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For reasons of protection of personal data, some information contained in this issue cannot be disclosed anymore, therefore a new authentic version has been published.

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NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

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*

(2017/C 412/01)

Last publication

OJ C 402, 27.11.2017

Past publications

OJ C 392, 20.11.2017

OJ C 382, 13.11.2017

OJ C 374, 6.11.2017

OJ C 369, 30.10.2017

OJ C 357, 23.10.2017

OJ C 347, 16.10.2017

These texts are available on:

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

COURT OF JUSTICE

Appointment of the First Advocate General

(2017/C 412/02)

At its Meeting on 26 September 2017, the Court of Justice appointed Mr Wathelet as First Advocate General for the period from 7 October 2017 to 6 October 2018.

Designation of the Chamber responsible for cases of the kind referred to in Article 107 of the Rules of Procedure of the Court

(2017/C 412/03)

At its General Meeting on 26 September 2017, the Court designated the First Chamber as the Chamber that is, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 107 of those Rules, for the period from 7 October 2017 to 6 October 2018.

Designation of the Chamber responsible for cases of the kind referred to in Article 193 of the Rules of Procedure of the Court

(2017/C 412/04)

At its General Meeting on 26 September 2017, the Court designated the Second Chamber as the Chamber that is, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 193 of those Rules, for the period from 7 October 2017 to 6 October 2018.

Decisions adopted by the Court in its General Meeting on 3 October 2017

(2017/C 412/05)

Assignment of Judges to Chambers of three Judges

At its meeting on 3 October 2017, the Court decided to assign Judges to the Chambers of three Judges as follows:

Sixth Chamber

Mr Fernlund, President of the Chamber,

Mr Bonichot, Mr Arabadjiev, Mr Rodin and Mr Regan, Judges.

Seventh Chamber

Mr Rosas, President of the Chamber,

Ms Toader, Ms Prechal and Mr Jarašiūnas, Judges.

Eighth Chamber

Mr Malenovský, President of the Chamber,

Mr Safjan, Mr Šváby and Mr Vilaras, Judges.

Ninth Chamber

Mr Vajda, President of the Chamber,

Mr Juhász, Ms Jürimäe and Mr Lycourgos, Judges.

Tenth Chamber

Mr Levits, President of the Chamber,

Mr Borg Barthet, Ms Berger and Mr Biltgen, Judges.

List for determining the composition of the Chambers for cases allocated to a Chamber composed of three Judges

(2017/C 412/06)

At its Meeting on 3 October 2017, the Court drew up the list for determining the composition of the Chambers of three Judges as follows:

Sixth Chamber

Mr Bonichot

Mr Arabadjiev

Mr Rodin

Mr Regan

Seventh Chamber

Ms Toader

Ms Prechal

Mr Jarašiūnas

Eighth Chamber

Mr Safjan

Mr Šváby

Mr Vilaras

Ninth Chamber

Mr Juhász

Ms Jürimäe

Mr Lycourgos

Tenth Chamber

Mr Borg Barthet

Ms Berger

Mr Biltgen

Election of the Presidents of the Chambers of three Judges

(2017/C 412/07)

At a meeting on 26 September 2017, the Judges of the Court of Justice elected, pursuant to Article 12(2) of the Rules of Procedure, Mr Fernlund as President of the Sixth Chamber, Mr Rosas as President of the Seventh Chamber, Mr Malenovský as President of the Eighth Chamber, Mr Vajda as President of the Ninth Chamber and Mr Levits as President of the Tenth Chamber for the period from 7 October 2017 to 6 October 2018.

Taking of the oath by new Members of the General Court

(2017/C 412/08)

Following his appointment as Judge at the General Court for the period from 2 April 2017 to 31 August 2019 by decision of the Representatives of the Governments of the Member States of the European Union of 29 March 2017 ([1]), Mr Mac Eochaidh took the oath before the Court of Justice on 8 June 2017.

Following his appointment as Judge at the General Court for the period from 15 September 2017 to 31 August 2022 by decision of the Representatives of the Governments of the Member States of the European Union of 6 September 2017 ([2]), Mr De Baere took the oath before the Court of Justice on 4 October 2017.

([1]) OJ L 89, 1.4.2017, p. 9.
([2]) OJ L 236, 14.9.2017, p. 22.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 10 October 2017 (request for a preliminary ruling from the Supreme Court — Ireland) — Elaine Farrell v Alan Whitty, The Minister for the Environment, Ireland, Attorney General, Motor Insurers Bureau of Ireland (MIBI),

(Case C-413/15) ([1])

(Reference for a preliminary ruling — Approximation of laws — Insurance against civil liability in respect of the use of motor vehicles — Directive 90/232/EEC — Article 1 — Liability for personal injury caused to all passengers other than the driver — Compulsory insurance — Direct effect — Directive 84/5/EEC — Article 1(4) — Organisation responsible for paying compensation for damage to property or personal injury caused by an unidentified or uninsured vehicle space — Whether a directive can be relied on against a State — Conditions governing whether a private law body can be deemed to be an emanation of the State and whether provisions of a directive capable of having direct effect can be relied upon against it)

(2017/C 412/09)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Elaine Farrell

Defendants: Alan Whitty, The Minister for the Environment, Ireland, Attorney General, Motor Insurers Bureau of Ireland (MIBI),

Operative part of the judgment

1. *Article 288 TFEU must be interpreted as meaning that it does not, in itself, preclude the possibility that provisions of a directive that are capable of having direct effect may be relied on against a body that does not display all the characteristics listed in paragraph 20 of the judgment of 12 July 1990, Foster and Others (C-188/89, EU:C:1990:313), read together with those mentioned in paragraph 18 of that judgment.;*

2. *Provisions of a directive that are capable of having direct effect may be relied on against a private law body on which a Member State has conferred a task in the public interest, such as that inherent in the obligation imposed on the Member States by Article 1(4) 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, as amended by the Third Council Directive 90/232/EEC of 14 May 1990, and which, for that purpose, possesses, by statute, special powers, such as the power to oblige insurers carrying on motor vehicle insurance in the territory of the Member State concerned to be members of it and to fund it.*

([1]) OJ C 320, 28.9.2015.

Judgment of the Court (Fourth Chamber) of 11 October 2017 — European Union Intellectual Property Office (EUIPO) v Cactus SA, Isabel Del Rio Rodríguez

(Case C-501/15 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Figurative mark containing the word elements 'CACTUS OF PEACE CACTUS DE LA PAZ' — Opposition by the proprietor of word and figurative EU trade marks containing the word element 'Cactus' — Nice Classification — Article 28 — Point (a) of the second subparagraph of Article 15(1) of Regulation No 207/2009 — Genuine use of the mark in an abbreviated form)

(2017/C 412/10)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: A. Folliard-Monguiral, Agent)

Other parties to the proceedings: Cactus SA (represented by: K. Manhaeve, avocate), Isabel Del Rio Rodríguez

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Union Intellectual Property Office (EUIPO) to pay the costs.*

([1]) OJ C 414, 14.12.2015.

Judgment of the Court (Fifth Chamber) of 12 October 2017 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X BV v Staatssecretaris van Financiën

(Case C-661/15) ([1])

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 29 — Import of vehicles — Determination of the customs value — Article 78 — Revision of the declaration — Article 236(2) — Repayment of import duties — Period of three years — Regulation (EEC) No 2454/93 — Article 145(2) and (3) — Risk of defects — Period of 12 months — Validity)

(2017/C 412/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X BV

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

1. *Article 145(2) 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, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, read in conjunction with Article 29(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, must be interpreted as meaning that it applies in a case, such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for specific goods, there was a manufacture-related risk that the goods might become defective in use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.*

2. *Article 145(3) of Regulation No 2454/93, as amended by Regulation No 444/2002, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must be made, is invalid.*

([1]) OJ C 98, 14.3.2016.

Judgment of the Court (Eighth Chamber) of 12 October 2017 (request for a preliminary ruling from the Finanzgericht München — Germany) — Tigers GmbH v Hauptzollamt Landshut

(Case C-156/16) ([1])

(Reference for a preliminary ruling — Implementing Regulation (EU) No 412/2013 — Article 1(3) — Community Customs Code — Article 78 — Rule making the application of individual anti-dumping duty rates conditional upon presentation of a valid commercial invoice — Whether a valid commercial invoice may be presented after the customs declaration — Refusal to refund)

(2017/C 412/12)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Tigers GmbH

Defendant: Hauptzollamt Landshut

Operative part of the judgment

Article 1(3) of Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China must be interpreted as meaning that it allows the presentation, after the customs declaration has been made, of a valid commercial invoice, for the purposes of fixing a definitive anti-dumping duty, in the case where all the other preconditions necessary for obtaining a company-specific anti-dumping duty rate are satisfied and compliance with the proper application of the anti-dumping duties is ensured, this being a matter for the referring court to verify.

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 12 October 2017 (request for a preliminary ruling from the Sąd Okręgowy w Gorzowie Wielkopolskim — Poland) — proceedings brought by Aleksandra Kubicka

(Case C-218/16) ([1])

(Reference for a preliminary ruling — Area of Freedom, Security and Justice — Regulation (EU) No 650/2012 — Succession and the European Certificate of Succession — Scope — Immovable property located in a Member State in which legacies 'per vindicationem' do not exist — Refusal to recognise the material effects of such a legacy)

(2017/C 412/13)

Language of the case: Polish

Referring court

Sąd Okręgowy w Gorzowie Wielkopolskim

Parties in the main proceedings

Applicant: Aleksandra Kubicka

Intervening party: Przemysława Bac, acting in her capacity as notary

Operative part of the judgment

Article 1(2)(k) and (l) and Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as precluding refusal, by an authority of a Member State, to recognise the material effects of a legacy 'by vindication', provided for by the law governing succession chosen by the testator in accordance with Article 22(1) of that regulation, where that refusal is based on the ground that the legacy concerns the right of ownership of immovable property located in that Member State, whose law does not provide for legacies with direct material effect when succession takes place.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Third Chamber) of 12 October 2017 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Shields & Sons Partnership v Commissioners for Her Majesty's Revenue and Customs

(Case C-262/16) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 296(2) — Article 299 — Common flat-rate scheme for farmers — Exclusion from the common scheme — Conditions — Concept of 'category of farmers')

(2017/C 412/14)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Appellant: Shields & Sons Partnership

Respondent: Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

1. *Article 296(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as laying down exhaustively all the cases in which a Member State may exclude a farmer from the common flat-rate scheme for farmers.*

2. *Article 296(2) of Directive 2006/112 must be interpreted as meaning that farmers who are found to be recovering substantially more as members of the common flat-rate scheme for farmers than they would if they were subject to the normal value added tax arrangements or the simplified value added tax arrangements cannot constitute a category of farmers within the meaning of that provision.*

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Fifth Chamber) of 12 October 2017 (request for a preliminary ruling from the Landgericht Aachen — Germany) — Criminal proceedings against Frank Sleutjes

(Case C-278/16) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2010/64/EU — Article 3(1) — Right to interpretation and translation in criminal proceedings — Translation of 'essential documents' — Definition of essential documents — Penalty order issued following a simplified unilateral procedure and imposing on the addressee a fine for a minor offence)

(2017/C 412/15)

Language of the case: German

Referring court

Landgericht Aachen

Party in the main proceedings

Frank Sleutjes

Intervening party: Staatsanwaltschaft Aachen

Operative part of the judgment

Article 3 of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a 'document which is essential', within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Ninth Chamber) of 12 October 2017 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Kamin und Grill Shop GmbH v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

(Case C-289/16) ([1])

(Reference for a preliminary ruling — Agriculture — Organic products — Control system established by Regulation (EC) No 834/2007 — Concept of 'direct sale to the final consumer or user')

(2017/C 412/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Kamin und Grill Shop GmbH

Defendant: Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Operative part of the judgment

Article 28(2) of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 must be interpreted as meaning that, in order for products to be regarded as being sold 'directly', within the meaning of that provision, to the final consumer or user, it is necessary for the sale to occur in the presence of both the operator or his sales personnel and the final consumer.

([1]) OJ C 350, 26.9.2016.

Judgment of the Court (Sixth Chamber) of 12 October 2017 (request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság — Hungary) — Lombard Ingatlan Lízing Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-404/16) ([1])

(Reference for a preliminary ruling — VAT — Directive 2006/112/EC — Article 90(1) — Direct effect — Taxable amount — Reduction in the case of cancellation or refusal — Reduction in the case of total or partial non-payment — Distinction — Financial leasing agreement terminated for non-payment of public charges)

(2017/C 412/17)

Language of the case: Hungarian

Referring court

Szegedi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Lombard Ingatlan Lízing Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Operative part of the judgment

1. *The concepts of 'cancellation' and 'refusal' in Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as including a situation in which, under a financial leasing agreement with definite transfer of ownership, the lessor may no longer claim payment of the leasing instalment from the lessee because the lessor has terminated the agreement owing to breach of contract by the lessee.*

2. *Where a financial leasing agreement has been definitively terminated because of non-payment of the lease instalments payable by the lessee, the lessor may rely on Article 90(1) of Directive 2006/112 against a Member State with a view to obtaining a reduction of the taxable amount for value added tax, even if the applicable national law considers that situation to be a case of 'non-payment' within the meaning of Article 90(2) of the directive and does not allow the taxable amount to be reduced in the case of non-payment.*

([1]) OJ C 364, 3.10.2016.

Appeal brought on 27 April 2017 by Hernández Zamora, SA against the judgment of the General Court (Ninth Chamber) delivered on 17 February 2017 in Case T-369/15: Hernández Zamora, SA v European Union Intellectual Property Office

(Case C-224/17 P)

(2017/C 412/18)

Language of the case: English

Parties

Appellant: Hernández Zamora, SA (represented by: J.L. Rivas Zurdo, abogado)

Other parties to the proceedings: European Union Intellectual Property Office, Rosen Tantau KG

By order of 19 October 2017 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Action brought on 5 May 2017 — European Commission v Hungary

(Case C-235/17)

(2017/C 412/19)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: L. Malferrari and L. Havas, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

— declare that, by adopting legislation which restricts the usufruct of arable land, Hungary has failed to fulfil its obligations under Articles 49 and 63 of the Treaty on the Functioning of the European Union and under Article 17 of the Charter of Fundamental Rights of the European Union;

— order Hungary to pay the costs.

Pleas in law and main arguments

The Commission takes the view that, by disproportionately restricting the usufruct of arable and forest land, the Hungarian legislation at issue is incompatible with Hungary's obligations under Articles 49 and 63 of the Treaty on the Functioning of the European Union and under Article 17 of the Charter of Fundamental Rights of the European Union.

The withdrawal of rights of usufruct by way of legislation amounts to a restriction of the freedom of establishment guaranteed by Article 49 of the Treaty on the Functioning of the European Union, in particular because such removal of the right of usufruct makes it impossible or excessively difficult, for those who have hitherto held such rights, to set up a secondary establishment in Hungary (or to obtain title there enabling them to exploit arable land) for the purpose of carrying out their activities there and so contribute, through economic activity on a self-employed basis, to economic and social interpenetration within the European Union. The Commission considers that the withdrawal of rights of usufruct by way of legislation is liable to hinder or make less attractive the exercise of the freedom of establishment.

The Hungarian legislation also infringes the free movement of capital since it has the effect of preventing or limiting investment in immovable property situated in Hungary by those who do not have Hungarian nationality. Such legislation has the effect of reducing the value of existing rights of usufruct, which also constitutes a restriction on the free movement of capital.

The Hungarian legislation gives rise to indirect discrimination by placing at a disadvantage EU citizens who do not have Hungarian nationality.

That restriction of the abovementioned freedoms is unjustifiable. It cannot be justified by any of the grounds laid down in the Treaty or by the other grounds that the Hungarian Government put forward in the course of the proceedings.

In particular, the Commission cannot accept the Hungarian Government's submission that the restriction is necessary in order to end an unlawful situation. According to the Commission, it cannot be accepted that there is a general presumption — which is not established in any event — that all usufruct contracts concluded by foreign citizens in respect of arable land in Hungary are, from the time at which they are made, illegal or invalid. Nor can the submission be accepted that the unlawfulness of each and every usufruct contract may be inferred from the absence of authorisation for the currency exchange required by the legislation in force prior to 2002.

The restriction introduced by the Hungarian legislation does not satisfy the requirement of proportionality since it is not appropriate for attaining the objectives pursued and, in addition, goes significantly beyond what is necessary to attain those objectives.

The Hungarian legislation does not meet the requirements arising from the principles of legal certainty and the protection of legitimate expectations and does not guarantee adequate compensation for those who have suffered loss and damage because of the withdrawal or restriction of rights of usufruct.

In the Commission's view, the Hungarian legislation at issue is contrary to the right to property guaranteed by Article 17 of the Charter. In certain cases, there is interference with the right to property even when the infringement does not extend to the three constituent elements of 'property' (use and enjoyment, possession and disposal).

Appeal brought on 28 June 2017 by Irit Azoulay, Andrew Boreham, Mirja Bouchard and Darren Neville against the judgment of the General Court (Eighth Chamber) delivered on 28 April 2017 in Case T-580/16, Azoulay and Others v European Parliament

(Case C-390/17 P)

(2017/C 412/20)

Language of the case: French

Parties

Appellants: Irit Azoulay, Andrew Boreham, Mirja Bouchard and Darren Neville (represented by: M. Casado García-Hirschfeld, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— grant the form of order sought at first instance by the present appellants in the action brought in Case T-580/16;

— order the respondent to pay all of the costs.

Grounds of appeal and main arguments

The appellants are of the opinion that the judgment under appeal is vitiated by several errors of law and a distortion of the facts.

The General Court erred in law and distorted the facts by rejecting an autonomous and uniform interpretation of the concept of education costs within the EU legal order and by making that concept dependent on the meaning attributed to it in the various education systems of the countries of residence of an official, irrespective of the nature of the costs and the interests of the children.

According to the case-law of the Court of Justice, it follows, both from the uniform application of EU law and from the principle of equality, that the terms of a provision of EU law that makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of the provision and the objective pursued by the legislation in question (judgment of 15 October 2015, *Axa Belgium*, C–494/14, EU:C:2015:692).

In addition, the General Court's finding in paragraph 47 of the judgment under appeal is incoherent and misconstrues the case-law concerning the rule of correspondence between the prior administrative complaint and the action.

The appellants also submit that the General Court did not comply with its obligation to state reasons by failing to rule on the infringement of the principle of equal treatment and of Article 22 of the Charter of Fundamental Rights of the European Union, which had nonetheless been put forward before it.

Consequently, according to the appellants, by examining their three separate heads of claims in a manner that was overly perfunctory, the General Court arrived at findings that are substantiated neither in law nor in fact.

Appeal brought on 17 July 2017 by Enercon GmbH against the judgment of the General Court (Eighth Chamber) delivered on 3 May 2017 in Case T-36/16: Enercon v EUIPO

(Case C-433/17 P)

(2017/C 412/21)

Language of the case: English

Parties

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

Other parties to the proceedings: European Union Intellectual Property Office, Gamesa Eólica, SL

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court in case T-36/16;

— annul the judgment of the General Court in case T-245/12;

— remit the case to the EUIPO with a direction to adopt the decision of the First Board of Appeal in Case R 260/2011-1 and reject Gamesa's application for cancellation of the registration in suit;

— award the costs of the proceedings against the respondent at first instance.

Pleas in law and main arguments

The appellant submits that the judgment under appeal in Case T-36/16 infringes Article 7(1)(b) and/or 52(1)(a) of Council regulation (EC) No 207/2009 ([1]) and that there was a breach of procedure before the General Court on the following grounds:

1. The General Court wrongly held that the registration of the mark in suit lacks the requisite inherent distinctive character to entitle it to registration contrary to Article 7(1)(b) of regulation 207/2009. In so doing the General Court erred in law.

2. The first error of law was to treat the designation of the mark as a colour mark on the application form as determining the nature of the mark in law and consequently affecting the assessment of its inherent distinctive character. The court ought to have held that the designation of the mark as a colour mark on the application form is one made principally for the administrative convenience of the EUIPO and not a matter of law. Consequently it ought to have had regard not only to the designation of the mark on the form but to the whole content of the application form, in particular the representation of the mark filed with the application form, in determining the nature of mark sought to be registered. The representation of the mark on the application shows a figurative mark having the particular characteristics shown therein.

3. The General Court ought also to have had regard to the form of the mark as registered, and in particular as denoted in the registration certificate issued by the EUIPO on registration of the mark. The registration certificate is the document of record which denotes the form of the mark as registered and should have been treated by the court as determinative in establishing the nature of the registered mark. The content of the registration certificate, properly understood, makes clear that the mark is registered as a figurative mark taking the form appearing in the representation filed with the application form. In failing to do so, the court erred in law.

4. The second error of law and breach of procedure was to refuse to receive information necessary to understand the content of the registration certificate for the mark in suit. That document is publication ST.60 of the World Intellectual Property Office which sets out the meaning of the INID codes used universally in registration certificates issued by intellectual property offices including the EUIPO to identify the nature and meaning of the entries therein. The meaning of the INID codes can only be determined by reference to publication ST.60 or an equivalent reference source and the content of registration certificates can only be determined by reference to the meaning of the INID codes therein. The court wrongly treated the source of such information as evidence and consequently wrongly refused to receive the document or the information it contains when it is in fact a legal text equivalent to a dictionary. Had the court had regard to the interpretive tools presented to it, it would have appreciated that the registration certificate is for a figurative mark comprising the representation shown in the application form for registration. Such a mark had previously been correctly held by the First Board of Appeal of the EUIPO to have the requisite distinctive character to entitle it to registration and the General Court should accordingly have so determined.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, L 78, p. 1).

Request for a preliminary ruling from the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (Poland) lodged on 22 August 2017 — HR

(Case C-512/17)

(2017/C 412/22)

Language of the case: Polish

Referring court

Sąd Rejonowy Poznań-Stare Miasto w Poznaniu

Parties to the main proceedings

Applicant: HR

Questions referred

1. In the circumstances of the present case, should Article 8(1) of 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, ([1]) as amended ('Regulation No 2201/2003'), be interpreted as meaning that:

   the place of habitual residence of a child aged 18 months is the Member State in which the child demonstrates some degree of integration into the social and family environment through the nationality of the parent who has custody of the child on a daily basis, the use by the child of the official language of that Member State, the christening of the child in that country, visits, lasting up to three months, to that country by the child during holidays and that parent's parental leave, and contact with that parent's family,

   in a situation where the child resides with that same parent in another Member State for all remaining periods and that parent is employed in that State on the basis of an employment contract of indefinite duration and the child maintains in that State regular but temporally limited contact with its second parent and his family?

2. When determining, on the basis of Article 8(1) of Regulation No 2201/2003, by assessing the integration of the child into the social and family environment, the place of habitual residence of a child aged 18 months which, given its age, remains in the custody of only one of its parents on a daily basis and maintains regular but temporally limited contact with the second parent, where there is a lack of agreement between the parents as to the exercise of parental responsibility for and contact with the child, should equal account be taken of the ties between the child and each of its parents, or should greater consideration be given to the child's ties with the parent who looks after the child on a daily basis?

([1]) OJ 2003 L 338, p. 1.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 8 September 2017 — Vetsch Int. Transporte GmbH

(Case C-531/17)

(2017/C 412/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Vetsch Int. Transporte GmbH

Respondent authority: Zollamt Feldkirch Wolfurt

Questions referred

1. Is the exemption under Article 138 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) for an intra-Community transfer from a Member State to be refused where the taxable person carrying out that transfer in another Member State does declare in the other Member State the intra-Community acquisition linked to the intra-Community transfer, but commits tax evasion in connection with a subsequent taxable transaction with the goods concerned in the other Member State by wrongfully declaring an exempt intra-Community supply from that other Member State?

2. Is it relevant to the answer to Question 1 whether the taxable person had intended at the time of the intra-Community transfer to commit tax evasion in respect of a subsequent transaction with those goods?

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

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 11 September 2017 — NK, liquidator in the bankruptcies of OJ B.V. and PI v BNP Paribas Fortis N.V.

(Case C-535/17)

(2017/C 412/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: NK, liquidator in the bankruptcies of OJ B.V. and PI

Defendant: BNP Paribas Fortis N.V.

Questions referred

1. Is a claim for damages against a third party brought by the liquidator pursuant to the task assigned to him in Article 68 (1) of the Faillissementswet of administering and liquidating the bankrupt estate on behalf of the joint creditors, on the grounds that that third party behaved wrongfully towards the creditors, and the proceeds of which, if the claim succeeds, are added to the estate, covered by the exception of Article 1(2)(b) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?

2. If question 1 is answered in the affirmative and the claim concerned is therefore covered by Council Regulation (EC) No 1346/2000 ([2]) of 29 May 2000 on insolvency proceedings, is that claim then governed by the law of the Member State where the insolvency proceedings were opened under Article 4(1) of that regulation, both as regards the power of the liquidator to bring that claim and as regards the substantive law applicable to that claim?

3. If question 2 is answered in the affirmative, should the courts of the Member State where the insolvency proceedings were opened then take account, whether or not by analogy, of:

   (a) the provisions of Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, in the sense that the defendant can defend itself against a claim brought by the liquidator for the benefit of the joint creditors by proving that its conduct did not result in it being liable, if assessed on the basis of the law which would have been applicable to the claim if it had not been brought by the liquidator, but by an individual creditor as a result of a wrongful act;

   (b) the provisions of Article 17 of Regulation (EC) No 864/2007 ([3]) of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), in conjunction with Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, that is to say, with the security regulations and codes of conduct applicable at the site of the alleged wrongful act, such as financial rules of conduct for banks?

([1]) OJ 2001 L 12, p. 1.
([2]) OJ 2000 L 160, p. 1.
([3]) OJ 2007 L 199, p. 40.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 18 September 2017 — DISA Gas SAU v Administración del Estado, Redexis Gas, S.L., Repsol Butano, S.A.

(Case C-546/17)

(2017/C 412/25)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: DISA Gas SAU

Defendants: Administración del Estado, Redexis Gas, S.L., Repsol Butano, S.A.

Questions referred

1) In the light of the case-law laid down in [the judgment of 20 April 2010, *Federutility*, C-265/08], is a measure setting a maximum price for cylinders of bottled liquefied gas, in so far as it is a measure for the protection of socially vulnerable users, compatible with that case-law or with the principle of proportionality where, separately or together, any of the following circumstances occur?

   — the measure is adopted as a general measure in relation to all consumers and for an indefinite period 'while the conditions of competition on this market are not considered to be sufficient',

   — the measure has already been in force for more than 28 years,

   — the measure may contribute to freezing the situation of limited competition by impeding the entry of new operators.

2) In the light of the case-law laid down in [the judgment of 20 April 2010, *Federutility*, C-265/08], is the obligation placed on the dominant operator in a given territory to provide home delivery of bottled liquefied petroleum gas, on the ground that it protects socially vulnerable users or residents in areas that are difficult to access, compatible with that case-law or with the principle of proportionality where, separately or together, any of the circumstances listed in the previous question occur?

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 28 September 2017 — Riksåklagaren v Imran Syed

(Case C-572/17)

(2017/C 412/26)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Appellant: Riksåklagaren

Respondent: Imran Syed

Questions referred

1. When goods bearing a protected motif are unlawfully offered for sale in a shop, can there also be an infringement of the author's exclusive right of distribution under Article 4(1) of Directive 2001/29 ([1]) as regards goods with identical motifs, which are held in storage by the person offering the goods for sale?

2. Is it relevant whether the goods are held in a storage facility connected with the shop or in another location?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 28 September 2017 — Openbaar Ministerie v Daniel Adam Popławski

(Case C-573/17)

(2017/C 412/27)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Daniel Adam Popławski

Questions referred

1. If the executing judicial authority cannot interpret the national provisions implementing a framework decision in such a way that their application leads to an outcome in conformity with the framework decision, must it then, in accordance with the principle of primacy, disapply those national provisions not in conformity with that framework decision?

2. Does a declaration of a Member State within the meaning of Article 28(2) of Framework Decision 2008/909/JHA ([1]) that it did not make 'on the adoption of this Framework Decision', but at a later date, have legal effect?

([1]) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 3 October 2017 — Oy Hartwall Ab

(Case C-578/17)

(2017/C 412/28)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Oy Hartwall Ab

Other interested parties: Patentti- ja rekisterihallitus

Questions referred

1. For the interpretation of Article 2 of Directive 2008/95/EC ([1]) and the condition relating to the distinctive character of a trade mark within the meaning of Article 3(1)(b) thereof, is it of relevance whether the trade mark is to be registered as a figurative mark or a colour mark?

2. If the classification of the mark as a colour mark or figurative mark is of importance in the assessment of its distinctive character, is the mark, regardless of its representation as an image, to be registered as a colour mark in accordance with the trade mark application, or can it be registered only as a figurative mark?

3. If it is possible to register, as a colour mark, a mark represented in the form of a drawing in the trade mark application, is it necessary for the registration as a colour mark of a mark which has been graphically illustrated in the trade mark application with the accuracy required by the case-law of the Court of Justice relating to colour marks (and which is not the registration as a mark of a colour in itself, abstract, without shape or contours), is it necessary to submit in addition solid evidence of use as required by the Patentti- ja rekisterihallitus or any such evidence?

(1) OJ 2008 L 299, p. 25.

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 4 October 2017 — Mittetulundusühing Järvelaev v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

(Case C-580/17)

(2017/C 412/29)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Mittetulundusühing Järvelaev

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Questions referred

1. In the event of the recovery of project funding awarded as part of a *Leader* measure, if the funding was approved on 6 September 2011, the final instalment was paid on 19 November 2013, the infringement was established on 4 December 2014 and the recovery decision was issued on 27 January 2015, must Article 72 of Council Regulation (EC) No 1698/2005 (1) or Article 71(1) of Regulation (EU) No 1303/2013 (2) of the European Parliament and of the Council be applied in relation to the requirement concerning the durability of the project? In those circumstances, does Article 33(1) of Council Regulation (EC) No 1290/2005 (3) or Article 56 of Regulation (EU) No 1306/2013 (4) of the European Parliament and of the Council form the basis for the recovery?

2. If the answer to Question 1 is that Regulation No 1698/2005 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the not-for-profit association which received the funding to another not-for-profit association which uses the sailing boat for the same operation for which the funding was granted to the beneficiary be regarded as a substantial modification within the meaning of Article 72(1)(a) of Regulation No 1698/2005, which affects the nature or implementation conditions of the operation or gives undue advantage to a firm? Must the payment body of a Member State determine what the advantage specifically is in order for the condition relating to undue advantage to be satisfied? If the answer is in the affirmative, can the undue advantage lie in the fact that the actual user of the asset would not have obtained the project funding if it had itself submitted an application with the same content?

2a. If the answer to Question 1 is that Regulation No 1303/2013 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the not-for-profit association which received the funding to another not-for-profit association which uses the sailing boat in the same manner for which the funding was granted to the beneficiary be regarded as a substantial change within the meaning of Article 71(1)(c) of Regulation No 1303/2013, which affects its nature, objectives or implementation conditions in a manner which would result in undermining its original objectives?

3. If the answer to Question 1 is that Regulation No 1698/2005 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the beneficiary to another not-for-profit association which uses the sailing boat for the same operation for which the funding was granted to the beneficiary be regarded as a substantial modification within the meaning of Article 72(1)(b) of Regulation No 1698/2005, which results either from a change in the nature of ownership of an item of infrastructure, or the cessation or relocation of a productive activity, having regard to the fact that the ownership of the sailing boat has remained unchanged but the beneficiary is now the indirect, rather than the direct, possessor of that sailing boat and obtains rental income rather than income derived from the provision of the service described in the application?

3a. If the answer to Question 1 is that Regulation No 1303/2013 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the not-for-profit association which received the funding to another not-for-profit association which uses the sailing boat for the same operation for which the funding was granted to the beneficiary be regarded as a change in ownership of an item of infrastructure which gives to a firm an undue advantage within the meaning of Article 71(1)(b) of Regulation No 1303/2013, having regard to the fact that the ownership of the sailing boat has remained unchanged but the beneficiary is now the indirect, rather than the direct, possessor of that sailing boat and obtains rental income rather than income derived from the provision of the service described in the application? Must the payment body of a Member State determine what the advantage specifically is in order for the requirement relating to undue advantage to be satisfied? If the answer is in the affirmative, can the undue advantage lie in the fact that the actual user of the asset would not have obtained the project funding if it had itself submitted an application with the same content?

4. May a national decree governing a *Leader* measure impose on the beneficiary the obligation to retain the asset for five years with stricter requirements than those laid down in Article 72(1) of Regulation No 1698/2005 or in Article 71(1) of Regulation No 1303/2013?

5. If the answer to Question 4 is in the negative, are the provision of a national decree under which the beneficiary of project funding is obliged to retain and use for its intended purpose the asset acquired by means of the project funding for at least five years following the payment of the last instalment of the funding, and the interpretation of that provision as meaning that the beneficiary must use that asset personally, consistent with Article 72(1) of Regulation No 1698/2005 and/or Article 71(1) of Regulation No 1303/2013?

6. Must it be regarded as an irregularity within the meaning of Article 33(1) of Regulation No 1290/2005 and/or Article 56 of Regulation No 1306/2013 if the beneficiary has not carried out an operation which, under a national decree governing a *Leader* measure, was not obligatory but to which the beneficiary had referred in the 'Summary of the objectives and activities of the operation and the investment' set out in its funding application and which was one of the criteria on the basis of which the applications were assessed for the purpose of ranking them?

7. If the answer to Question 6 is in the affirmative, is the recovery rendered unlawful by the fact that it is sought before the expiry of the period of five years from the time of the final payment and the beneficiary remedies the infringement in the course of the judicial proceedings concerning recovery?

([1]) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

([2]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

([3]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

([4]) 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).

Appeal brought on 5 October 2017 by the Kingdom of Belgium against the judgment of the General Court (Second Chamber) delivered on 20 July 2017 in Case T-287/16, Belgium v Commission

(Case C-587/17 P)

(2017/C 412/30)

Language of the case: French

Parties

Appellant: Kingdom of Belgium (represented by: J.-C. Halleux, M. Jacobs and C. Pochet, acting as Agents, and by E. Grégoire and J. Mariani, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Second Chamber) of 20 July 2017 in Case T-287/16, *Belgium* v *Commission* (EU:T:2017:531);

— annul Commission Implementing Decision (EU) 2016/417 of 17 March 2016 ([1]) in so far as it excludes from European Union financing the sum of EUR 9 601 619,00 (budget item 6701);

— order the Commission to pay the costs.

Grounds of appeal and main arguments

In support of its appeal, the appellant relies on a single ground of appeal, alleging an error of law resulting from a misinterpretation by the General Court of Article 32(8)(a) of Regulation No 1290/2005, ([2]) now, essentially, Article 54(5)(c) of Regulation No 1306/2013, ([3]) both with regard to the prior exhaustion of national rights of action and with regard to the due care required by that provision.

([1]) Commission Implementing Decision (EU) 2016/417 of 17 March 2016 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2016 L 75, p. 16).

([2]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

([3]) 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; corrigendum OJ 2016 L 130, p. 6).

Action brought on 13 October 2017 — European Commission v Republic of Slovenia

(Case C-594/17)

(2017/C 412/31)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: L. Flynn, G. von Rintelen and M. Žebre)

Defendant: Republic of Slovenia

Form of order sought

The applicant claims that the Court should:

— declare that the Republic of Slovenia has failed to fulfil its obligations under Article 15(1) of Council Directive 2001/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ 2011 L 306, p. 41), by failing to adopt, by 31 December 2013, all the laws, regulations and administrative provisions necessary to comply with that directive, or in any event by failing to communicate those provisions to the Commission;

— order the Republic of Slovenia to pay, on the basis of Article 260(3) TFEU, a penalty of EUR 7 099,20 per day from the date of delivery of judgment in the present case;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

In accordance with Article 15(1) of Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, the Republic of Slovenia should have adopted and made public, by 31 December 2013, all the laws, regulations and administrative provisions necessary to comply with that directive. Since the Republic of Slovenia did not confirm to the Commission, before expiry of that time limit, that all the provisions of the directive cited above had been transposed, the Commission decided to bring an action before the Court.

By its action, the Commission claims that the Court should order the Republic of Slovenia to pay a penalty of EUR 7 099,20 per day. In calculating that amount, the Commission took into consideration the seriousness and the duration of the breach of EU law as well as the deterrent effect in relation to the ability of the Member State concerned, namely the Republic of Slovenia, to pay.

GENERAL COURT

Judgment of the General Court of 23 October 2017 — CEAHR v Commission

(Case T-712/14) ([1])

(Competition — Agreements, decisions and concerted practices — Abuse of a dominant position — Selective repair system — Refusal of Swiss watch manufacturers to supply spare parts to independent watch repairers — Primary market and aftermarket — Elimination of all effective competition — Decision rejecting a complaint)

(2017/C 412/32)

Language of the case: English

Parties

Applicant: Confédération européenne des associations d'horlogers-réparateurs (CEAHR) (Brussels, Belgium) (represented: initially by P. Mathijsen and P. Dyrberg, subsequently by M. Sánchez Rydelski and lastly by P. Benczek, lawyers)

Defendant: European Commission (represented: initially by F. Ronkes Agerbeek, M. Farley and C. Urraca Caviedes, and subsequently by A. Dawes, F. Ronkes Agerbeek and J. Norris-Usher, acting as Agents)

Interveners in support of the defendant: LVMH Moët Hennessy-Louis Vuitton SA (Paris, France) (represented by: C. Froitzheim, lawyer, and R. Subiotto QC), Rolex, SA (Geneva, Switzerland) (represented by: M. Araujo Boyd, lawyer) and The Swatch Group SA (Neuchâtel, Switzerland) (represented: initially by A. Israel and M. Jakobs, and subsequently by A. Israel and J. Lang, lawyers)

Re:

Application pursuant to Article 263 TFEU for the annulment of Commission Decision C(2014) 5462 final of 29 July 2014, by which the Commission rejected the complaint lodged by the applicant concerning alleged infringements of Articles 101 and 102 TFEU (Case AT.39097 — Watch Repair).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Confédération européenne des associations d'horlogers-réparateurs (CEAHR) to pay the costs.*

([1]) OJ C 7, 12.1.2015.

Judgment of the General Court of 19 October 2017 — Leopard v EUIPO — Smart Market (LEOPARD true racing)

(Case T-7/15) ([1])

(EU trade mark — Opposition proceedings — Application for figurative EU trade mark LEOPARD true racing — Prior figurative EU trade mark leopard CASA Y JARDIN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 412/33)

Language of the case: French

Parties

Applicant: Leopard SA (Howald, Luxembourg) (represented by: P. Lê Dai, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Smart Market, SLU (Alcantarilla, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 2 October 2014 (Case R 1866/2013-1) concerning opposition proceedings between Smart Market and Leopard.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Leopard SA to pay the costs.*

([1]) OJ C 81, 9.3.2015.

Judgment of the General Court of 19 October 2017 — Spain v Commission

(Case T-502/15) ([1])

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Spain — Flat-rate financial corrections — Regulations (EC) No 1290/2005 and (EU) No 1306/2013 — Obligation to state reasons — Burden of proof — Proportionality — Rights of defence)

(2017/C 412/34)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented initially by L. Banciella Rodríguez-Miñón, and subsequently by M. Sampol Pucurull, A. Gavela Llopis and V. Ester Casas, acting as Agents)

Defendant: European Commission (represented initially by J. Guillem Carrau and D. Triantafyllou, and subsequently by D. Triantafyllou and I. Galindo Martín, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39) as regards certain corrections made in respect of Catalonia, on the one hand, and the Canaries, on the other hand.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 346, 19.10.2015.

Judgment of the General Court of 19 October 2017 — Aldi v EUIPO — Sky (SKYLITe)

(Case T-736/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark skylite — Earlier EU word mark SKY — Proof of use of the earlier mark — Article 15(1) and Article 42(2) and (3) of Regulation (EC) No 207/2009 — Rule 22(2) of Regulation (EC) No 2868/1995 — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Regulation No 207/2009)

(2017/C 412/35)

Language of the case: English

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, C. Fürsen and N. Bertram, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sky plc (Isleworth, United Kingdom) (represented by: J. Barry, Solicitor)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 20 October 2015 (Case R 2771/2014-4) relating to opposition proceedings between Sky and Aldi.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aldi GmbH & Co. KG to pay the costs.*

([1]) OJ C 90, 7.3.2016.

Judgment of the General Court of 24 October 2017 — Keturi kambariai v EUIPO — Coffee In (coffee inn)

(Case T-202/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark coffee inn — Earlier national figurative mark coffee in — Relative ground for refusal — Likelihood of confusion — Article 8 (1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Genuine use of the earlier mark — Article 42(2) of Regulation No 207/2009 (now Article 47(2) of Regulation 2017/1001))

(2017/C 412/36)

Language of the case: English

Parties

Applicant: UAB Keturi kambariai (Vilnius, Lithuania) (represented by: R. Pumputienė, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: OÜ Coffee In (Tallinn, Estonia) (represented by: P. Lätt, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 3 March 2016 (Case R 137/2015-4), relating to opposition proceedings between Coffee In and Keturi kambariai.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders UAB Keturi kambariai to pay the costs.*

(1) OJ C 270, 25.7.2016.

Judgment of the General Court of 23 October 2017 — Galletas Gullón v EUIPO — O2 Holdings (Shape of a packet of biscuits)

(Case T-404/16) (1)

(EU trade mark — Revocation proceedings — Three-dimensional EU trade mark — Shape of a packet of biscuits — Declaration of revocation — Extent of use — No alteration of distinctive character)

(2017/C 412/37)

Language of the case: English

Parties

Applicant: Galletas Gullón, SA (Aguilar de Campoo, Spain) (represented by: I. Escudero Pérez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: O2 Holdings Ltd (Slough, United Kingdom) (represented by: J. Rebling, Solicitor)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 May 2016 (Case R 1613/2015-4), relating to revocation proceedings between O2 Holdings Ltd and Galletas Gullón.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 19 May 2016 (Case R 1613/2015-4), relating to revocation proceedings between O2 Holdings Ltd and Galletas Gullón;*

2. *Orders EUIPO and O2 Holdings Ltd to pay the costs.*

(1) OJ C 343, 19.9.2016.

Judgment of the General Court of 23 October 2017 — Galletas Gullón v EUIPO — O2 Holdings (Shape of a packet of biscuits)

(Case T-418/16) ([1])

(EU trade mark — Revocation proceedings — Three-dimensional EU trade mark — Shape of a packet of biscuits — Declaration of revocation — Extent of use — No alteration of distinctive character)

(2017/C 412/38)

Language of the case: English

Parties

Applicant: Galletas Gullón, SA (Aguilar de Campoo, Spain) (represented by: I. Escudero Pérez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: O2 Holdings Ltd (Slough, United Kingdom) (represented by: J. Rebling, Solicitor)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 May 2016 (Case R 1614/2015-4), relating to revocation proceedings between O2 Holdings Ltd and Galletas Gullón.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 19 May 2016 (Case R 1614/2015-4), relating to revocation proceedings between O2 Holdings Ltd and Galletas Gullón;*

2. *Orders EUIPO and O2 Holdings Ltd to pay the costs.*

([1]) OJ C 343, 19.9.2016.

Judgment of the General Court of 23 October 2017 — Tetra Pharm (1997) v EUIPO — Sebapharma (SeboCalm)

(Case T-441/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark SeboCalm — Earlier EU word mark — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 412/39)

Language of the case: English

Parties

Applicant: Tetra Pharm (1997) Ltd (Tel Aviv, Israel) (represented by: A. Gorzkiewicz, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and D. Stoyanova-Valchanova, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sebapharma GmbH & Co. KG (Boppard, Germany) (represented by: J. Wald and D. Koal, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO dated 19 May 2016 (Case R 852/2015-1), relating to opposition proceedings between Sebapharma and Tetra Pharm (1997).

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Tetra Pharm (1997) Ltd to pay the costs.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 19 October 2017 — Bernaldo de Quirós v Commission

(Case T-649/16) ([1])

(Civil service — Officials — Assignment — Transfer from a head of unit post to an advisor post — Interests of the service — Misuse of powers — Right to be heard and duty of care — Principle of equivalence of posts)

(2017/C 412/40)

Language of the case: French

Parties

Applicant: Belén Bernaldo de Quirós (Brussels, Belgium) (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented by: G. Berscheid, C. Berardis-Kayser and C. Ehrbar, acting as Agents)

Re:

Application based on Article 270 TFEU seeking annulment of the Commission decision of 30 November 2015 changing the applicant's assignment, from 1 December 2015, from the post of Head of the Traineeships Office Unit of the Youth and Sport Directorate within the Education and Culture Directorate General (DG) to the post of Advisor at the Modernisation of Education II: Education policy and programme, Innovation, EIT and MSCA Directorate within that same DG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Belén Bernaldo de Quirós to pay the costs.*

([1]) OJ C 402, 31.10.2016.

Judgment of the General Court of 19 October 2017 — Kuka Systems v EUIPO (MATRIX BODY SHOP)

(Case T-683/16) ([1])

(EU trade mark — Application for EU word mark MATRIX BODY SHOP — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2017/C 412/41)

Language of the case: German

Parties

Applicant: Kuka Systems GmbH (Augsburg, Germany) (represented by: B. Maneth and C. Huch-Hallwachs, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 19 July 2016 (Case R 2503/2015-4), relating to an application for registration of the word sign MATRIX BODY SHOP as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kuka Systems GmbH to pay the costs.*

([1]) OJ C 410, 7.11.2016.

Judgment of the General Court of 19 October 2017 — *Possanzini* v *Frontex*

(Case T-686/16 P) ([1])

(Appeal — Civil service — Temporary staff — 2009 appraisal procedure — Powers of the countersigning officer — Amendment of the reporting officer's primary assessment by the countersigning officer — Preliminary consultation meeting between the countersigning officer and the reporting officer — Infringement of substantial procedural requirements — Examination of the Court's own motion)

(2017/C 412/42)

Language of the case: French

Parties

Appellant: Daniele Possanzini (Pisa, Italy) (represented by: S. Pappas, lawyer)

Other party to the proceedings: European Border and Coast Guard Agency (Frontex) (represented by: H. Caniard and S. Drew, acting as Agents, and D. Waelbrock and A. Duron, lawyers)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) of 18 July 2016, *Possanzini* v *Commission* (F-68/15, EU:F:2016:150), seeking to have that order set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Daniele Possanzini to bear his own costs and to pay those of the European Border and Coast Guard Agency (Frontex) in the present proceedings.*

(1) OJ C 428, 21.11.2016.

Judgment of the General Court of 19 October 2017 — WQ (*) v Parliament

(Case T-705/16) (1)

(Appeal — Civil service — Officials — Certification procedure — 2014 — Not included in the list of officials selected to participate in the training programme — Equal treatment — Article 165 TFEU — Plea of illegality)

(2017/C 412/43)

Language of the case: French

Parties

Appellant: WQ (*) (represented by: S. Orlandi and T. Martin, lawyers)

Other party to the proceedings: European Parliament (represented by: D. Nessaf and M. Ecker, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) of 21 July 2016, *WQ (*) v Parliament* (F-1/16, EU:F:2016:171), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders WQ (*) to bear his own costs and to pay those incurred by the European Parliament on appeal.*

(1) OJ C 454, 5.12.2016.

(*) Information erased within the framework of the protection of individuals with regard to the processing of personal data.

Judgment of the General Court of 23 October 2017 — Barmenia Krankenversicherung v EUIPO (Mediline)

(Case T-810/16) ([1])

(EU trade mark — Application for registration of the EU word mark Mediline — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Article 7(2) of Regulation No 207/2009 (now Article 7(2) of Regulation 2017/1001))

(2017/C 412/44)

Language of the case: German

Parties

Applicant: Barmenia Krankenversicherung AG (Wuppertal, Germany) (represented by: M. Graf, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 September 2016 (Case R 2437/2015-1), concerning an application for registration of the word sign Mediline as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Barmenia Krankenversicherung AG to pay the costs.*

([1]) OJ C 22, 23.1.2017.

Judgment of the General Court of 19 October 2017 — Kuka Systems v EUIPO (Matrix light)

(Case T-87/17) ([1])

(EU trade mark — Application for EU word mark Matrix light — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001))

(2017/C 412/45)

Language of the case: German

Parties

Applicant: Kuka Systems GmbH (Augsburg, Germany) (represented by: B. Maneth and C. Huch-Hallwachs, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 1 December 2016 (Case R 886/2016-4), relating to an application for registration of the word sign Matrix light as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kuka Systems GmbH to pay the costs.*

(1) OJ C 104, 3.4.2017.

Order of the General Court of 16 October 2017 — Salehi v Commission

(Case T-773/16) (1)

(Action for failure to act — Regulation (EC) No 539/2001 — Failure by the Commission to adopt implementing acts temporarily suspending the exemption from visa requirements for certain categories of third country nationals — Position of the Commission — Manifestly inadmissible)

(2017/C 412/46)

Language of the case: German

Parties

Applicant: Dominik Salehi (Bremen, Germany) (represented by: C. Drews, lawyer)

Defendant: European Commission (represented by: C. Cattabriga and G. Wils, acting as Agents)

Re:

Application on the basis of Article 265 TFEU seeking a finding that the Commission unlawfully failed to adopt an implementing act within the meaning of Article 1(4) of Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1) and failed to notify the applicant thereof.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Dominik Salehi shall pay the costs.*

(1) OJ C 53, 20.2.2017.

Action brought on 24 August 2017 — Karp v Parliament

(Case T-580/17)

(2017/C 412/47)

Language of the case: English

Parties

Applicant: Kevin Karp (Brussels, Belgium) (represented by: N. Lambers and R. Ben Ammar, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the authority authorized to conclude contracts of employment for the EFDD group in the European Parliament by which it classified him in function group II, grade 4, step 1, while entrusting him with advisory tasks consistent with a function group IV salary grade until the end of his employment contract on 11/11/2016;

— award the applicant damages for the material and non-material damage allegedly suffered by him, including damages for the alleged loss of opportunity to be recruited after the end of his employment contract.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 80 of the Conditions of Employment of Other Servants of the European Union (CEOS).

   — The applicant alleges that he was given a salary grade corresponding to Function Group I for his first contract and at the bottom of Function Group II for the second employment contract he was offered, while the vast majority of tasks entrusted to the applicant within the scope of his first and his second employment contracts were administrative and advisory tasks.

2. Second plea in law, alleging infringement of Article 82 of the CEOS.

   — Article 82 of the CEOS states that a contract member shall be recruited in function group IV if he can demonstrate a level of education which corresponds to completed university studies of at least three years attested by a diploma or professional training of an equivalent level. The applicant satisfied these criteria and his salary grade should have been adjusted accordingly.

3. Third plea in law, alleging abuse of rights arising from the use of successive fixed-term employment contracts

   — The applicant claims an abuse of rights by the appointing authority in the choices of contracts offered to him and, especially, in its decision not to renew his employment contract or offer him a permanent contract.

4. Fourth plea in law, alleging misuse of power by virtue of the decision not to renew the applicant's contract.

   — The reasons for the non-renewal of the applicant's employment contract are not reasonably justified and constitute a misuse of powers justifying a request for damages.

5. Fifth plea in law, alleging loss of an opportunity to be recruited.

   — The applicant was kept in the dark regarding the possibility of renewal of his contract. He never actually received a proper decision from the appointing authority and could not organize his departure and for example ask for redeployment or submit an application for another position.

Action brought on 28 August 2017 — Poza Poza v SRB

(Case T-597/17)

(2017/C 412/48)

Language of the case: Spanish

Parties

Applicant: Máximo Poza Poza (Murcia, Spain) (represented by: P. Poza Cisneros, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Take note of the lodging of the action for annulment of the Single Resolution Board's decision to seize the shares of Banco Popular and give judgment annulling that decision and, in consequence, returning to my client its Popular shares and other capital instruments or, in the alternative, order the payment of compensation corresponding to the net value of its Popular assets as of 22 May 2017, valued at EUR 26 675 424.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward 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 el 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 Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 21 September 2017 — Madrid Diario de la Noche and Others v Commission and SRB

(Case T-639/17)

(2017/C 412/49)

Language of the case: Spanish

Parties

Applicants: Madrid Diario de la Noche (Madrid, Spain) and 24 other applicants (represented by: B. Cremades Roman, F. Orts Castro, J. López Useros, S. Cajal Martín and P. Marrodán Lázaro, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Acknowledge the lodging of the present application and its supporting documents, as well as the claims it contains;

— Annul Decision SRB/EES/2017/08 of SRB and Commission Decision (EU) 2017/1246, both adopted on 7 June 2017 and, consequently, order SRB and the European Commission to refund to the applicants their investments in Banco Popular or, in the alternative, order SRB and the Commission to pay damages to the applicants on grounds of non-contractual liability;

— Order SRB and the European Commission to pay the costs of the present proceedings;

— Declare the valuation carried out by SRB's independent expert invalid and, following the calculation of the net value of the assets of Banco Popular, order SRB and the European Commission to pay compensation to the applicants in the terms set out in the present application.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward 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 el 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 Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 4 October 2017 — Amorepacific v EUIPO — Primavera Life (p primera Pure Sprout Energy)

(Case T-684/17)

(2017/C 412/50)

Language in which the application was lodged: German

Parties

Applicant: Amorepacific Corporation (Seoul, Korea) (represented by: B. Führmeyer and F. Klein, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Primavera Life GmbH (Oy-Mittelberg, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'p primera Pure Sprout Energy' — Application for registration No 13 151 683

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 July 2017 in Case R 1744/2016-4

Form of order sought

The applicant claims that the Court should:

— amend the contested decision by rejecting the opposition in its entirety;

— order EUIPO to pay the costs of the proceedings, including those incurred in the appeal proceedings.

Plea in law

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

Action brought on 6 October 2017 — Hola v SRB

(Case T-688/17)

(2017/C 412/51)

Language of the case: Spanish

Parties

Applicant: Hola, SL (Madrid, Spain) (represented by: R. Vallina Hoset and C. Iglesias Megías, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicant as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Principally, order the Board to reimburse the applicant EUR 543 242,11 for investments made in Banco Popular shares and EUR 304 950 for investments in Banco Popular securities;

— In the alternative, order the Board to pay EUR 451 459 for the applicant's Banco Popular shares and EUR 304 950 for its Banco Popular securities ('the amount due');

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17, *Vallina Fonseca* v *SRB*.

Action brought on 5 October 2017 — Top Cable v SRB

(Case T-689/17)

(2017/C 412/52)

Language of the case: Spanish

Parties

Applicant: Top Cable, SA (Rubí, Spain) (represented by: R. Vallina Hoset and A. Sellés Marco, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicant as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Order the Board to pay the applicant EUR 52 000 000 as damages for the harm suffered ('the amount due');

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment up to its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17, *Vallina Fonseca* v *SRB*.

Action brought on 9 October 2017 — Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven v Commission

(Case T-696/17)

(2017/C 412/53)

Language of the case: Dutch

Parties

Applicants: Havenbedrijf Antwerpen NV (Antwerp, Belgium) and Maatschappij van de Brugse Zeehaven NV (Zeebrugge, Belgium) (represented by: P. Wytinck, W. Panis and I. Letten, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the application for annulment admissible;

— annul Decision C(2017) 5174 final of the European Commission of 27 July 2017 concerning state aid scheme No SA.38393 (2016/C, ex 2015/E) — Ports taxation in Belgium, implemented by Belgium;

— in the alternative, grant a transitional period until such time that the Commission has completed its investigation into the tax regime of the various ports in the EU, amounting, in any event, to one full year;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 107 TFEU and Article 296 TFEU.

   — The Commission infringes Article 107 TFEU in so far as it incorrectly considers there to be a 'market' on which the port authorities provide their services.

   — The port authorities' main activities, namely providing access to ports and making lands available by means of domain concessions, involve activities that are non-economic in nature. At the very least, the Commission did not justify the opposite conclusion in an adequate manner, thereby infringing Article 296 TFEU.

2. Second plea in law, alleging infringement of Article 107 TFEU in so far as the Commission wrongly qualifies the measure as selective.

   Making the port authorities subject to the regime of tax on legal persons is not a derogation from the 'reference system' since the tax on legal persons is a reference system in itself. The liability of the port authorities to the tax on legal persons is explained by the fact that the management of the ports as a public domain is a public task which is not subject to corporation tax. The port authorities still perform, in essence, a public service, on a non-profit basis, in accordance with the conditions of the legislature and under administrative supervision.

3. Third plea in law, alleging infringement of Article 107 TFEU in so far as the derogation from the reference system is, in any event, justified.

Even if corporation tax were to be regarded as the Belgian reference system — which it is not — not subjecting the port authorities to it is justifiable. This follows from the overall coherence of the tax system and from the fact that the applicants are not in a factual and legal situation comparable to that of undertakings subject to corporation tax. Liability to corporation tax would, moreover, have a punitive effect.

4. Fourth plea in law, in the further alternative, concerning a request for a transitional period until such time that the Commission has completed its investigation into the tax regime of the various ports in the EU, amounting, in any event, to one full year.

— In the case against the Netherlands, the Commission gave the Netherlands legislature one full year in order for it to amend its legislation; the ports thus also had a year to prepare for the new situation. There is no justification for why the applicants should be granted a shorter period to adapt to the new situation.

— Prohibiting the measure in one Member State, when ports in other Member States can still enjoy its effects, in no way benefits the level playing field between the ports (not the port authorities). On the contrary, instead of eliminating inequality, it actually creates an unequal situation between the ports in the various Member States.

Action brought on 11 October 2017 — Poland v Commission

(Case T-699/17)

(2017/C 412/54)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (notified under document C(2017) 5225);

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 16(4) and (5) TEU, read in conjunction with Article 3(2) and (3) of Protocol No 36 on transitional provisions, annexed to the TEU and the TFEU, by using an unsuitable method of calculating the qualified majority when adopting the contested decision.

2. Second plea in law, alleging that the Commission infringed Article 3(10) and (13) of Directive 2010/75/EU, read in conjunction with Annex III to that directive, as well as Implementing Decision 2012/119/EU, by establishing the BAT-AELs (associated emission levels) on the basis of inaccurate and unrepresentative data.

3. Third plea in law, alleging that the Commission infringed the principle of proportionality (Article 5(4) TEU, read in conjunction with Article 191(2) TFEU), by establishing excessively high BAT-AELs which are not suitable for or commensurate with achieving the intended benefits and aims, and also that it failed to carry out an impact assessment in relation to the contested decision.

4. Fourth plea in law, alleging that the Commission infringed Article 13(4) and (5) of Directive 2010/75/EU, read in conjunction with Article 3(12) of that directive and Article 291(2) TFEU, by exceeding the entitlements which it is acknowledged as having in Article 13(5) of Directive 2010/75/EU, as a result of introducing derogations from the application of the BAT conclusions by means of the contested decision rather than by means of an amendment to Directive 2010/75/EU.

5. Fifth plea in law, alleging that the Commission infringed Article 3(3) and (4) of Regulation No 182/2011, misused its powers, and infringed the principles of sound administration by introducing, without allowing for prior discussion, significant amendments to the draft of the contested decision on the day of the vote by the Committee referred to in Article 75 of Directive 2010/75/EU as to its opinion on that draft.

Action brought on 11 October 2017 — Hermann Biederlack v EUIPO (Feeling home)

(Case T-715/17)

(2017/C 412/55)

Language of the case: German

Parties

Applicant: Hermann Biederlack GmbH & Co. KG (Greven, Germany) (represented by: T. Seifried, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Feeling home' — Application for registration No 15 452 931

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 June 2017 in Case R 252/2017-5

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 7(1)(b) of Regulation No 207/2009.

Action brought on 18 October 2017 — Germanwings v Commission

(Case T-716/17)

(2017/C 412/56)

Language of the case: German

Parties

Applicant: Germanwings GmbH (Cologne, Germany) (represented by: A. Martin-Ehlers, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 29 July 2016 ([1]) in Case SA.33983 (ex 2012/NN) (ex 2011/NN) — Compensation to Sardinian airports for public service obligations (services of a general economic interest — SGEI) and, specifically:

  — Article 1(2), in so far as it refers to Germanwings GmbH; and

  — Article 2(1), in so far as the repayment claimed therein relates to Germanwings GmbH; and

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

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 there is no aid element

   The defendant has neither shown nor proved that the payment made to the applicant contained aid. Consequently, the defendant departs significantly from the case-law and from its own decision-making practice.

2. Second plea in law, alleging that, if it is established that aid is involved, that aid would neither interfere with trade between Member States nor distort competition.

   The defendant has provided an inadequate statement of reasons for its claim that the alleged aid affects trade between Member States and competition. In the alternative, the applicant argues that it would be *de minimis* aid within the meaning of Article 2(1) of Regulation (EC) No 1998/2006. ([2])

([1]) Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI) (notified under document C(2016) 4862) (OJ 2017 L 268, p. 1).

([2]) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ 2006 L 379, p. 5).

Order of the General Court of 16 October 2017 — Falmouth University v Commission

(Case T-227/17) ([1])

(2017/C 412/57)

Language of the case: English

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

([1]) OJ C 221, 10.7.2017.

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