by which the tender of the consortium 'ELECTRO KAD', formed by the companies SOLELEC S.A., MANNELLI & ASSOCIÉS S.A., PAUL WAGNER & FILS S.A. and SOCOM S.A., with regard to Lot 75 'electricity — high-voltage' presented on 14 January 2016 in the context of call for tenders INLO-D-UPIL-T-15-AO6 concerning the extension project and upgrade of the Konrad Adenauer Building in Luxembourg was rejected and the decision that awarded the contract at issue to another tenderer;
- Order production of the documents of the procurement file in which the contacts which were made between the Parliament and the tenderers were reported in accordance with Article 160(3) of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Order the defendant to pay the 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 failure to observe the selection criteria, which were not fulfilled by the consortium that was awarded the contract in so far as one of its members did not have legal personality for the entire duration of the work and it was, it is claimed, impossible for the consortium awarded the contract to have the references relating to technical and professional capacity as required in the tender specifications.
2. Second plea in law, alleging failure to comply with the award criteria. By comparing the tender submitted by the applicants to that of the consortium that was awarded the contract, the latter would have been revealed to be abnormally low, which would have led the defendant to reject that tender and to award the contract to the applicants.

Action brought on 30 May 2016 — Dominator International v EUIPO (DREAMLINE)

(Case T-285/16)

(2016/C 260/61)

Language of the case: German

Parties

Applicant: Dominator International GmbH (Vienna, Austria) (represented by: N. Gugerbauer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'DREAMLINE' — Application for registration No 1 222 091

Contested decision: Decision of the Second Board of Appeal of EUIPO of 4 March 2016 in Case R 1669/2015-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 7(1)(b) of Regulation No 207/2009;
- Infringement of Article 7(1)(c) of Regulation No 207/2009;
- Infringement of Article 7(2) of Regulation No 207/2009.

Action brought on 2 June 2016 — Kneidinger v EUIPO — Topseat International (Toilet Lid)
(Case T-286/16)
(2016/C 260/62)

Language in which the application was lodged: German

Parties

Applicant: Ernst Kneidinger (Wilhering, Austria) (represented by: M. Grötschl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Topseat International (Plano, Texas, USA)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design No 2274035-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 5 April 2016 in Case R 1030/2015-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs — in particular the cost of the pleadings and the further costs of any possible oral proceedings and travel costs — and the costs incurred during the proceedings before the Board of Appeal.

Plea in law

- Infringement of Article 6(1) and (3) of Regulation No 6/2002.
-

Action brought on 2 June 2016 – Convivo v EUIPO – Porcesadora Nacional de Alimentos (M'Cooky)**(Case T-288/16)**

(2016/C 260/63)

*Language in which the application was lodged: English***Parties***Applicant:* Convivo GmbH (Vienna, Austria) (represented by: C. Düchs, lawyer)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other party to the proceedings before the Board of Appeal:* Porcesadora Nacional de Alimentos C.A. Pronaca (Quito, Ecuador)**Details of the proceedings before EUIPO***Proprietor of the trade mark at issue:* Applicant*Trade mark at issue:* International registration designating the European Union in respect of the word mark 'M'Cooky' – International registration designating the European Union No 1 075 242*Procedure before EUIPO:* Opposition proceedings*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 7 March 2016 in Case R 1039/2015-2**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the EUIPO to pay the costs incurred by the Applicant for the present judicial proceedings including those incurred in the appeal and opposition proceedings;
- order the EUIPO and the intervener to bear their own costs.

Plea in law

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (First Chamber) of 7 June 2016 — Verile v Commission

(Case F-108/12) ⁽¹⁾

(Civil service — Officials — Pensions — Article 11(2) of Annex VIII to the Staff Regulations — Transfer of pension rights acquired in a national pension scheme into the European Union pension scheme — Proposal concerning additional pensionable years — Action — Annulment — Appeal — Reclassification of claim for annulment of the proposal concerning additional pensionable years — Interpretation of the claim for annulment as a claim seeking annulment of the decision recognising additional pensionable years following the transfer of pension rights — Rejection of the claim — Judgment on appeal which has acquired the force of res judicata — No need to adjudicate)

(2016/C 260/64)

Language of the case: French

Parties

Applicant: Marco Verile (Cadrezzate, Italy) (represented by: initially by D. de Abreu Caldas, A. Coolen, É. Marchal, S. Orlandi and J.-N. Louis, lawyers, then by D. de Abreu Caldas, S. Orlandi and J.-N. Louis, lawyers, then by S. Orlandi and J.-N. Louis, lawyers, and finally by J.-N. Louis, lawyer)

Defendant: European Commission (represented by: initially by D. Martin and G. Gattinara, acting as Agents, then by J. Currall and G. Gattinara, acting as Agents, then by G. Gattinara, acting as Agent, and finally by G. Gattinara and F. Simonetti, acting as Agents)

Re:

Application for annulment of the decision regarding the transfer of the applicant's pension rights into the European Union pension scheme, a decision which applies the new general implementing provisions relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials of the European Union.

Operative part of the order

1. There is no need to adjudicate in Case F-108/12, Verile v Commission.
2. Mr Marco Verile and the European Commission are each ordered to bear their own costs.

⁽¹⁾ OJ C 379, 8.12.2012, p. 34.

Order of the Civil Service Tribunal (First Chamber) of 8 June 2016 — Massoulié v Parliament

(Case F-146/15) ⁽¹⁾

(Civil service — Officials — Parliament — Inter-institutional transfer — 2014 promotion exercise — Request seeking the conversion of staff reports into merit points — Reclassification of a complaint as a request — Article 90 of the Staff Regulations — Manifest inadmissibility)

(2016/C 260/65)

Language of the case: French

Parties

Applicant: François Massoulié (Brussels, Belgium) (represented by: S. Orlandi and T. Martin)

Defendant: European Parliament (represented by: V. Montebello-Demogeot and M. Dean, acting as Agents)

Re:

Application for annulment of the Parliament's decision rejecting the applicant's request for the staff reports drawn up since his promotion to grade AD 12 to be converted into merit points.

Operative part of the order

1. *Mr François Massoulié's action is dismissed as manifestly inadmissible.*
2. *Mr Massoulié is ordered to bear his own costs and to pay those incurred by the European Parliament.*

⁽¹⁾ OJ C 68, 22.2.2016, p. 45.

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