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COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Sixth Chamber) of 20 July 2017 (request for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Fidelidade-Companhia de Seguros SA v Caisse Suisse de Compensation, Fundo de Garantia Automóvel, Sandra Cristina Crystello Pinto Moreira Pereira, Sandra Manuela Teixeira Gomes Seemann, Catarina Ferreira Seemann, José Batista Pereira and Teresa Rosa Teixeira

(Case C-287/16) ([1])

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Second Directive 84/5/EEC — Article 2(1) — Insurance contract concluded on the basis of false statements concerning the ownership of the vehicle and the identity of its usual driver — Policyholder — No economic interest in the conclusion of that contract — Insurance contract null and void — Whether that nullity may be invoked against third-party victims)

(2017/C 338/02)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: Fidelidade-Companhia de Seguros SA

Defendants: Caisse Suisse de Compensation, Fundo de Garantia Automóvel, Sandra Cristina Crystello Pinto Moreira Pereira, Sandra Manuela Teixeira Gomes Seemann, Catarina Ferreira Seemann, José Batista Pereira and Teresa Rosa Teixeira

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, and Article 2(1) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles must be interpreted as precluding national legislation which would have the effect of making it possible to invoke against third-party victims, in circumstances such as those at issue in the main proceedings, the nullity of a contract for motor vehicle insurance against civil liability arising as a result of the policyholder initially making false statements concerning the identity of the owner and of the usual driver of the vehicle concerned or from the fact that the person for whom or on whose behalf that insurance contract was concluded had no economic interest in the conclusion of that contract.

([1]) OJ C 326, 6.9.2016.

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 27 June 2017 — Stefano Liberato v Luminita Luisa Grigorescu

(Case C-386/17)

(2017/C 338/03)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Stefano Liberato

Respondent: Luminita Luisa Grigorescu

Questions referred

1. Does an infringement of the rules on *lis pendens* contained in Article 19(2) and (3) of Regulation No 2201/2003 ([1]) affect only the determination of jurisdiction, with the consequent application of Article 24 of Regulation No 2201/2003 or, on the contrary, may it constitute a ground for withholding recognition, in the Member State whose court has been seised first, of a judicial ruling made in the Member State whose court has been seised at a later stage, in the light of procedural public policy, having regard to the fact that Article 24 of Regulation No 2201/2003 refers only to the rules determining jurisdiction contained in Articles 3 to 14 of that regulation and not to the subsequent Article 19 thereof?

2. Does the interpretation of Article 19 of Regulation No 2201/2003, seen only as a test for the conferral of jurisdiction, conflict with the EU-law concept of *lis* pendens and with the function and purpose of that provision, which is intended to lay down a set of binding rules, reflecting procedural public policy, thereby guaranteeing the creation of a common area characterised by reciprocal procedural trust and fairness between the Member States, within which the automatic recognition and free movement of judicial decisions may operate?

([1]) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy), lodged on 28 June 2017 — Presidenza del Consiglio dei Ministri v Fallimento Traghetti del Mediterraneo SpA

(Case C-387/17)

(2017/C 338/04)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Presidenza del Consiglio dei Ministri

Defendant: Fallimento Traghetti del Mediterraneo SpA

Questions referred

'The Court of Justice of the European Union is asked the following questions (in the circumstances of the main proceedings, involving an action for damages against the State as legislator, alleging that, during the period 1976 to 1980, and pursuant to the law of that Member State (Law No 684/197), it granted to a shipping company subsidies constituting State aid within the meaning of Article 87(1) of the EC Treaty (formerly Article 92(1) and now Article 107(1) TFEU) which were not notified or authorised pursuant to Article 88 of the EC Treaty (formerly Article 93 and now Article 108 TFEU), in the context of a market that was not liberalised at that time (maritime cabotage):

(a) For the purposes of classifying that aid (as "existing" and, therefore, not "new" aid), is Article 1(b)(v) of Regulation No 659/1999, ([1]) according to which "*(v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the common market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Community law, such measures shall not be considered as existing aid after the date fixed for liberalisation*", applicable and, if so, under what conditions; or is the principle (formally different in scope from that of the abovementioned substantive law provision) established by the General Court in its judgment of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/9 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 (*Alzetta and Others* v *Commission*, paragraph 143), and confirmed, by the ruling, of interest in the present case, of the Court of Justice in Case C-298/00 P (paragraphs 66 to 69) — according to which "*… a system of aid established in a market that was initially closed to competition must, when that market is liberalised, be regarded as an existing aid system, since at the time of its establishment it did not come within the scope of Article 92(1) of the Treaty [subsequently Article 87(1)], which, having regard to the requirements set out in that provision regarding effect on trade between Member States and repercussions on competition, applies only to sectors open to competition*" — applicable and, if so, under what conditions?

(b) For the purposes of classifying the aid at issue, is Article 1(b)(iv) of Regulation No 659/1999, according to which "existing" aid is "*aid which is deemed to be existing aid pursuant to Article 15*" — Article 15 establishing a 10-year limitation period for recovering unlawfully granted aid — applicable and, if so, under what conditions —; or are the well established principles of the Court of Justice of the protection of legitimate expectation and legal certainty applicable and, if so, under what conditions (whether or not similar to the principle set out in the substantive law provision referred to above)?'

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 6 July 2017 — Acea Energia SpA v Autorità Garante della Concorrenza e del Mercato and Others

(Case C-406/17)

(2017/C 338/05)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Acea Energia SpA

Defendants: Autorità Garante della Concorrenza e del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idirco, Autorità per le Garanzie nelle Comunicazioni

Questions referred

1. Does the 'rationale' of 'general' Directive No 2005/29/EC, ([1]) namely that of providing a 'safety net' for consumer protection, and, in particular, recital 10, Article 3(4) and Article 5(3) of the directive preclude a national measure which brings within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directives 2009/72/EC ([2]) and 2009/73/EC ([3]) for consumer protection, thereby excluding action by the sectoral authority — in this case the AEEGSI — to penalise infringements of the sectoral directive in all cases in which the prerequisites establishing an improper or unfair commercial practice may also be satisfied?

2. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general systems and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between independent authorities responsible for regulating and monitoring the relevant sectors?

3. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices, such as to give rise to a conflict of laws in a specific case?

4. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

5. Does the 'speciality' principle established in recital 10 and Article 3(4) of Directive 2005/29/EC, and Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I to Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even where there are sectoral rules adopted to protect (such) consumers and based on provisions of EU law that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper/unfair practices'?

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

([2]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

([3]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 6 July 2017 — Green Network SpA v Autorità Garante della Concorrenza e del Mercato and Others

(Case C-407/17)

(2017/C 338/06)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Green Network SpA

Defendants: Autorità Garante della Concorrenza e del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idirco, Autorità per le Garanzie nelle Comunicazioni

Questions referred

1. Does the 'rationale' of 'general' Directive No 2005/29/EC, ([1]) namely that of providing a 'safety net' for consumer protection, and, in particular, recital 10, Article 3(4) and Article 5(3) of the directive preclude a national measure which brings within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directives 2009/72/EC ([2]) and 2009/73/EC ([3]) for consumer protection, thereby excluding action by the sectoral authority — in this case the AEEGSI — to penalise infringements of the sectoral directive in all cases in which the prerequisites establishing an improper or unfair commercial practice may also be satisfied?

2. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general systems and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between independent authorities responsible for regulating and monitoring the relevant sectors?

3. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices, such as to give rise to a conflict of laws in a specific case?

4. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

5. Does the 'speciality' principle established in recital 10 and Article 3(4) of Directive 2005/29/EC, and Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I to Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even where there are sectoral rules adopted to protect (such) consumers and based on provisions of EU law that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper/unfair practices'?

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

([2]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

([3]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 6 July 2017 — Enel Energia SpA v Autorità Garante della Concorrenza ed del Mercato and Others

(Case C-408/17)

(2017/C 338/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Enel Energia SpA

Defendants: Autorità Garante della Concorrenza ed del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idirco, Autorità per le Garanzie nelle Comunicazioni

Questions referred

1. Does the 'rationale' of 'general' Directive No 2005/29/EC, ([1]) namely that of providing a 'safety net' for consumer protection, and, in particular, recital 10, Article 3(4) and Article 5(3) of the directive preclude a national measure which brings within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directives 2009/72/EC ([2]) and 2009/73/EC ([3]) for consumer protection, thereby excluding action by the sectoral authority — in this case the AEEGSI — to penalise infringements of the sectoral directive in all cases in which the prerequisites establishing an improper or unfair commercial practice may also be satisfied?

2. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general systems and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between independent authorities responsible for regulating and monitoring the relevant sectors?

3. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices, such as to give rise to a conflict of laws in a specific case?

4. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

5. Does the 'speciality' principle established in recital 10 and Article 3(4) of Directive 2005/29/EC, and Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I to Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even where there are sectoral rules adopted to protect (such) consumers and based on provisions of EU law that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper/unfair practices'?

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

([2]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

([3]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 10 July 2017 — Hera Comm Srl v Autorita Garante della Concorrenza e del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idrico

(Case C-417/17)

(2017/C 338/08)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Hera Comm Srl

Defendants: Autorita Garante della Concorrenza e del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idrico

Questions referred

1. Does the 'rationale' of 'general' Directive No 2005/29/EC, ([1]) namely that of providing a 'safety net' for consumer protection, and, in particular, recital 10, Article 3(4) and Article 5(3) of the directive preclude a national measure which brings within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directives 2009/72/EC ([2]) and 2009/73/EC ([3]) for consumer protection, thereby excluding action by the sectoral authority — in this case the AEEGSI — to penalise infringements of the sectoral directive in all cases in which the prerequisites establishing an improper or unfair commercial practice may also be satisfied?

2. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general systems and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between independent authorities responsible for regulating and monitoring the relevant sectors?

3. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices, such as to give rise to a conflict of laws in a specific case?

4. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?

5. Does the 'speciality' principle established in recital 10 and Article 3(4) of Directive 2005/29/EC, and Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I to Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even where there are sectoral rules adopted to protect (such) consumers and based on provisions of EU law that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper/unfair practices'?

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

([2]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

([3]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Request for a preliminary ruling from the Tartu Halduskohus (Estonia) lodged on 18 July 2017 — Argo Kalda Mardi talu v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

(Case C-435/17)

(2017/C 338/09)

Language of the case: Estonian

Referring court

Tartu Halduskohus

Parties to the main proceedings

Applicant: Argo Kalda Mardi talu

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Questions referred

1. Is a requirement to preserve cairns, established by a Member State for an applicant for a single area payment and a payment for agricultural practices beneficial for the climate and the environment, for the breach of which a reduction of the payment by 3 % is imposed as an administrative penalty laid down by Article 39 of Commission Delegated Regulation No 640/2014, ([1]) compatible with Article 93(1) and Article 94 of Regulation No 1306/2013 ([2]) of the European Parliament and of the Council and the minimum standards laid down in Annex II to that regulation?

2. If the answer to Question 1 is No, must, in accordance with Article 72(1)(a), Article 91(1) and (2), Article 93(1) and Article 94 of Regulation No 1306/2013 of the European Parliament and of the Council and Article 4(1)(b), (c) and (e) of Regulation No 1307/2013 ([3]) of the European Parliament and of the Council, an applicant for a single area payment and a payment for agricultural practices beneficial for the climate and the environment comply with the requirements of good agricultural and environmental condition on the whole of his holding or solely on the agricultural area in respect of which the payment is specifically applied for, in order to exclude the imposition of an administrative penalty?

([1]) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48).

([2]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([3]) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

Action brought on 20 July 2017 — European Commission v Republic of Poland

(Case C-441/17)

(2017/C 338/10)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: C. Hermes and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— declare that the Republic of Poland has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') ([1]) by approving an appendix to a forest management plan for the Białowieża Forest District without satisfying itself that it will not adversely affect the integrity of the Białowieża Forest Site of Community Importance (SCI) and Special Protection Area (SPA) PLC200004;

— declare that the Republic of Poland has failed to fulfil its obligations under Article 6(1) of the Habitats Directive and under Article 4(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ('the Birds Directive') ([2]) by not taking the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I and the species listed in Annex II to the Habitats Directive, and (ii) the birds listed in Annex I to the Birds Directive and the regularly occurring migratory species not listed in that annex, for which the Białowieża Forest SCI and SPA PLC200004 were designated;

— declare that the Republic of Poland has failed to fulfil its obligations under Article 12(1)(a) and (d) of the Habitats Directive by not guaranteeing the strict protection of the saproxylic beetles (the Flat Bark Beetle (*Cucujus cinnaberinus*), the Goldstreifiger Beetle (*Buprestis splendens*), the False Darkling Beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*) listed in Annex IV to the Habitats Directive, that is, by failing to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and

— declare that the Republic of Poland has failed to fulfil its obligations under Article 5(b) and (d) of the Birds Directive by not guaranteeing the protection of the species of birds referred to in Article 1 of the Birds Directive, including, in particular, the White-Backed Woodpecker (*Dendrocopos leucotos*), the Three-Toed Woodpecker (*Picoides tridactylus*), the Pygmy Owl (*Glaucidium passerinum*) and the Boreal Owl (*Aegolius funereus*), that is, by failing to ensure that they will not be killed or disturbed during their breeding and rearing periods and that their nests or eggs in the Białowieża Forest District will not be deliberately destroyed, damaged or removed;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

In response to an outbreak of Spruce Bark Beetle (*Ips typographus*), on 25 March 2016 the Polish Minister for the Environment approved an appendix to the 2012 Forest Management Plan (FMP) permitting a threefold increase in logging in the forests of the Białowieża Forest District, that is, from 63 471 m^3 to 188 000 m^3, between 2012 and 2021, and, in areas previously outside the scope of such activity, permitting the application of Forest Action Plans consisting in the removal of centuries-old dead and dying trees, including, in particular, spruces affected by the Spruce Bark Beetle — so-called 'sanitary pruning', afforestation and restoration. That appendix constitutes a plan within the meaning of Article 6(3) of the Habitats Directive. The integrity of the Białowieża Forest area PLC200004 consists in: the fact of its being natural and untouched by human activity, the high proportion of ancient forest cover, including a large number of centuries-old dead standing and lying trees (deadwood), and the presence of species typical of natural forests (saproxylic beetles, the Three-Toed Woodpecker, the White-Backed Woodpecker, the Pygmy Owl and the Boreal Owl). Therefore the activities taking place in the Białowieża Forest District area are, in the Commission's view, contrary to Article 6(3) of the Habitats Directive, because the Polish authorities did not ensure, prior to approving the appendix, that its adoption would not adversely affect the integrity of that site.

Following the issuing of Decision No 51 by the Director-General of State Forests on 17 February 2017, work began on the removal of dead trees and trees affected by the Spruce Bark Beetle from all Forest District areas (Białowieża, Browsk, Hajnówka), that is to say, over a total area of approximately 34 000 hectares (the surface area of the Białowieża Forest area PLC200004 is 63 147 hectares).

The Commission takes the view that the Forest Action Plans for the bog and swamp forest habitat 91D0, the willow, poplar, alder and ash riparian forest habitat 91E0, and the centuries-old stands in the subcontinental broadleaved forest habitat 9170 and for the habitats of the White-Backed Woodpecker, the Three-Toed Woodpecker, the Pygmy Owl, the Boreal Owl, the Honey Buzzard, the Red-Breasted Flycatcher, the Collared Flycatcher and the Stock Dove and of the saproxylic beetles *Cucujus cinnaberinus*, *Boros schneideri*, *Phryganophilus ruficollis*, *Pytho kolwensis*, *Rhysodes sulcatus* and *Buprestis splendens*, and the removal of centuries-old dead spruces and sections of trees as part of the increased logging in the Białowieża Forest area PLC200004 resulting from the implementation of the decision of the Polish Minister for the Environment of 25 March 2016 and Decision No 51 of the Director-General of State Forests of 17 February 2017 constitute potential threats to natural habitats and to the habitats of the animals and birds identified in the Site Management Plans for the Białowieża Forest area PLC200004 and prevent the implementation of conservation measures set out in those plans aimed at properly preserving the conservation status of the Białowieża Forest area PLC200004, which constitutes an infringement of Article 6 (1) of the Habitats Directive.

The Commission also submits that the Forest Action Plans described above, implemented on the basis of the appendix and destroying the habitat of strictly protected saproxylic beetles, prevent the adoption of practical and specific measures designed to ensure an adequate level of protection for the four species of saproxylic beetle (*Cucujus cinnaberinus*, *Buprestis splendens*, *Phryganophilus ruficollis* and *Pytho kolwensis*) included in Annex IV(a) to the Habitats Directive.

Lastly, the Commission submits that the Forest Action Plans described above and implemented, on the basis of the appendix, fail, because of the destruction of the habitats of the White-Backed Woodpecker (*Dendrocopos leucotos*), the Three-Toed Woodpecker (*Picoides tridactylus*), the Pygmy Owl (*Glaucidium passerinum*) and the Boreal Owl (*Aegolius funereus*), to fulfil the obligation to provide effective protection for those species of birds, inasmuch as they prevent neither the destruction of those birds' nests nor their deliberate disturbance.

([1]) OJ 1992 L 206, p. 7.
([2]) OJ 2010 L 20, p. 7.

Reference for a preliminary ruling from High Court (Irlande) (Ireland) made on 28 July 2017 — Brian Holohan, Richard Guilfoyle, Noric Guilfoyle, Liam Donegan v An Bord Pleanála

(Case C-461/17)

(2017/C 338/11)

Language of the case: English

Referring court

High Court (Irlande)

Parties to the main proceedings

Applicants: Brian Holohan, Richard Guilfoyle, Noric Guilfoyle and Liam Donegan

Defendant: An Bord Pleanála

Questions referred

(a) whether Council Directive 92/43/EEC ([1]) of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a Natura impact statement must identify the entire extent of the habitats and species for which the site is listed;

(b) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in a Natura Impact Statement;

(c) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a Natura impact statement must expressly address the impact of the proposed development on protected species and habitats both located on the SAC site as well as species and habitats located outside its boundaries;

(d) whether Directive 2011/92/EU ([2]) of the European Parliament and Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, has the effect that an environmental impact statement must expressly address whether the proposed development will significantly impact on the species identified in the statement;

(e) whether an option that the developer considered and discussed in the environmental impact assessment, and/or that was argued for by some of the stakeholders, and/or that was considered by the competent authority, amounts to a *'main alternative'* within the meaning of art. 5(3)(d) of Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, even if it was rejected by the developer at an early stage;

(f) whether Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, has the effect that an environmental impact assessment should contain sufficient information as to the environmental impact of each alternative as to enable a comparison to be made between the environmental desirability of the different alternatives; and/or that it must be made explicit in the environmental impact statement as to how the environmental effects of the alternatives were taken into account;

(g) whether the requirement in art. 5(3)(d) of Directive 2011/92/EU of the European Parliament and Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, that the reasons for the developer's choice must be made by *'taking into account the environmental effects'*, applies only to the chosen option or also to the main alternatives studied, so as to require the analysis of those options to address their environmental effects;

(h) whether it is compatible with the attainment of the objectives of Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended that details of the construction phase (such as the compound location and haul routes) can be left to post-consent decision, and if so whether it is open to a competent authority to permit such matters to be determined by unilateral decision by the developer, within the context of any development consent granted, to be notified to the competent authority rather than approved by it;

(i) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific opinion presented to it argues in favour of obtaining further information prior to the grant of development consent;

(j) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that the competent authority is required to give reasons or detailed reasons for rejecting a conclusion by its inspector that further information or scientific study is required prior to the grant of development consent; and

(k) whether Council Directive 92/43/EEC of the 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended has the effect that a competent authority, when conducting an appropriate assessment, must provide detailed and express reasons for each element of its decision.

([1]) OJ L 206, p. 7
([2]) OJ L 26, p. 1

Action brought on 17 August 2017 — European Commission v Italian Republic

(Case C-498/17)

(2017/C 338/12)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Gattinara and E. Sanfrutos, acting as Agents)

Defendants: Italian Republic

Form of order sought

— Declare that, by failing to adopt all the measures necessary to close down, as soon as possible, in accordance with Articles 7(g) and 13 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), sites which have not been granted, in accordance with Article 8 of the directive, a permit to continue to operate, or by failing to take the measures necessary to ensure that sites which have obtained a permit to continue to operate comply with the requirements laid down in that directive, with the exception of the requirements set out in point 1 of Annex I to the directive, the Italian Republic has failed to fulfil its obligations under the second sentence of Article 14(b) and Article 14(c) of the directive, in so far as concerns the following landfill sites: (1) Avigliano (Loc. Serre Le Brecce); (2) Ferrandina (Loc. Venita); (3) Genzano di Lucania (Loc. Matinella); (4) Latronico (Loc. Torre); (5) Lauria (Loc. Carpineto); (6) Maratea (Loc. Montescuro); (7) Moliterno (Loc. Tempa La Guarella); (8) Potenza (Loc. Montegrosso-Pallareta: site scheduled for closure in September 2016); (9) Potenza (Loc. Montegrosso-Pallareta), site said never to have been used; (10) Rapolla (Loc. Albero in Piano); (11) Roccanova (Loc. Serre); (12) Sant'Angelo Le Fratte (Loc. Farisi); (13) Campotosto (Loc. Reperduso); (14) Capistrello (Loc. Trasolero); (15) Francavilla (Valle Anzuca); (16) L'Aquila (Loc. Ponte delle Grotte); (17) Andria (D'Oria G.& C. s.n.c); (18) Canosa (CO.BE.MA); (19) Bisceglie (CO.GE.SER); (20) Andria (F.lli Acquaviva); (21) Trani (BAT-Igea s.r.l.); (22) Torviscosa (Società Caffaro);

— declare that, by failing to adopt all the measures necessary to close down, as soon as possible, in accordance with Articles 7(g) and 13 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, sites which have not been granted, in accordance with Article 8 of the directive, a permit to continue to operate, the Italian Republic has failed to fulfil its obligations under the second sentence of Article 14(b) of that directive, in so far as concerns the following landfill sites: (23) Atella (Loc. Cafaro); (24) Corleto Perticara (Loc. Tempa Masone); (25) Marsico Nuovo (Loc. Galaino); (26) Matera (Loc. La Martella); (27) Pescopagano (Loc. Domacchia); (28) Rionero in Volture (Loc. Ventaruolo); (29) Salandra (Loc. Piano del Governo); (30) San Mauro Forte (Loc. Priati); (31) Senise (Loc. Palomabara); (32) Tito (Loc. Aia dei Monaci); (33) Tito (Loc. Valle del Forno); (34) Capestrano (Loc. Tirassegno); (35) Castellalto (Loc. Colle Coccu); (36) Castelvecchio Calvisio (Loc. Termine); (37) Corfinio (Loc. Cannucce); (38) Corfinio (Loc. Case querceto);(39) Mosciano S. Angelo (Loc. Santa Assunta); (40) S. Omero (Loc. Ficcadenti); (41) Montecorvino Pugliano (Loc. Parapoti); (42) San Bartolomeo in Galdo (Loc. Serra Pastore); (43) Trivigano (ex Cava Zof); (44) Torviscosa (Loc. La Valletta);

— order Italian Republic to pay the costs.

Pleas in law and main arguments

Article 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste makes provision for 'existing' landfill sites, that is landfills which had already been granted a permit or which were already in operation before 16 July 2001, the date by which the Directive 1999/31/EC was to be transposed into national law pursuant to Article 18(1) of the directive. With regard to such landfill sites, Article 14 of the directive provides that, by 16 July 2009, the competent authorities of the Member State were to have either carried out the work necessary for the conditioning of the site, in order to ensure that it complies with the requirements laid down in the directive (Article 14(c)), or to have definitively closed down the site (second sentence of Article 14(b)).

The Commission is of the view that it is apparent from the information provided by the Italian Republic during the pre-litigation stage of the procedure that neither of those two obligations has been complied with in so far as concerns 44 existing landfill sites, with the result that, in respect of those sites, the Italian Republic has failed to fulfil its obligations under the second sentence of Article 14(b) and under Article 14(c) of Directive 1999/31/EC.

GENERAL COURT

Order of the President of the General Court of 25 August 2017 — Sigma Orionis v REA

(Case T-47/16 R)

(Application for interim measures — Arbitration clause — Horizon 2020 Framework Program for Research and Innovation — Decision to suspend payments and terminate grant contracts following a financial audit — Amounts allegedly due by the REA in the context of the implementation of the grant contracts — Claim for damages — Application for suspension of operation of a measure — Lack of urgency — Balancing of interests)

(2017/C 338/13)

Language of the case: French

Parties

Applicant: Sigma Orionis SA (Valbonne, France) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: Research Executive Agency (REA) (represented by: S. Payan-Lagrou and V. Canetti, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Application based on Articles 278 and 279 TFEU and asking for immediate payment by the REA of a sum under the 'FET-Event' grant agreement.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 25 August 2017 — Sigma Orionis v Commission

(Case T-48/16 R)

(Application for interim measures — Arbitration clause — Seventh Framework Programme of the European Community (2007-2013) and Horizon 2020 Framework Program for Research and Innovation — Decision to suspend payments and terminate grant contracts following a financial audit — Amounts allegedly due by the Commission in the context of the implementation of the grant contracts — Claim for damages — Application for suspension of operation of a measure — Lack of urgency — Balancing of interests)

(2017/C 338/14)

Language of the case: French

Parties

Applicant: Sigma Orionis SA (Valbonne, France) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: A. Lewis and M. Siekierzyńska, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU and asking for immediate payment by the Commission of various sums under several grant agreements and asking for suspension of the operation of the decision to terminate those agreements.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 25 August 2017 — Malta v Commission

(Case T-653/16 R)

(Interim measures — Access to documents — Regulation (EC) No 1049/2001 — Common fisheries policy — Regulation (EC) No 1224/2009 — Documents exchanged by Malta and the Commission — Access granted to Greenpeace — Application for suspension of operation — Prima facie case — Balancing of interests)

(2017/C 338/15)

Language of the case: English

Parties

Applicant: Republic of Malta (represented by: A. Buhagiar, acting as Agent)

Defendant: European Commission (represented by: J. Baquero Cruz and F. Clotuche-Duvieusart, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the Commission of 13 July 2016, adopted in accordance with Regulation (EC) No 1049/2001, relating to a request for access to documents registered under the reference GestDem2015/5711A-018-2014.

Operative part of the order

1. *Operation of the decision of the European Commission of 13 July 2016, adopted in accordance with Regulation (EC) No 1049/2001, relating to a request for access to documents registered under the reference GestDem2015/5711, is suspended in so far as that decision grants access to documents originating from the Republic of Malta.*

2. *The costs are reserved.*

Action brought on 14 July 2017 — Yellow Window v EIGE

(Case T-439/17)

(2017/C 338/16)

Language of the case: English

Parties

Applicant: Yellow Window (Antwerp, Belgium) (represented by: M. Velardo, lawyer)

Defendant: European Institute for Gender Equality

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision of 8 May 2017 assessing not successful the applicant's tender in procedure EIGE/2017/OPER/04 'Female Genital Mutilation: Estimating Girls at Risk' and subsequent decisions to assess the bid of another tenderer successful and to award the contract to it;

— order the defendant to pay damages suffered by the applicant as well as an interest of 8 % or in the alternative to award a compensation as well as a compensation of 8 %;

— order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of the principle of equal treatment, of the principle of transparency, of the principle to act with a certain care, of the duty to respect confidentiality as well as alleging manifest error of appraisal.

2. Second plea in law, alleging inconsistency in the grounds, infringement of the principle of proportionality while assessing the applicant's tender.

3. Third plea in law, alleging infringement of the right to a good administration.

Action brought on 7 August 2017 — Mutualidad Complementaria de Previsión Social Renault España v Commission and SRB

(Case T-501/17)

(2017/C 338/17)

Language of the case: Spanish

Parties

Applicant: Mutualidad Complementaria de Previsión Social Renault España (Madrid, Spain) (represented by: A. Solana López, lawyer)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the court should:

— declare that EU law has been infringed by the SRB in Decision SRB/EES/2017/08 adopted at the executive session of 7 June 2017 and in which it adopted the resolution scheme regarding the financial institution Banco Popular Español, S. A.;

— consequently, annul that measure and, in addition, the consequential implementing measures that the SRB was able to take, all with retroactive effect.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board,* T-481/17, *Fundación Tatiana Pérez de Guzmán y Bueno and SFL* v *Single Resolution Board,* T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board,* T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board,* T-484/17, *Fidesban and Others* v *Single Resolution Board,* T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board,* and T-498/17, *Pablo Alvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 7 August 2017 — OCU and Others v SRB

(Case T-512/17)

(2017/C 338/18)

Language of the case: Spanish

Parties

Applicants: Organización de Consumidores y Usuarios (OCU) (Madrid, Spain) and 37 other applicants

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision;

— declare that Articles 18 and 29 of Regulation (EU) No 806/2014 are unlawful and inapplicable;

— order the defendant, the Single Resolution Board, to pay the costs.

Pleas in law and main arguments

The present action is brought against Decision SRB/EES/2017/08 of the Single Resolution Board of 7 June 2017 concerning the adoption of a resolution scheme regarding the Banco Popular Español, S.A.

The pleas in law and main arguments are similar to those raised in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board,* T-481/17, *Fundación Tatiana Pérez de Guzmán y Bueno and SFL* v *Single Resolution Board,* T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board,* T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board,* T-484/17, *Fidesban and Others* v *Single Resolution Board,* T-497/17, *Sánchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board,* and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 11 August 2017 — Haufe-Lexware v EUIPO — Le Shi Holdings (Beijing) (Leshare)

(Case T-546/17)

(2017/C 338/19)

Language in which the application was lodged: English

Parties

Applicant: Haufe-Lexware GmbH & Co. KG (Freiburg im Breisgau, Germany) (represented by: N. Hebeis, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Le Shi Holdings (Beijing) Ltd (Beijing, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'Leshare' — Application for registration No 13 883 301

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 June 2017 in Case R 1691/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 17 August 2017 — dm-drogerie markt v EUIPO — Albea Services (ALBÉA)

(Case T-562/17)

(2017/C 338/20)

Language in which the application was lodged: English

Parties

Applicant: dm-drogerie markt Verwaltungs-GmbH (Karlsruhe, Germany) (represented by: O. Bludovsky and C. Mellein, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Albea Services (Gennevilliers, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word element 'ALBÉA' — International registration designating the European Union No 1 210 553

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 25 May 2017 in Case R 1870/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the European Union Intellectual Property Office of 25 May 2017 (Appeal No R 1870/2016-1) and, by the way of correction, delete the applicant's trademark;

alternatively

— annul the decision of the First Board of Appeal of the European Union Intellectual Property Office of 25 May 2017 (Appeal No R 1870/2016-1) and, to remit the case to the Office for Harmonization;

alternatively

— annul the decision of the First Board of Appeal of the European Union Intellectual Property Office of 25 May 2017 (Appeal No R 1870/2016-1)

Plea in law

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

Action brought on 18 August 2017 — Tong Myong/Council and Commission

(Case T-564/17)

(2017/C 338/21)

Language of the case: English

Parties

Applicant: So Tong Myong (Pyongyang, Democratic People's Republic of Korea) (represented by: M. Lester and S. Midwinter, QC, T. Brentnall and A. Stevenson, Solicitors)

Defendants: Council of the European Union, European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2017/993 of 12 June 2017 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 149, p. 67) and Council Decision (CFSP) 2017/994 of 12 June 2017 amending Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 149, p. 75), insofar as those acts include the applicant in the list of entities subject to restrictive measures;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendants have failed to give adequate or sufficient reasons for including the applicant.

2. Second plea in law, alleging that the defendants have manifestly erred in considering that any of the criteria for listing in the contested measures were fulfilled in the applicant's case; there is no factual basis for its inclusion.

3. Third plea in law, alleging that the defendants have misused their powers by attempting to render ineffective the applicant's right to an effective remedy in relation to its listing pursuant to Article 230 TFEU and/or they have breached the applicant's right to equal treatment.

4. Fourth plea in law, alleging that the defendants have breached the applicant's rights of defence by failing to provide him with the evidence on which they rely before re-listing the applicant.

5. Fifth plea in law, alleging that the defendants have breached data protection law.

6. Sixth plea in law, alleging that the defendants have infringed, without justification or proportion, the applicant's fundamental rights, including its right to protection of its property, business, and reputation.

Action brought on 18 August 2017 — Korea National Insurance Corporation v Council and Commission

(Case T-568/17)

(2017/C 338/22)

Language of the case: English

Parties

Applicant: Korea National Insurance Corporation (Pyongyang, Democratic People's Republic of Korea) (represented by: M. Lester and S. Midwinter, QC, T. Brentnall and A. Stevenson, Solicitors)

Defendants: Council of the European Union and European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2017/993 of 12 June 2017 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 149, p. 67) , Council Decision (CFSP) 2017/994 of 12 June 2017 amending Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 149, p. 75), Council Implementing Decision (CFSP) 2017/1459 of 10 August 2017 implementing Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 208, p. 38), and Commission Implementing Regulation (EU) 2017/1457 of 10 August 2017 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ 2017, L 208, p. 33), insofar as those acts include the applicant in the list of entities subject to restrictive measures.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendants have failed to give adequate or sufficient reasons for including the applicant.

2. Second plea in law, alleging that the defendants have manifestly erred in considering that any of the criteria for listing in the contested measures were fulfilled in the applicant's case; there is no factual basis for its inclusion.

3. Third plea in law, alleging that the defendants failed to give the applicant the evidence purportedly in support of their decision to relist the applicant before it was relisted, or in support of the EU implementation of its UN listing, in breach of the applicant's rights of defence and the right to effective judicial protection.

4. Fourth plea in law, alleging that the defendants have failed to discharge their obligations when deciding to list the applicant following its UN designation.

5. Fifth plea in law, alleging that the defendants have misused their powers by attempting to render ineffective and thereby evade the applicant's right to an effective remedy in relation to its listing pursuant to Article 230 TFEU and/or they have breached the applicant's right to equal treatment.

6. Sixth plea in law, alleging that the defendants have breached data protection law.

7. Seventh plea in law, alleging that the defendants have infringed, without justification or proportion, the applicant's fundamental rights, including its right to protection of its property, business, and reputation.

Action brought on 26 August 2017 — A & O Hotel and Hostel Friedrichshain v Commission

(Case T-578/17)

(2017/C 338/23)

Language of the case: German

Parties

Applicant: A & O Hotel and Hostel Friedrichshain GmbH (Berlin, Germany) (represented by: S. Heise and M. Lindner, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2017) 3220 final of 29 May 2017 on the non-fiscal aid measures put in place by Germany in favour of the youth hostel Berlin Ostkreuz gGmbH (and others) — SA.43145 (2016/FC) (OJ 2017 C 193, p. 1); and

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law:

Infringement of essential formal and procedural requirements under Article 108(2) TFEU, in conjunction with Articles 4(4) and 15(1) of Regulation (EU) 2015/1589, ([1]) and the second paragraph of Article 296 TFEU

— The Commission infringed the applicant's procedural rights in so far as its decision, which is the subject of the action, was adopted after merely a preliminary examination, even though the Commission was required to open a formal investigation. The applicant bases this argument on the fact that the Commission, having a duty to carry out an assessment of the information and evidence at its disposal, ought to have been concerned about the compatibility of the non-fiscal aid measures unlawfully put in place by Germany in favour of the youth hostel Berlin Ostkreuz gGmbH (and others).

— In so far as the Commission only inadequately or, moreover, in substantial aspects incorrectly examined the information and evidence giving rise to those concerns in the decision which is the subject of the action, the applicant further argues that the Commission failed to meet its obligation to state reasons pursuant to the second paragraph of Article 296 TFEU.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 25 August 2017 — EOS Deutscher Inkasso-Dienst v EUIPO — IOS Finance EFC (IOS finance)

(Case T-583/17)

(2017/C 338/24)

Language in which the application was brought: German

Parties

Applicant: EOS Deutscher Inkasso-Dienst GmbH (Hamburg, Germany) (represented by: B. Sorg, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: IOS Finance EFC, SA (Barcelona, Spain)

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: EU figurative mark containing the word elements 'IOS FINANCE' — EU trade mark No 12 544 061

Procedure before EUIPO: Opposition Proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 June 2017 in Case R 2262/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Order of the General Court of 23 August 2017 — ZGS v EUIPO (Schülerhilfe1)

(Case T-209/17) ([1])

(2017/C 338/25)

Language of the case: German

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

([1]) OJ C 168, 29.5.2017.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-396/15

(Official Journal of the European Union C 283 of 28 August 2017)

(2017/C 338/26)

The notice in the Official Journal in Case T-396/15, *Herm. Sprenger v EUIPO — web2get (Shape of an articulated stirrup)*, should read as follows:

Order of the General Court of 30 May 2017 — Herm. Sprenger v EUIPO — web2get (Shape of an articulated stirrup)

(Case T-396/15) ([1])

(EU trade mark — Application for a declaration of invalidity — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2017/C 283/74)

Language of the case: German

Parties

Applicant: Herm. Sprenger GmbH & Co. KG (Iserlohn, Germany) (represented by: V. Schiller, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Söder and A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: web2get GmbH & Co. KG (Dülmen, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 April 2015 (Case R 520/2014-1), relating to opposition proceedings between web2get GmbH & Co. KG and Herm. Sprenger GmbH & Co. KG.

Operative part of the order

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

2. *Herm. Sprenger GmbH & Co. KG shall pay the costs.*

([1]) OJ C 302, 14.9.2015.

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