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Information and Notices

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(2018/C 240/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 17 May 2018 (request for a preliminary ruling from the vredegerecht te Antwerpen — Belgium) — Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen VZW v Susan Romy Jozef Kuijpers

(Case C-147/16) ([1])

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts concluded between a seller or supplier and a consumer — Examination by the national court of its own motion of the question of whether the contract is within the scope of that directive — Article 2(c) — Notion of 'seller or supplier' — Higher educational establishment financed mainly by public funds — Contract for an interest-free repayment plan for registration fees and share of costs of a study trip)

(2018/C 240/02)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen VZW

Defendant: Susan Romy Jozef Kuijpers

Operative part of the judgment

1. *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court giving judgment in default and which has the power, under national procedural rules, to examine of its own motion whether the term upon which the claim is based is contrary to national public policy laws is required to examine of its own motion whether the contract containing that term falls within the scope of that directive and, if so, whether that term is unfair.*

2. *Subject to verifications to be carried out by the referring court, Article 2(c) of Directive 93/13 must be interpreted as meaning that a free educational establishment, such as that at issue in the main proceedings, which, by contract, has agreed with one of its students to provide repayment facilities for sums due by the latter in respect of registration fees and costs connected with a study trip, must be regarded, in the context of that contract, as a 'seller or supplier', within the meaning of Article 2(c) of Directive 93/13, with the result that that contract falls within the scope of application of that directive.*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Ninth Chamber) of 17 May 2018 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Industrias Químicas del Vallés SA v Administracíon General del Estado, Sapec Agro SA

(Case C-325/16) ([1])

(Reference for a preliminary ruling — Agriculture — Directive 91/414/EEC — Directive 2010/28/EU — Article 3(1) — Procedure for re-evaluation by Member States, authorised plant protection products — Time limit — Extension)

(2018/C 240/03)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Industrias Químicas del Vallés SA

Defendants: Administracíon General del Estado, Sapec Agro SA

Operative part of the judgment

Article 3(1) of Commission Directive 2010/28/EU of 23 April 2010 amending Council Directive 91/414/EEC to include the active substance metalaxyl must be interpreted as meaning that the time limit that it lays down, expiring on 31 December 2010, to allow Member State to amend or withdraw, in accordance with Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, existing authorisations for plant protection products containing metalaxyl as an active substance, is a mandatory time limit, which cannot be extended by those Member States.

([1]) OJ C 305, 22.8.2016.

Judgment of the Court (Fourth Chamber) of 17 May 2018 (request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas — Lithuania) — Šiaulių regiono atliekų tvarkymo centras, 'Ecoservice projektai' UAB, formerly 'Specializuotas transportas' UAB

(Case C-531/16) ([1])

(Reference for a preliminary ruling — Directive 2004/18/EC — Procedures for the award of public works contracts, public supply contracts and public service contracts — Links between tenderers having submitted separate tenders in the same procedure — Obligations of the tenderers, of the contracting authority and of the national court)

(2018/C 240/04)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicants: Šiaulių regiono atliekų tvarkymo centras, 'Ecoservice projektai' UAB, formerly 'Specializuotas transportas' UAB

Interveners: 'VSA Vilnius' UAB, 'Švarinta' UAB, 'Specialus autotransportas' UAB, 'Ecoservice' UAB

Operative part of the judgment

Article 2 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that:

— *failing any express legislative provision or specific condition in the call for tenders or in the tender specifications governing the conditions for the award of a public contract, related tenderers submitting separate offers in the same procedure are not obliged to disclose, on their own initiative, the links between them to the contracting authority;*

— *the contracting authority, when it has evidence that calls into question the autonomous and independent character of the tenders submitted by certain tenderers, is obliged to verify, requesting, where appropriate, additional information from those tenderers, whether their offers are in fact autonomous and independent. If the offers prove not to be autonomous and independent, Article 2 of Directive 2004/18 precludes the award of the contract to the tenderers having submitted those tenders.*

([1]) OJ C 6, 9.1.2017.

Judgment of the Court (Fifth Chamber) of 17 May 2018 (request for a preliminary ruling from the Nyíregyházi Közigazgatási és Munkaügyi Bíróság — Hungary) — Dávid Vámos v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-566/16) ([1])

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Articles 282 to 292 — Special scheme for small enterprises — Exemption scheme — Obligation to opt for the application of the special scheme in the reference calendar year)

(2018/C 240/05)

Language of the case: Hungarian

Referring court

Nyíregyházi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dávid Vámos

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Operative part of the judgment

EU law must be interpreted as not precluding national legislation which excludes a special value added tax taxation scheme providing for an exemption for small enterprises — that scheme having been adopted in accordance with the provisions of Section 2 of Chapter I of Title XII of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax — from being applied to a taxable person who fulfils all the material conditions but did not exercise the right to opt for the application of that scheme at the same time as he declared the commencement of his economic activities to the tax authority.

([1]) OJ C 104, 3.4.2017.

Judgment of the Court (Fifth Chamber) of 17 May 2018 (request for a preliminary ruling from the Bundesgerichtshof, Germany) — Junek Europ-Vertrieb GmbH v Lohmann & Rauscher International GmbH & Co. KG

(Case C-642/16) ([1])

(Reference for a preliminary ruling — Intellectual property — Trade-mark law — Regulation (EC) No 207/2009 — Article 13 — Exhaustion of the rights conferred by a trade mark — Parallel imports — Repackaging of the product bearing the mark — New labelling — Conditions applicable to medical devices)

(2018/C 240/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Junek Europ-Vertrieb GmbH

Defendant: Lohmann & Rauscher International GmbH & Co. KG

Operative part of the judgment

Article 13(2) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that the proprietor of a mark cannot oppose the further commercialisation, by a parallel importer, of a medical device in its original internal and external packaging where an additional label, such as that at issue in the case in the main proceedings, has been added by the importer, which, by its content, function, size, presentation and placement, does not give rise to a risk to the guarantee of origin of the medical device bearing the mark.

([1]) OJ C 104, 3.4.2017.

Judgment of the Court (Fourth Chamber) of 17 May 2018 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Dyrektor Izby Celnej w Poznaniu v Kompania Piwowarska S.A. w Poznaniu

(Case C-30/17) ([1])

(Reference for a preliminary ruling — Tax provisions — Excise duties — Directive 92/83/EEC — Article 3 (1) — Alcohol and alcoholic beverages — Beer — Flavoured beer — Degree Plato — Method of calculation)

(2018/C 240/07)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Dyrektor Izby Celnej w Poznaniu

Defendant: Kompania Piwowarska S.A. w Poznaniu

Operative part of the judgment

Article 3(1) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that in order to determine the basis of assessment for flavoured beers according to the Plato scale, the dry extract of the original wort must be taken into consideration but not the aromatic substances or sugar syrup added after the completion of fermentation.

([1]) OJ C 161, 22.5.2017.

Judgment of the Court (Sixth Chamber) of 17 May 2018 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — Evonik Degussa GmbH v Federal Republic of Germany

(Case C-229/17) ([1])

(Reference for a preliminary ruling — Environment — Scheme for greenhouse gas emission allowance trading within the European Union — Free allocation — Directive 2003/87/EC — Article 10a — Annex I — Decision 2011/278/EU — Annex I, Part 2 — Determination of product benchmarks — Production of hydrogen — System boundaries of the product benchmark for hydrogen — Process element of separation of hydrogen in a rich gas stream which already contains hydrogen)

(2018/C 240/08)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Evonik Degussa GmbH

Defendant: Federal Republic of Germany

Operative part of the judgment

Annex I, Part 2, to Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council must be interpreted as meaning that a process, such as that at issue in the main proceedings, which does not produce hydrogen by chemical synthesis, but only isolates hydrogen already contained in a gas mixture, does not fall within the system boundaries of the product benchmark for hydrogen. It would be otherwise only if that process, first, is associated with 'production of hydrogen' within the meaning of Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 and, second, have a technical connection with it.

([1]) OJ C 256, 7.8.2017.

Order of the Court (Eighth Chamber) of 25 April 2018 (request for a preliminary ruling from the Tribunal de Contas — Portugal) — Secretaria Regional de Saúde dos Açores v Ministério Público

(Case C-102/17) ([1])

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Article 267 TFEU — Concept of a 'court or tribunal of a Member State' — Proceedings intended to lead to a decision of a judicial nature — National court of auditors — Prior review of the legality and budgetary justification of public expenditure — Manifest inadmissibility)

(2018/C 240/09)

Language of the case: Portuguese

Referring court

Tribunal de Contas

Parties to the main proceedings

Applicant: Secretaria Regional de Saúde dos Açores

Interested party: Ministério Público

Operative part of the order

The request for a preliminary ruling brought by the Tribunal de Contas (Court of Auditors, Portugal), by decision of 17 January 2017, is manifestly inadmissible.

([1]) OJ C 151, 15.5.2017.

Order of the Court (Seventh Chamber) of 12 April 2018 — Cryo-Save AG v European Union Intellectual Property Office (EUIPO), MedSkin Solutions Dr. Suwelack AG

(Case C-327/17 P) ([1])

(Appeal — European Union trade mark — Revocation proceedings — Withdrawal of the application for revocation — Appeal which has become devoid of purpose — No need to adjudicate)

(2018/C 240/10)

Language of the case: German

Parties

Appellant: Cryo-Save AG (represented by: C. Onken, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: D. Hanf, Agent), MedSkin Solutions Dr. Suwelack AG (represented by: A. Thünken, Rechtsanwalt)

Operative part of the order

1. *There is no need to adjudicate on the present appeal.*

2. *Cryo-Save AG shall pay the costs incurred by the European Union Intellectual Property Office (EUIPO) in the present proceedings.*

3. *Cryo-Save AG and MedSkin Solutions Dr. Suwelack AG shall bear their own costs.*

(1) OJ C 330, 2.10.2017.

Order of the Court (Eighth Chamber) of 17 April 2018 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal de Coimbra — Portugal) — Luís Manuel dos Santos v Fazenda Pública

(Case C-640/17) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Internal taxation — Prohibition of discriminatory taxation — Article 110 TFEU — Uniform road tax for motor vehicles — Setting of tax rate according to the date of first registration of the vehicle in the taxing Member State — Second-hand motor vehicles imported from other Member States — No account taken of the date of first registration in another Member State)

(2018/C 240/11)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal de Coimbra

Parties to the main proceedings

Applicant: Luís Manuel dos Santos

Defendant: Fazenda Pública

Operative part of the order

Article 110 TFEU must be interpreted as precluding legislation of a Member State pursuant to which the uniform road tax established by that legislation is levied on light passenger motor vehicles registered or listed in that Member State without taking into account the date of first registration of the vehicle where registration took place in another Member State, which results in higher taxation of vehicles imported from another Member State compared with similar non-imported vehicles.

(1) OJ C 42, 5.2.2018.

Order of the Court (First Chamber) of 10 April 2018 (request for a preliminary ruling from the Judecătoria Oradea — Romania) — CV v DU

(Case C-85/18 PPU) (1)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Article 99 of the Rules of Procedure of the Court — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Child custody — Regulation (EC) No 2201/2003 — Articles 8, 10 and 13 — Concept of 'habitual residence' of a child — Judgment delivered by a court of another Member State concerning the place of residence of a child — Wrongful removal or retention — Jurisdiction in cases of child abduction)

(2018/C 240/12)

Language of the case: Romanian

Referring court

Judecătoria Oradea

Parties to the main proceedings

Applicant: CV

Respondent: DU

Operative part of the order

Article 10 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, and Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as meaning that, in a case such as that at issue in the main proceedings, in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child.

([1]) OJ C 152, 30.4.2018.

Request for a preliminary ruling from the Fővárosi Ítélőtábla (Budapest Regional Court of Appeal, Hungary) lodged on 18 January 2018 — Ottília Lovasné Tóth v ERSTE Bank Hungary Zrt.

(Case C-34/18)

(2018/C 240/13)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla

Parties to the main proceedings

Appellant: Ottília Lovasné Tóth

Respondent: ERSTE Bank Hungary Zrt.

Questions referred

1. Must point 1(q) of the Annex to Directive 93/13/EEC, ([1]) as an EU law having the status of a rule of public policy, be interpreted as a general prohibition, making any further analyses unnecessary, that prevents a lender from imposing on a debtor classed as a consumer a contract term in the form of a standard term or a term that has not been individually negotiated, when the purpose or effect of that term is to reverse the burden of proof?

2. If, pursuant to point 1(q) of the Annex to Directive [93/13], the purpose or effect of the contract term has to be assessed, can the following types of contract term be held to prevent consumers from exercising their rights?

   — A term that gives a debtor with the status of a consumer good reason to believe that he must perform the contract in its entirety, including all its terms, in the manner and to the extent required by the lender, even when the debtor is convinced that the performance demanded by the lender is not due, whether in full or in part.

   — A term that has the effect of limiting or excluding the consumer's access to a dispute resolution mechanism based on equitable negotiation, given that it is sufficient for the lender to invoke this contract term in order for the dispute to be deemed to have been resolved?

3. If a decision is required as to whether the contract terms listed in the Annex to Directive [93/13] are unfair in the light of the criteria established in Article 3(1) of the Directive, is the requirement in Article 5 of the Directive for terms to be drafted in plain, intelligible language satisfied in the case of a contract term which affects decisions by the consumer about performance of the contract, resolution of disputes with the lender through judicial or non-judicial channels, or the exercise of rights, when (although the wording is clear grammatically) the legal effects of the term can be determined only by interpreting national laws on which the courts had not formulated a consistent position at the time the contract was concluded, and on which no consistent position has emerged in subsequent years?

4. Must point 1(m) of the Annex to Directive [93/13] be interpreted as meaning that a contract term that has not been individually negotiated can also be unfair where it authorises the party contracting with the consumer to determine unilaterally whether the consumer's performance of the contract satisfies the terms of the contract, and when the consumer acknowledges himself to be bound by the term even before the contracting parties have performed any obligations?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Appeal brought on 22 February 2018 by Tulliallan Burlington Ltd against the judgment of the General Court (Third Chamber) delivered on 6 December 2017 in Case T-120/16: Tulliallan Burlington Ltd v European Union Intellectual Property Office

(Case C-155/18 P)

(2018/C 240/14)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office, Burlington Fashion GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court dismissing Tulliallan Burlington Ltd's (TBL) appeal from the Board of Appeal;

— set aside the decision of the Board of Appeal [or alternatively refer the case back to the General Court to be decided in accordance with the Court of Justice's decision];

— order the European Union Intellectual Property Office (EUIPO) and Burlington Fashion GmbH (BFG) to pay the costs incurred by TBL in connection with this appeal.

Pleas in law and main arguments

The appellant ('TBL') appeals from the General Court's judgment on the basis that the General Court made the following errors of law:

1) Pleas in law alleging infringement of Article 8(5)EUTMR (1)

a) The General Court erred in failing to make any findings in relation to 'link'.

b) Further, the General Court erred in holding that TBL had not provided the proof necessary to establish detriment to distinctive character or unfair advantage.

c) In concluding as it did that the necessary proof had not been provided, the General Court erred by (i) setting the legal bar too high, and (ii) failing to take into account the relevant evidence.

d) In fact, the only conclusion available to the General Court was that there was detriment to distinctive character or further or alternatively unfair advantage.

e) The General Court wrongly rejected TBL's submissions that the Board of Appeal's decision was vitiated by its evident failure to take into account the submissions made to it.

2) Pleas in law alleging infringement of Article 8(4) EUTMR

a) The General Court declined to find that the Board of Appeal should have requested additional submissions on Article 8(4) in circumstances where the only way to ensure procedural justice would have been for the Board of Appeal to invite those submissions or decide the issue on Article 8(5) only and remit the issue of Article 8(4) back to the Opposition Division. The Board of Appeal's decision should have been set aside by the General Court.

b) The General Court was wrong to uphold the Board of Appeal's conclusion that TBL had not demonstrated the prerequisites for making out Article 8(4). The General Court ought to have found that the Board of Appeal was in error, set aside the Board of Appeal's findings on Article 8(4) and substituted its own finding that Article 8(4) had been infringed.

Pleas in law alleging infringement of Article 8(1) EUTMR

a) The General Court erred in applying *Praktiker* because in the light of the decision of the Court of Justice in EUIPO v Cactus (C-501/15 P; EU:C:2017:750), *Praktiker* does not apply to the Earlier Marks here.

b) Further or alternatively, the General Court erred in applying *Praktiker* because that judgment does not apply to shopping arcade services.

c) Even if TBL's Earlier Marks fell within the scope of 'retail services' and therefore fell within the ambit of *Praktiker*, the General Court was wrong to interpret *Praktiker* as necessarily precluding a finding of confusing similarity.

d) Because it erred in its findings on the application of *Praktiker*, the General Court failed to either (i) conduct an assessment of the likelihood of confusion or (ii) refer that exercise to the Board of Appeal. In the circumstances, it was obliged to take one of these steps.

(1) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017, L 154, p. 1).

Appeal brought on 22 February 2018 by Tulliallan Burlington Ltd against the judgment of the General Court (Third Chamber) delivered on 6 December 2017 in Case T-121/16: Tulliallan Burlington Ltd v European Union Intellectual Property Office

(Case C-156/18 P)

(2018/C 240/15)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office, Burlington Fashion GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court dismissing Tulliallan Burlington Ltd's (TBL) appeal from the Board of Appeal;

— set aside the decision of the Board of Appeal [or alternatively refer the case back to the General Court to be decided in accordance with the Court of Justice's decision];

— order the European Union Intellectual Property Office (EUIPO) and Burlington Fashion GmbH (BFG) to pay the costs incurred by TBL in connection with this appeal.

Pleas in law and main arguments

The appellant ('TBL') appeals from the General Court's judgment on the basis that the General Court made the following errors of law:

1) Pleas in law alleging infringement of Article 8(5)EUTMR ([1])

   a) The General Court erred in failing to make any findings in relation to 'link'.

   b) Further, the General Court erred in holding that TBL had not provided the proof necessary to establish detriment to distinctive character or unfair advantage.

   c) In concluding as it did that the necessary proof had not been provided, the General Court erred by (i) setting the legal bar too high, and (ii) failing to take into account the relevant evidence.

   d) In fact, the only conclusion available to the General Court was that there was detriment to distinctive character or further or alternatively unfair advantage.

   e) The General Court wrongly rejected TBL's submissions that the Board of Appeal's decision was vitiated by its evident failure to take into account the submissions made to it.

2) Pleas in law alleging infringement of Article 8(4) EUTMR

   a) The General Court declined to find that the Board of Appeal should have requested additional submissions on Article 8(4) in circumstances where the only way to ensure procedural justice would have been for the Board of Appeal to invite those submissions or decide the issue on Article 8(5) only and remit the issue of Article 8(4) back to the Opposition Division. The Board of Appeal's decision should have been set aside by the General Court.

b) The General Court was wrong to uphold the Board of Appeal's conclusion that TBL had not demonstrated the prerequisites for making out Article 8(4). The General Court ought to have found that the Board of Appeal was in error, set aside the Board of Appeal's findings on Article 8(4) and substituted its own finding that Article 8(4) had been infringed.

Pleas in law alleging infringement of Article 8(1) EUTMR

a) The General Court erred in applying *Praktiker* because in the light of the decision of the Court of Justice in EUIPO v Cactus (C-501/15 P; EU:C:2017:750), *Praktiker* does not apply to the Earlier Marks here.

b) Further or alternatively, the General Court erred in applying *Praktiker* because that judgment does not apply to shopping arcade services.

c) Even if TBL's Earlier Marks fell within the scope of 'retail services' and therefore fell within the ambit of *Praktiker,* the General Court was wrong to interpret *Praktiker* as necessarily precluding a finding of confusing similarity.

d) Because it erred in its findings on the application of *Praktiker,* the General Court failed to either (i) conduct an assessment of the likelihood of confusion or (ii) refer that exercise to the Board of Appeal. In the circumstances, it was obliged to take one of these steps.

([1]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017, L 154, p. 1).

Appeal brought on 22 February 2018 by Tulliallan Burlington Ltd against the judgment of the General Court (Third Chamber) delivered on 6 December 2017 in Case T-122/16: Tulliallan Burlington Ltd v European Union Intellectual Property Office

(Case C-157/18 P)

(2018/C 240/16)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office, Burlington Fashion GmbH

Form of order sought

The appellant(s) claim(s) that the Court should:

— set aside the judgment of the General Court dismissing Tulliallan Burlington Ltd's (TBL) appeal from the Board of Appeal;

— set aside the decision of the Board of Appeal [or alternatively refer the case back to the General Court to be decided in accordance with the Court of Justice's decision];

— order the European Union Intellectual Property Office (EUIPO) and Burlington Fashion GmbH (BFG) to pay the costs incurred by TBL in connection with this appeal.

Pleas in law and main arguments

The appellant ('TBL') appeals from the General Court's judgment on the basis that the General Court made the following errors of law:

1) Pleas in law alleging infringement of Article 8(5)EUTMR ([1])

   a) The General Court erred in failing to make any findings in relation to 'link'.

   b) Further, the General Court erred in holding that TBL had not provided the proof necessary to establish detriment to distinctive character or unfair advantage.

   c) In concluding as it did that the necessary proof had not been provided, the General Court erred by (i) setting the legal bar too high, and (ii) failing to take into account the relevant evidence.

   d) In fact, the only conclusion available to the General Court was that there was detriment to distinctive character or further or alternatively unfair advantage.

   e) The General Court wrongly rejected TBL's submissions that the Board of Appeal's decision was vitiated by its evident failure to take into account the submissions made to it.

2) Pleas in law alleging infringement of Article 8(4) EUTMR

   a) The General Court declined to find that the Board of Appeal should have requested additional submissions on Article 8(4) in circumstances where the only way to ensure procedural justice would have been for the Board of Appeal to invite those submissions or decide the issue on Article 8(5) only and remit the issue of Article 8(4) back to the Opposition Division. The Board of Appeal's decision should have been set aside by the General Court.

   b) The General Court was wrong to uphold the Board of Appeal's conclusion that TBL had not demonstrated the prerequisites for making out Article 8(4). The General Court ought to have found that the Board of Appeal was in error, set aside the Board of Appeal's findings on Article 8(4) and substituted its own finding that Article 8(4) had been infringed.

Pleas in law alleging infringement of Article 8(1) EUTMR

a) The General Court erred in applying *Praktiker* because in the light of the decision of the Court of Justice in EUIPO v Cactus (C-501/15 P; EU:C:2017:750), *Praktiker* does not apply to the Earlier Marks here.

b) Further or alternatively, the General Court erred in applying *Praktiker* because that judgment does not apply to shopping arcade services.

c) Even if TBL's Earlier Marks fell within the scope of 'retail services' and therefore fell within the ambit of *Praktiker,* the General Court was wrong to interpret *Praktiker* as necessarily precluding a finding of confusing similarity.

d) Because it erred in its findings on the application of *Praktiker*, the General Court failed to either (i) conduct an assessment of the likelihood of confusion or (ii) refer that exercise to the Board of Appeal. In the circumstances, it was obliged to take one of these steps.

([1]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017, L 154, p. 1).

Appeal brought on 22 February 2018 by Tulliallan Burlington Ltd against the judgment of the General Court (Third Chamber) delivered on 6 December 2017 in Case T-123/16: Tulliallan Burlington Ltd v European Union Intellectual Property Office

(Case C-158/18 P)

(2018/C 240/17)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office, Burlington Fashion GmbH

Form of order sought

The appellant(s) claim(s) that the Court should:

— set aside the judgment of the General Court dismissing Tulliallan Burlington Ltd's (TBL) appeal from the Board of Appeal;

— set aside the decision of the Board of Appeal [or alternatively refer the case back to the General Court to be decided in accordance with the Court of Justice's decision];

— order the European Union Intellectual Property Office (EUIPO) and Burlington Fashion GmbH (BFG) to pay the costs incurred by TBL in connection with this appeal.

Pleas in law and main arguments

The appellant ('TBL') appeals from the General Court's judgment on the basis that the General Court made the following errors of law:

1) Pleas in law alleging infringement of Article 8(5)EUTMR ([1])

a) The General Court erred in failing to make any findings in relation to 'link'.

b) Further, the General Court erred in holding that TBL had not provided the proof necessary to establish detriment to distinctive character or unfair advantage.

c) In concluding as it did that the necessary proof had not been provided, the General Court erred by (i) setting the legal bar too high, and (ii) failing to take into account the relevant evidence.

d) In fact, the only conclusion available to the General Court was that there was detriment to distinctive character or further or alternatively unfair advantage.

e) The General Court wrongly rejected TBL's submissions that the Board of Appeal's decision was vitiated by its evident failure to take into account the submissions made to it.

2) Pleas in law alleging infringement of Article 8(4) EUTMR

a) The General Court declined to find that the Board of Appeal should have requested additional submissions on Article 8(4) in circumstances where the only way to ensure procedural justice would have been for the Board of Appeal to invite those submissions or decide the issue on Article 8(5) only and remit the issue of Article 8(4) back to the Opposition Division. The Board of Appeal's decision should have been set aside by the General Court.

b) The General Court was wrong to uphold the Board of Appeal's conclusion that TBL had not demonstrated the prerequisites for making out Article 8(4). The General Court ought to have found that the Board of Appeal was in error, set aside the Board of Appeal's findings on Article 8(4) and substituted its own finding that Article 8(4) had been infringed.

Pleas in law alleging infringement of Article 8(1) EUTMR

a) The General Court erred in applying *Praktiker* because in the light of the decision of the Court of Justice in EUIPO v Cactus (C-501/15 P; EU:C:2017:750), *Praktiker* does not apply to the Earlier Marks here.

b) Further or alternatively, the General Court erred in applying *Praktiker* because that judgment does not apply to shopping arcade services.

c) Even if TBL's Earlier Marks fell within the scope of 'retail services' and therefore fell within the ambit of *Praktiker,* the General Court was wrong to interpret *Praktiker* as necessarily precluding a finding of confusing similarity.

d) Because it erred in its findings on the application of *Praktiker,* the General Court failed to either (i) conduct an assessment of the likelihood of confusion or (ii) refer that exercise to the Board of Appeal. In the circumstances, it was obliged to take one of these steps.

([1]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017, L 154, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 19 March 2018 — Pollo del Campo S.c.a., Avi Coop Società Cooperativa Agricola v Regione Emilia-Romagna and Others

(Case C-199/18)

(2018/C 240/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Pollo del Campo S.c.a., Avi Coop Società Cooperativa Agricola

Respondents: Regione Emilia-Romagna, Azienda Unità Sanitaria Locale 104 di Modena, A.U.S.L. Romagna

Questions referred

1. By providing that Member States must ensure the collection of fees for the activities referenced in Annex IV, Section A, and Annex V, Section A, must Article 27 of Regulation (EC) No 882/2004 be interpreted as placing an obligation to pay on all agricultural operators, even those which 'carry out the activities of slaughtering and cutting of meat instrumental to and connected with the activity of rearing livestock'?

2. Can a [Member] State make certain categories of undertaking exempt from payment of the veterinary fees in the case where it has set up a system for the collection of fees that, overall, guarantees coverage of the costs of the official controls, or may it apply charges that are lower than those provided for by Regulation (EC) No 8[8]2/2004? ([1])

([1]) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 19 March 2018 — C.A. F.A.R. — Società Agricola Cooperativa, Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta v Regione Emilia-Romagna and Others

(Case C-200/18)

(2018/C 240/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: C.A.F.A.R. — Società Agricola Cooperativa, Società Agricola Guidi di Roncofreddo di Guidi Giancarlo e Nicolini Fausta

Respondents: Regione Emilia-Romagna, Azienda Unità Sanitaria Locale 104 di Modena, A.U.S.L. Romagna

Questions referred

1. By providing that Member States must ensure the collection of fees for the activities referenced in Annex IV, Section A, and Annex V, Section A, must Article 27 of Regulation (EC) No 882/2004 be interpreted as placing an obligation to pay on all agricultural operators, even those which 'carry out the activities of slaughtering and cutting of meat instrumental to and connected with the activity of rearing livestock'?

2. Can a [Member] State make certain categories of undertaking exempt from payment of the veterinary fees in the case where it has set up a system for the collection of fees that, overall, guarantees coverage of the costs of the official controls, or may it apply charges that are lower than those provided for by Regulation (EC) No 8[8]2/2004? ([1])

([1]) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 26 March 2018 — IDEALMED III — Serviços de Saúde, S.A. v Autoridade Tributária e Aduaneira

(Case C-211/18)

(2018/C 240/20)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: IDEALMED III — Serviços de Saúde, S.A.

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Does Article 132(1)(b) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax ('the VAT Directive') preclude a hospital owned by a company governed by private law, which has concluded agreements for the provision of medical care with the State and with legal persons governed by public law, from being deemed to have started to operate under social conditions comparable with those applicable to bodies governed by public law, as referred to in that provision, where the following conditions are met:

   — more than 54,5 % of revenue, including sums invoiced to the relevant user-beneficiaries, comes from State bodies and public health subsystems, at the prices stipulated in the agreements concluded with them;

   — more than 69 % of users are beneficiaries of public health subsystems or receive services provided within the framework of agreements concluded with State bodies;

   — more than 71 % of medical services are carried out under agreements concluded with public health subsystems and with State bodies; and

   — the activity carried out is of significant general public interest?

2. In view of the fact that, in accordance with Article 377 of the VAT Directive, Portugal chose to continue to exempt from VAT transactions carried out by hospitals not referred to in Article 132(1)(b) of that directive, that it granted such taxable persons the right to opt for taxation of those transactions under Article 391 of the directive, provided that they continue to be taxed for a minimum period of five years, and that it provides that they may become subject to the exemption scheme again only if they make an express declaration to that effect, does Article 391 and/or the principles of the protection of acquired rights and of legitimate expectations, equality and non-discrimination, neutrality and non-distortion of competition in relation to users and taxable persons which are bodies governed by public law, preclude the taxation and customs authority from imposing the exemption scheme before that period has elapsed, since it considers that the taxable person has started to provide services under social conditions comparable with those applicable to bodies governed by public law?

3. Do Article 391 of the VAT Directive and/or the abovementioned principles preclude a new law from requiring the application of the exemption scheme to taxable persons who previously opted for the taxation scheme, before the five-year period has elapsed?

4. Do Article 391 of the VAT Directive and the abovementioned principles preclude legislation in accordance with which a taxable person, who opted for application of the taxation scheme because, at the time when he opted for that scheme, he was not providing healthcare services under social conditions comparable with those applicable to bodies governed by public law, can continue to be subject to that scheme if he starts to provide such services under social conditions comparable with those applicable to bodies governed by public law?

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

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 26 March 2018 — Prato Nevoso Termo Energy Srl v Province of Cuneo, ARPA Piemonte

(Case C-212/18)

(2018/C 240/21)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Prato Nevoso Termo Energy Srl

Defendants: Province of Cuneo, ARPA Piemonte

Questions referred

1. Do Article 6 of Directive 2008/98/EC ([1]) and, in any case, the principle of proportionality, preclude provisions of national law, such as Article 293 of Legislative Decree No 152/2006 and Article 268 paragraph eee-bis) of Legislative Decree No 152/2006, which provide that, even in the ambit of a procedure for authorisation of a biomass-powered plant, a bioliquid that fulfils the technical requirements in that respect and is requested for production purposes as fuel must be considered waste if and so long as it is not included in Annex X part II, section 4, par.1 in Part V of Legislative Decree of 3 April 2006, No 152, irrespective of any adverse environmental impact assessments, or of any dispute as to the technical characteristics of the product, arising in the context of the authorisation procedure?

2. Do Article 13 of Directive 2009/28/EC ([2]) and, in any case, the principles of proportionality, transparency and simplification preclude a provision of national law such as Article 5 of Legislative Decree No 28/2011 insofar as it does not provide, when the applicant requests authorisation to use biomass as fuel in a plant producing emissions into the atmosphere, for any coordination with the procedure for authorisation of that use as fuel under Legislative Decree No 152/2006, Annex X Part V, or provide for the possibility of specifically assessing the solution proposed in the context of the single authorisation procedure and having regard to pre-defined technical specifications?

([1]) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).

([2]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

Request for a preliminary ruling from the Tribunale ordinario di Roma (Italy) lodged on 26 March 2018 — Adriano Guaitoli and Others v easyJet Airline Co. Ltd

(Case C-213/18)

(2018/C 240/22)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Applicants: Adriano Guaitoli, Concepción Casan Rodriguez, Alessandro Celano Tomassoni, Antonia Cirilli, Lucia Cortini, Mario Giuli, Patrizia Padroni

Defendant: easyJet Airline Co. Ltd

Questions referred

1. If a party whose flight has been delayed or cancelled jointly requests, not only the standardised and lump-sum compensation provided for by Articles 5, 7 and 9 of Regulation (EC) No 261/2004, ([1]) but also the further compensation referred to in Article 12 of the Regulation, must Article 33 of the Montreal Convention apply, or is 'jurisdiction' (both international and local) governed by Article 5 of Regulation (EC) No 44/2001? ([2])

2. In the first hypothesis in question 1, must Article 33 of the Montreal Convention be interpreted to the effect that it governs only the allocation of jurisdiction among the States Parties, or as meaning that it also governs local jurisdiction within the individual State?

3. In the first hypothesis in question 2, is the application of Article 33 of the Montreal Convention 'exclusive', precluding application of Article 5 of Regulation (EC) No 44/2001, or may the two provisions be applied jointly, so as to determine directly both the jurisdiction of the State and the local jurisdiction of its courts?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 — Commission Statement (OJ 2004 L 46, p. 1).

([2]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 26 March 2018 — La Gazza s.c.r.l. and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-217/18)

(2018/C 240/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: La Gazza s.c.r.l., Umberto Bernardi, Giovanni Bressan, Bruno Ceccato, Alessandro Cerbaro, Virgilio Cerbaro, Alessandro Conte, Antonio Costa, Maurizio Dalla Pria, Daniele Donà, Fausto Guidolin, Gianni Mancon, Claudio Meneghini, Antonio Pesce, Dario Poli, Rino Salvalaggio, Luciano Simioni, Tiziano Sperotto, Armando Tollio, Marco Toson, Silvano Marcon, Lorella Cusinato, Federica Marcon, Eleonora Marcon, Caterina Marcon, Azienda agricola Bacchin Fratelli, Baldisseri Giancarlo e Mario s.s., Azienda agricola Ballardin Bortolino e Giuseppe, Facchinello Egidio e Giuseppe s.s., Azienda agricola Marchioron Fratelli di Marchioron Maurizio e Giuliano, Marchioron Ruggero e Massimo s.s., Azienda agricola Milan di Milan Mauro e Maurizio s.s., Azienda agricola Pettenuzzo Luciano e Aurelio s.s., Azienda agricola Stragliotto di Stragliotto Giovanni & c. s.s., Azienda agricola Todescato Giuseppe e Maurizio s.s., Azienda agricola Toffan Piermaria e Antonio s.s.

Respondents: Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

Questions referred

1. In a situation such as that described in the case in the main proceedings, must EU law be interpreted to the effect that the consequence of the conflict of a legislative provision of a Member State with the third subparagraph of Article 2(2) of Regulation (EEC) No 3950/92 ([1]) is that producers are not obliged to pay the additional levy if the conditions laid down by that regulation are met?

2. In a situation such as that described in the case in the main proceedings, must EU law, and in particular the general principle of the protection of legitimate expectations, be interpreted as meaning that the expectations of persons who have performed an obligation laid down by a Member State and who have benefited from the effects associated with performance of that obligation may not be protected if that obligation has proved to be in conflict with EU law?

3. In a situation such as that described in the case in the main proceedings, do Article 9 of Regulation (EC) No 1392/2001 ([2]) of 9 July 2001 and the EU concept of 'priority category' preclude a provision of a Member State, such as Article 2(3) of Decree-Law No 157/2004, approved by the Italian Republic, which lays down varying methods for refunding an additional levy that has been over-charged, drawing a distinction, in terms of timetables and methods of repayment, between producers who have relied upon due compliance with a national provision that has proved to be in conflict with EU law and producers who have not complied with such a provision?

([1]) Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

([2]) Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 26 March 2018 — Latte Più Srl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-218/18)

(2018/C 240/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Latte Più Srl, Azienda agricola Benedetti Pietro e Angelo s.s., Azienda agricola Bertoldo Leandro e Ferruccio s.s., Sila di Bettinardi Virgilio e Adriano s.s., Bonora Delis, Capparotto Giampaolo e Lorenzino s.s., Cristofori Alessandra, Cunico Antonio, Dal Degan Santo e Giovanni, Dalle Palle Silvano e Munari Teresa, Dalle Palle Tiziano, Fontana Luca, Gonzo Dino e Stefano s.s., Guarato Giuseppe, Guerra Giuseppe, Magrin Stefano e Renato s.s., Marcolin Graziano, Marin Daniele, Gabriele e Graziano s.s., Azienda agricola Mascot di Pilotto Bortolo e figli s.s., Azienda agricola 2000 di Mastrotto Giuseppe, Matteazzi Mario, Mazzaron Roberto, Pozzan Michele e Luca, Radin Alessandro, Raffaello Carlo e fratelli s.s., Azienda agricola Rodighiero Elena di Bartolomei Roberto e Michele s.s., Sambugaro Andrea, Scuccato Gervasio, Serafini Candida, Toffanin Giovanni e Mauro s.s., Trevisan Francesco, Zanettin Gianfranco e Giampietro s.s.

Respondents: Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

Questions referred

1. In a situation such as that described in the case in the main proceedings, must EU law be interpreted to the effect that the consequence of the conflict of a legislative provision of a Member State with the third subparagraph of Article 2(2) of Regulation (EEC) No 3950/92 ([1]) is that producers are not obliged to pay the additional levy if the conditions laid down by that regulation are met?

2. In a situation such as that described in the case in the main proceedings, must EU law and, in particular, the general principle of the protection of legitimate expectations, be interpreted as meaning that the expectations of persons who have performed an obligation laid down by a Member State and who have benefited from the effects associated with performance of that obligation may not be protected if that obligation has proved to be in conflict with EU law?

3. In a situation such as that described in the case in the main proceedings, do Article 9 of Regulation (EC) No 1392/2001 ([2]) of 9 July 2001 and the EU concept of 'priority category' preclude a provision of a Member State, such as Article 2(3) of Decree-Law No 157/2004, approved by the Italian Republic, which lays down varying methods for refunding an additional levy that has been over-charged, drawing a distinction, in terms of timetables and methods of repayment, between producers who have relied upon due compliance with a national provision that has proved to be in conflict with EU law and producers who have not complied with such a provision?

([1]) Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

([2]) Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 26 March 2018 — Brenta Scrl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-219/18)

(2018/C 240/25)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Brenta Scrl, Michele Bianchin, Antonio Bortignon, Doriano Bortignon, Bruno Caron, Francesca Carraro, Antonio Didonè, Loris Donazzan, Rino Guidolin, Silvano Orsato, Valentino Rigo, Roberto Sacchetto, Emiliano Sonda, Azienda agricola Rebesco Antonio e Guerrino s.s.

Respondents: Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

Questions referred

1. In a situation such as that described in the case in the main proceedings, must EU law be interpreted to the effect that the consequence of the conflict of a legislative provision of a Member State with the third subparagraph of Article 2(2) of Regulation (EEC) No 3950/92 ([1]) is that producers are not obliged to pay the additional levy if the conditions laid down by that regulation are met?

2. In a situation such as that described in the case in the main proceedings, must EU law and, in particular, the general principle of the protection of legitimate expectations be interpreted as meaning that the expectations of persons who have performed an obligation laid down by a Member State and who have benefited from the effects associated with performance of that obligation may not be protected if that obligation has proved to be in conflict with EU law?

3. In a situation such as that described in the case in the main proceedings, do Article 9 of Regulation (EC) No 1392/2001 ([2]) of 9 July 2001 and the EU concept of 'priority category' preclude a provision of a Member State, such as Article 2(3) of Decree-Law No 157/2004, adopted by the Italian Republic, which lays down varying methods for refunding an additional levy that has been over-charged, drawing a distinction, in terms of timetables and methods of repayment, between producers who have relied upon due compliance with a national provision that has proved to be in conflict with EU law and producers who have not complied with such a provision?

([1]) Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).
([2]) Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19).

Request for a preliminary ruling from the Audiencia Provincial de Almería (Spain) lodged on 29 March 2018 — Banco Popular Español, S.A. v María Angeles Díaz Soria, Miguel Ángel Góngora Gómez, José Antonio Sánchez González and Dolores María del Águila Andújar

(Case C-232/18)

(2018/C 240/26)

Language of the case: Spanish

Referring court

Audiencia Provincial de Almería

Parties to the main proceedings

Applicant: Banco Popular Español S.A.

Defendants: María Angeles Díaz Soria, Miguel Ángel Góngora Gómez, José Antonio Sánchez González and Dolores María del Águila Andújar

Questions referred

1. Is a provision such as that laid down in Article 465.5 of the Spanish Ley de Enjuiciamiento Civil 1/2000 (Law on Civil Procedure) which limits the power of the Tribunal de Apelación (Court of Appeal) to assess of its own motion all the effects of a declaration of invalidity, which is upheld on appeal, compatible with Article 6(1) of Directive 93/13, ([1]) when those effects have been determined restrictively at first instance and the consumer has not appealed against the judgment at first instance declaring the term null and void?

2. Is the foregoing compatible with the principles laid down in Articles 6(1) and 7(1) of Directive 93/13, if it means that the effects of a finding that a clause such as that at issue is unfair will be limited for persons making a claim under the ruling of the Tribunal Supremo (Supreme Court) in its judgment of 9 May 2013, declared invalid by the Court of Justice in its judgment of 21 December 2016? ([2])

3. Does res judicata under national law (or following from the analysis that the appeal court might make when only the party claiming that the clause is valid has brought an appeal) affect only any declaration of nullity (of the clause[,] or also the full effects of that nullity when they have been limited in the judicial decision and no party has contested this?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
([2]) Judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980).

Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 3 April 2018 — Komisia za protivodeystvie na koruptsiata i otnemane na nezakonno pridobito imushtestvo v BP, AB, PB, Agro In 2001 EOOD, Acount Service 2009 EOOD, Invest Management OOD, Estate OOD, Trast Vasilevi OOD, Bromak OOD, Bromak Finance EAD, Viva Telekom Bulgaria EOOD, Balgarska Telekomunikatsionna Kompania AD, Hedge Investment Bulgaria AD, Kemira OOD, Dunarit AD, Technologichen Zentar-Institut Po Mikroelektronika AD, Evrobild 2003 EOOD, Technotel Invest AD, Ken Trade EAD, Konsult Av EOOD, Louvrier Investments Company 33 S.A, EFV International Financial Ventures Ltd, LIC Telecommunications S.A.R.L., V Telecom Investment S.C.A, V2 Investment S.A.R.L., Interv Investment S.A.R.L., Empreno Ventures S.A.R.L.

(Case C-234/18)

(2018/C 240/27)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: Komisia za protivodeystvie na koruptsiata i otnemane na nezakonno pridobito imushtestvo

Defendants: BP, AB, PB, Agro In 2001 EOOD, Acount Service 2009 EOOD, Invest Management OOD, Estate OOD, Trast Vasilevi OOD, Bromak OOD, Bromak Finance EAD, Viva Telekom Bulgaria EOOD, Balgarska Telekomunikatsionna Kompania AD, Hedge Investment Bulgaria AD, Kemira OOD, Dunarit AD, Technologichen Zentar-Institut Po Mikroelektronika AD, Evrobild 2003 EOOD, Technotel Invest AD, Ken Trade EAD, Konsult Av EOOD, Louvrier Investments Company 33 S.A, EFV International Financial Ventures Ltd, LIC Telecommunications S.A.R.L., V Telecom Investment S.C.A, V2 Investment S.A.R.L., Interv Investment S.A.R.L., Empreno Ventures S.A.R.L.

Questions referred

1. Is Article 1(1) of Directive 2014/42/EU ([1]) of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, which provides for the establishment of 'minimum rules on the freezing of property with a view to possible subsequent confiscation', to be interpreted as meaning that it permits Member States to adopt provisions on civil-law confiscation that is not based on a conviction?

2. Does it follow from Article 1(1) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, taking into account Article 4(1) thereof, that the institution of criminal proceedings against the person whose assets are the subject of confiscation is, of itself, a sufficient basis on which to bring and conclude civil-law confiscation proceedings?

3. Can the grounds given in Article 4(2) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union be interpreted broadly as permitting civil-law confiscation that is not based on a conviction?

4. Is Article 5(1) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union to be interpreted as meaning that a right to property may be withdrawn, as having been directly or indirectly obtained by way of a criminal offence, on the sole ground of the discrepancy between the value of a person's assets and his lawful earnings, in the case where there is no final criminal judgment finding that the person concerned committed the criminal offence in question?

5. Is the provision contained in Article 6(1) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union to be interpreted as meaning that it provides for confiscation from third parties as an additional or alternative means of direct confiscation or as an additional means of extended confiscation?

6. Is the provision contained in Article 8(1) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union to be interpreted as meaning that it ensures the application of the presumption of innocence and prohibits confiscation that is not based on a conviction?

([1]) OJ 2014 L 127, p. 39.

Request for a preliminary ruling from the Commissione tributaria provinciale di Napoli (Italy) lodged on 5 April 2018 — easyJet Airline Co. Ltd v Regione Campania

(Case C-241/18)

(2018/C 240/28)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Napoli

Parties to the main proceedings

Applicant: easyJet Airline Co. Ltd

Defendant: Regione Campania

Question referred

Must Articles 4 and 5 of Directive 30/2002/EC ([1]) and Annex II thereto be interpreted as meaning that they preclude a provision such as Article 1(169) to (174) of Law No 5/2013 of the Campana Region because the determination of the tax is not preceded by an overall plan relating to the measure to adopt to reduce aircraft noise emissions at airports and in areas surrounding those airports, for the purposes of Article 5 of the Directive and Annex II thereto.

([1]) Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ 2002 L 85, p. 40)

Action brought on 13 April 2018 — European Commission v Ireland

(Case C-261/18)

(2018/C 240/29)

Language of the case: English

Parties

Applicant: European Commission (represented by: M. Noll-Ehlers, J. Tomkin, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— to declare that, by failing to take the necessary measures to comply with the second ground of the judgment of this Court in Case C-215/06 ([1]), *Commission v Ireland*, Ireland has failed to fulfil its obligations under Article 260 TFEU;

— to order Ireland to pay to the Commission a lump sum of EUR 1 343,2multiplied by the number of days between the ruling in Case C-215/06 and either compliance by Ireland with that ruling or the judgment in the present proceedings, whichever is the sooner, with a minimum lump sum of EUR 1 685 000;

— to order Ireland to pay to the Commission a penalty payment of EUR 12,264 per day from the date of the judgment in the present proceedings to the date of compliance by Ireland with the ruling in Case C-215/06; and

— order Ireland to pay the costs of this action.

Pleas in law and main arguments

Ireland is required, under Article 260 (1) TFEU, to take the necessary measures to comply with the judgment of the Court in C-215/06. As Ireland has not taken the necessary measures to comply with the second ground of that judgment, the Commission decided to refer the matter to the Court of Justice.

In its application, the Commission proposes that the Court of Justice impose a lump sum payment of EUR 1 343,2 per day and a penalty payment of EUR 12,264 per day on Ireland. The amount of the lump sum and of the penalty payment has been calculated taking into account the seriousness and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

([1]) judgment of 3 July 2008, Commission v Ireland, C-215/16, EU:C:2008:380.

Request for a preliminary ruling from the Markkinaoikeus (Finland) lodged on 27 April 2018 — Oulun Sähkönmyynti Oy

(Case C-294/18)

(2018/C 240/30)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Appellant: Oulun Sähkönmyynti Oy

Other party: Energiavirasto

Questions referred

1. Is Article 11(1) of Directive 2012/27/EU ([1]) of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC to be interpreted as meaning that the granting of a discount on a basic electricity charge which is based on the method of billing chosen by the final customer means that billing and billing information has not been given free of charge to final customers other than those receiving the discount?

2. If the answer to the first question referred is in the negative and the grant of the abovementioned discount is permitted, does it follow from Directive 2012/27/EU that, in order to determine whether the discount is permitted, additional special conditions must be taken into account, such as whether the discount corresponds to the cost savings achieved with the chosen type of billing, whether or not the discount is given with each bill, or whether the discount can be given to the group of final customers who make cost savings with their choice of billing method?

3. If the grant of a discount referred to in Question 1 means that final customers other than those who have chosen a particular billing method would be required to pay charges contrary to Article 11(1) of Directive 2012/27/EU, are there any specific requirements of EU law to be taken into account in the decision on reimbursement of the charges?

([1]) OJ 2012 L 315, p. 1.

Appeal brought on 3 May 2018 by Jean-Marie Le Pen against the judgment of the General Court (Sixth Chamber) delivered on 7 March 2018 in Case T-140/16, Le Pen v Parliament

(Case C-303/18 P)

(2018/C 240/31)

Language of the case: French

Parties

Appellant: Jean-Marie Le Pen (represented by: F. Wagner, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 7 March 2018 in Case T-140/16;

and accordingly,

— annul the decision of the Secretary-General of the European Parliament of 29 January 2016, notified by letter No D 302191 of 5 February 2016, taken pursuant to Article 68 of Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 'concerning implementing measures for the Statute for Members of the European Parliament' as amended, finding a debt on the part of the appellant amounting to EUR 320 026,23 in respect of amounts unduly paid in the context of parliamentary assistance and giving reasons for its recovery;

— annul debit note No 2016-195 of 4 February 2016 informing the appellant that the decision of the Secretary-General of 29 January 2016 had found a debt on the part of the appellant and had ordered recovery of sums unduly paid in respect of parliamentary assistance;

— make an appropriate order as to the sum to be awarded to the appellant as compensation for the non-material harm that he has suffered;

— make an appropriate order as to the sum to be awarded to the appellant in respect of the costs of the proceedings;

— order the European Parliament to pay all costs.

Grounds of appeal and main arguments

1. Ground involving a question of public policy: Infringement by the General Court of the appellant's rights of the defence — Infringement of essential procedural requirements

   By failing to order the Parliament to comply with Articles 41 and 42 of the Charter of Fundamental Rights, the General Court failed to ensure a fair and adversarial debate. The Parliament has the administrative file and the OLAF file and can access those files. Evidence pertaining to the work carried out may be contained in both files without having been shared with the appellant.

2. Infringement of EU law by the General Court — Errors of law and errors in the characterisation of the legal nature of the facts and the evidence by the General Court — Discriminatory and, by extension, *fumus persecutionis* — Infringement of the principles of protection of legitimate expectations and of legality

a. No enquiries in relation to other parties

The General Court refused to acknowledge that M. Schulz's initiative was discriminatory, even though it was directed solely against the Front National and no other parties. Such proceedings should have been initiated in relation to all French parties, other parties in other Member States and dozens of members of the European Parliament.

b. Discrimination in relation to M. Schulz's personal situation and his use of Parliamentary staff

The General Court refused to hear M. Schulz and K. Welle, even though the appellant had submitted evidence of unlawful behaviour on the part of the former President of the Parliament without any proceedings having been brought against the latter. The General Court failed to make reference to the documents supplied, which constitutes an error of fact with legal consequences.

c. Infringement of the principles of protection of legitimate expectations and of equal treatment

Contrary to the statement of the General Court, there are a number of cases of violations of the implementing measures in which the Parliament did not seek reimbursement.

3. Substantive unlawfulness of the contested acts

a. Manifest error of assessment on the part of the General Court

Contrary to the assertion of the General Court, if the addendum constituted essential proof of the work carried out, it was for the Parliament to establish the appellant's failure to submit it, following reminders. The General Court thus reversed the burden of proof and committed an error of fact with legal consequences.

b. Evidencing working time and mode of proof

The General Court misinterpreted the Secretary-General's sentence which requires proof in relation to all the working time carried out during the relevant period, and not 'proof of compliance with the implementing measures relating to work'.

The General Court cannot claim the existence of an obligation where Parliament has acknowledged that there is none, as recorded in the transcript of the hearing before the General Court, and where it is not provided for in the implementing measures. The General Court erred in law.

c. Work carried out

The appellant submits two new documents before the Court, on the basis of Article 127 of the Rules of Procedure.

d. Infringement of the principle of proportionality

Contrary to the assertion of the General Court, there was no unconditional obligation on the Parliament to recover sums in relation to all five years when only three years were at issue. That infringement of the principle of proportionality justifies the setting aside of the judgment.

e. External contracts

Neither the Parliament, nor subsequently the General Court, have established that J.-F. Jalkh had any professional links to third parties liable to be detrimental to the appellant or the dignity of Parliament or to lead to a conflict of interest.

Request for a preliminary ruling from the Krajský soud v Ostravě — pobočka v Olomouci (Czech Republic) lodged on 7 May 2018 — KORADO, a.s. v Generální ředitelství cel

(Case C-306/18)

(2018/C 240/32)

Language of the case: Czech

Referring court

Krajský soud v Ostravě — pobočka v Olomouci

Parties to the main proceedings

Applicant: KORADO, a.s.

Defendant: Generální ředitelství cel

Questions referred

1. Is Commission Implementing Regulation (EU) 2015/23 ([1]) of 5 January 2015, in which the goods described in column 1 of the table in the annex are classified under sub-heading 7 307 93 19 of the Combined Nomenclature, valid?

2. If that Regulation is invalid, could the articles concerned be classified under sub-heading 7 322 19 00 of the Combined Nomenclature?

3. If that Regulation is valid, must the articles concerned be classified under sub-heading 7 307 93 19 of the Combined Nomenclature?

([1]) Commission Implementing Regulation (EU) 2015/23 of 5 January 2015 concerning the classification of certain goods in the Combined Nomenclature, OJ 2015 L 4, p. 15.

Reference for a preliminary ruling from Competition Appeal Tribunal, London (United Kingdom) made on 7 May 2018 — Generics (UK) Ltd, GlaxoSmithKline plc, Xellia Pharmaceuticals ApS, Alpharma, LLC, formerly Zoetis Products LLC, Actavis UK Ltd and Merck KGaA v Competition and Markets Authority

(Case C-307/18)

(2018/C 240/33)

Language of the case: English

Referring court

Competition Appeal Tribunal, London

Parties to the main proceedings

Applicants: Generics (UK) Ltd, GlaxoSmithKline plc, Xellia Pharmaceuticals ApS, Alpharma, LLC, formerly Zoetis Products LLC, Actavis UK Ltd and Merck KGaA

Defendant: Competition and Markets Authority

Questions referred

Potential competition

1. For the purpose of Article 101(1) TFEU, are the holder of a patent for a pharmaceutical drug and a generic company seeking to enter the market with a generic version of the drug to be regarded as potential competitors when the parties are in bona fide dispute as to whether the patent is valid and/or the generic product infringes the patent?

2. Does the answer to Question 1 differ if:

   (a) there are pending court proceedings between the parties involving this dispute; and/or

   (b) the patent-holder has obtained an interim injunction preventing the generic company from launching its generic product on the market until determination of those proceedings; and/or

   (c) the patent holder regards the generic company as a potential competitor?

Restriction by object

3. When there are pending court proceedings concerning the validity of a patent for a pharmaceutical drug and whether a generic product infringes that patent, and it is not possible to determine the likelihood of either party succeeding in those proceedings, is there a restriction of competition 'by object' for the purpose of Article 101(1) when the parties make an agreement to settle that litigation whereby:

   (a) the generic company agrees not to enter the market with its generic product and not to continue its challenge to the patent for the duration of the agreement (which is no longer than the unexpired period of the patent), and

   (b) the patent holder agrees to make a transfer of value to the generic company in an amount substantially greater than the avoided litigation costs (including management time and disruption) and which does not constitute payment for any goods or services supplied to the patent holder?

4. Does the answer to Question 3 differ if:

   (a) the scope of the restriction on the generic company does not go beyond the scope of the patent in dispute; and/or

   (b) the amount of the value transfer to the generic company may be less than the profit it would have made if it had instead succeeded in the patent litigation and entered the market with an independent generic product?

5. Do the answers to Questions 3 and 4 differ if the agreement provides for the supply by the patent holder to the generic company of significant but limited volumes of authorised generic product and that agreement:

   (a) does not give rise to any meaningful competitive constraint on the prices charged by the patent holder; but

   (b) brings some benefits to consumers which would not have occurred if the patent holder had succeeded in the litigation, but which are significantly less than the full competitive benefits resulting from independent generic entry which would have occurred if the generic company had succeeded in the litigation, or is this relevant only to assessment under Article 101(3)?

Restriction by effect

6. In the circumstances set out in Questions 3-5, is there a restriction of competition 'by effect' for the purpose of Article 101(1) or does that depend upon the court finding that in the absence of that settlement:

   (a) the generic company would probably have succeeded in the patent proceedings (i.e. that the chance that the patent was valid and infringed was below 50 %); alternatively

   (b) the parties would probably have entered into a less restrictive settlement (i.e. that the chance of a less restrictive settlement was above 50 %)?

Market definition

7. Where a patented pharmaceutical drug is therapeutically substitutable with a number of other drugs in a class, and the alleged abuse for the purpose of Article 102 is conduct by the patent holder that effectively excludes generic versions of that drug from the market, are those generic products to be taken into account for the purpose of defining the relevant product market, although they could not lawfully enter the market before expiry of the patent if (which is uncertain) the patent is valid and infringed by those generic products?

Abuse

8. In the circumstances set out in Questions 3-5 above, if the patent holder is in a dominant position, does its conduct in entering into such an agreement constitute an abuse within the meaning of Article 102 TFEU?

9. Does the answer to Question 8 differ if the patent holder makes an agreement of that kind not in settlement of actual litigation but to avoid litigation being commenced?

10. Does the answer to Question 8 or 9 differ if:

(a) the patent holder pursues a strategy of entering into several such agreements to preclude the risk of unrestricted generic entry; and

(b) the consequence of the first such agreement is that by reason of the structure of the national arrangements for reimbursement by the public health authorities to pharmacies of their costs of purchasing pharmaceutical drugs, the reimbursement level for the pharmaceutical drug in question is reduced, resulting in a substantial saving to the public health authorities (albeit a saving which is significantly less than that which would arise upon independent generic entry following a successful outcome for the generic company in patent litigation); and

(c) that saving was no part of the intention of the parties when entering into any of the agreements?

Appeal brought on 7 May 2018 by Bruno Gollnisch against the judgment of the General Court (Sixth Chamber) delivered on 7 March 2018 in Case T-624/16, Gollnisch v Parliament

(Case C-330/18 P)

(2018/C 240/34)

Language of the case: French

Parties

Appellant: Bruno Gollnisch (represented by: B. Bonnefoy-Claudet, avocat)

Other party to the proceedings: European Parliament

Form of order sought

With regard to the judgment under appeal, the appellant submits that the Court should:

— set aside the judgment of the General Court of 7 March 2018 in Case T-624/16;

— rule on the questions raised in accordance with case-law;

— refer the case back to the General Court in order for it to be adjudged afresh;

— award the appellant the sum of EUR 12 500 in respect of procedural costs incurred in the context of the appeal;

— order the Parliament to pay the costs.

In the event of the appeal being upheld, the appellant submits that the Court should:

— if it considers that it has sufficient information, itself rule on the substance of the case;

— annul the decision of the Secretary-General of the European Parliament of 1 July 2016, the notification and implementing measures set out in the letter of the Director-General for Finance of 6 July 2016, and debit note No 2016-914 of 5 July 2016;

— grant the form of order sought by the appellant at first instance;

— award the appellant the sum of EUR 20 000 as compensation for the non-material damage suffered;

— order the Parliament to pay all costs.

In the alternative, the appellant requests the Court to:

— decide that the proceedings are to be stayed until the conclusion of the criminal proceedings brought in France;

— rule that the implementation of the decision of the Secretary-General is to be suspended in the meantime and that sums deducted in that regard are to be repaid in full to the appellant.

Grounds of appeal and main arguments

1. First ground of appeal, alleging that the Secretary-General lacks competence and that Article 25(3) of the Rules of Procedure of the Parliament has been infringed

   The judgment under appeal recognises the Secretary-General as having decision-making power, enabling him alone to declare the existence of an undue payment, whereas, under the rules and earlier case-law, he has merely power to investigate, to propose and to implement.

2. Second ground of appeal, alleging disregard of the principles '*una via electa*' and 'le penal tient le civil en état' ('civil proceedings must be stayed pending the conclusion of criminal proceedings')

   The judgment under appeal wrongly finds that the principle relied on is a matter of national law and not European law and that the case in question has not given rise to any criminal aspect.

3. Third ground of appeal, alleging infringement of the rights of defence

   The judgment under appeal: (1) failed to restore the appellant's fundamental right to be heard, even though he has been deprived of that right throughout the proceedings; (2) validated the description of mere suspicions that the administration of the Parliament had given, whereas they were allegations, for that matter baseless, made against the appellant during the proceedings, and the changing and imprecise nature of those allegations constituted an obstacle impeding the presentation of an effective defence; (3) disregarded the consequences of the administration's failure to respond to the appellant's correspondence questioning the administration on the exact nature of the evidence of his assistant's work that they expected from him.

4. Fourth ground of appeal, alleging discriminatory treatment and *fumus persecutionis*, as well as an improper reversal of the burden of proof

   The judgment under appeal did not categorise the indicia of discriminatory treatment and *fumus persecutionis* as being so, and found that the case-law relied on by the appellant could not apply by analogy to cases of political discrimination.

5. Fifth ground of appeal, alleging inadequacy of the grounds and infringement of Article 41 of the Charter of Fundamental Rights

The judgment under appeal wrongly found that the intermediary documents relating to the procedure for the recovery of undue payments had no legal value in relation to the validity of that procedure and, therefore, to that of the final measure. The judgment under appeal therefore failed to draw consequences from the fact that both the changing nature of the grounds of judgment and the administration's failure to respond to the appellant's requests for clarification did not enable him to know how he was to demonstrate that no offence had been committed.

6. Sixth ground of appeal, alleging infringement of the principles of legal certainty and legitimate expectations

   The judgment under appeal held that the need for a member of Parliament to retain the evidence of his assistants' work is neither retroactive nor binding.

7. Seventh ground of appeal, alleging an incorrect description of the evidence, a distortion of the facts and contradictory grounds

   The judgment under appeal unilaterally presented, *a posteriori*, without legal basis and without consistent reasoning, a theory of recognised and admissible forms of evidence of the assistant's work, arbitrarily rejected those which the appellant had presented and criticised him for not having provided new evidence in the course of the proceedings.

8. Eighth ground of appeal, alleging infringement of the principle of proportionality

   The judgment under appeal finds, on the one hand, that the implementing measures do not give the Secretary-General any margin of discretion to take a decision and, on the other hand, that the appellant did not develop sufficient arguments against the implementing measures or the legal rules upon which those measures are based.

GENERAL COURT

Judgment of the General Court of 29 May 2018 — Uribe-Etxebarría Jiménez v EUIPO — Núcleo de comunicaciones y control (SHERPA)

(Case T-577/15) ([1])

(EU trade mark — Invalidity proceedings — EU word mark SHERPA — Earlier national word mark SHERPA — Partial declaration of invalidity — Subject matter of the dispute before the Board of Appeal — Genuine use of the mark — Article 42(2) of Regulation (EC) No 207/2009 (now Article 47(2) of Regulation (EU) 2017/1001) — Article 53(1)(a) of Regulation No 207/2009 (now Article 60(2) of Regulation (EU) 2017/1001) — Relative ground for refusal — Likelihood of confusion — Article 8(1)(a) and (b) of Regulation No 207/2009 (now Article 8(1)(a) and (b) of Regulation (EU) 2017/1001))

(2018/C 240/35)

Language of the case: Spanish

Parties

Applicant: Xavier Uribe-Etxebarría Jiménez (Erandio, Spain) (represented by: M. Esteve Sanz, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Núcleo de comunicaciones y control, SL (Madrid, Spain) (represented by: P. López Ronda, G. Macías Bonilla, G. Marín Raigal and E. Armero Lavie, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 17 July 2015 (Case R 1135/2014-2) relating to invalidity proceedings between Núcleo de comunicaciones y control and Mr Uribe-Etxebarría Jiménez.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 17 July 2015 (Case R 1135/2014-2) as regards the goods designated by the contested mark in Class 9;*

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

3. *Orders EUIPO to bear its own costs and to pay one third of the costs incurred by Mr Xavier Uribe-Etxebarría Jiménez;*

4. *Orders Mr Uribe-Etxebarría Jiménez to bear two thirds of his own costs;*

5. *Orders Núcleo de comunicaciones y control, SL to bear its own costs.*

([1]) OJ C 406, 7.12.2015.

Judgment of the General Court of 17 May 2018 – Josefsson v Parliament

(Case T-566/16) ([1])

(Civil service — Members of the temporary staff — Contract for an indefinite period — Dismissal — Article 47(c)(i) of the CEOS — Manifest error of assessment — Right to be heard — Principle of sound administration — Duty to have regard for the welfare of staff)

(2018/C 240/36)

Language of the case: English

Parties

Applicant: Erik Josefsson (Malmö, Sweden) (represented by: T. Bontinck, A. Guillerme and M. Forgeois, lawyers)

Defendant: European Parliament (represented by: initially M. Dean and L. Deneys, then by M. Dean and Í. Ní Riagáin Düro, acting as Agents)

Re:

Application pursuant to Article 270 TFEU seeking, first, annulment of the decision of the Parliament's authority empowered to conclude contracts of employment of 19 December 2014 to terminate the applicant's contract as a member of the temporary staff and, secondly, compensation in respect of the non-material damage allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Authority Empowered to Conclude Contracts of Employment of the European Parliament dated 19 December 2014 concerning the termination of Erik Josefsson's contract as a member of the temporary staff;*

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

3. *Orders the Parliament to pay the costs.*

([1]) OJ C 27, 25.1.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-138/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 17 May 2018 — Commission v AV

(Case T-701/16 P) ([1])

(Appeal — Civil service — Temporary staff — Recruitment — Medical examination — Incomplete declarations at the medical examination — Retroactive application of medical cover deferment — Not eligible for the invalidity allowance — Enforcement of a judgment of the Civil Service Tribunal setting aside the initial decision)

(2018/C 240/37)

Language of the case: French

Parties

Appellant: European Commission (represented initially by C. Berardis-Kayser, C. Ehrbar and T. Bohr, and subsequently by C. Ehrbar and T. Bohr, acting as Agents)

Other party to the proceedings: AV (represented by: J.-N. Louis and N. de Montigny, lawyers)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 21 July 2016, *AV* v *Commission* (F-91/15, EU:F:2016:170), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Second Chamber) of 21 July 2016, AV v Commission (F-91/15);*

2. *Refers the action to a Chamber of the General Court other than that which ruled on the present appeal;*

3. *Reserves costs.*

([1]) OJ C 14, 16.1.2017.

Judgment of the General Court of 17 May 2018 — Basil v EUIPO — Artex (Baskets adapted for cycles)

(Case T-760/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing baskets adapted for cycles — Ground for invalidity — Inadmissibility of the application for a declaration of invalidity — Article 52(3) and Article 86(5) of Regulation (EC) No 6/2002 — Disclosure of the earlier design — Individual character — Different overall impression — Article 6 and Article 25(1)(b) of Regulation No 6/2002)

(2018/C 240/38)

Language of the case: German

Parties

Applicant: Basil BV (Silvolde, Netherlands) (represented by: N. Weber and J. von der Thüsen, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Hanne and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Artex SpA (San Zeno di Cassola, Italy) (represented by: J. Vogtmeier, lawyer)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 7 July 2016 (Case R 535/2015-3), relating to invalidity proceedings between Artex and Basil.

Operative part of the judgment

The Court:

1. *The action is dismissed;*

2. *Basil BV is ordered to pay the costs.*

([1]) OJ C 6, 9.1.2018.

Judgment of the General Court of 29 May 2018 — Fedtke v EESC

(Case T-801/16 RENV) ([1])

(Civil service — Officials — Retirement — Retirement age — Request to extend the period of employment — First and second paragraphs of Article 52 of the Staff Regulations — Interest of the service — Purely confirmatory measure — New and substantial facts — Admissibility)

(2018/C 240/39)

Language of the case: French

Parties

Applicant: Ingrid Fedtke (Wezembeek-Oppem, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: European Economic and Social Committee (EESC) (represented by: M. Pascua Mateo, K. Gambino, X. Chamodraka, A. Carvajal and L. Camarena Januzec, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Application pursuant to Article 270 TFEU for annulment of the EESC decision rejecting the applicant's application to have her period of employment extended until the age of 66.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Ingrid Fedtke to pay the costs incurred in the present proceedings before both the General Court of the European Union and the European Union Civil Service Tribunal.*

([1]) OJ C 320, 28.9.2015 (case initially brought before the European Union Civil Service Tribunal under case number F-107/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 18 May 2018 — Italytrade v EUIPO — Tpresso (tèespresso)

(Case T-67/17) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark tèespresso — Earlier international figurative mark TPresso and earlier international word mark TPRESSO — 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))

(2018/C 240/40)

Language of the case: English

Parties

Applicant: Italytrade Srl (Bari, Italy) (represented by: N. Clemente, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Tpresso SA (Zürich, Switzerland) (represented by: L. Biglia and R. Spagnolli, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 November 2016 (Case R 959/2016-4), relating to opposition proceedings between Tpresso and Italytrade.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Italytrade Srl to pay the costs.*

(1) OJ C 104, 3.4.2017.

Judgment of the General Court of 18 May 2018 — Italytrade v EUIPO — Tpresso (teaespresso)

(Case T-68/17) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark teaespresso — Earlier international figurative mark TPresso and earlier international word mark TPRESSO — 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))

(2018/C 240/41)

Language of the case: English

Parties

Applicant: Italytrade Srl (Bari, Italy) (represented by: N. Clemente, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Tpresso SA (Zürich, Switzerland) (represented by L. Biglia and R. Spagnolli, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 November 2016 (Case R 1099/2016-4), relating to opposition proceedings between Tpresso and Italytrade.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Italytrade Srl to pay the costs.*

(1) OJ C 104, 3.4.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (1000)

(Case T-299/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 1000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 240/42)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 6 March 2017 (Case R 650/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (3000)

(Case T-300/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 3000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 240/43)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 (Case R 653/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 29 May 2018 — Sata v EUIPO — Zhejiang Rongpeng Air Tools (2000)

(Case T-301/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark 2000 — Absolute ground for refusal — Descriptive character — Article 52(1)(a) and (b) of Regulation (EC) No 207/2009 (now Article 59(1)(a) and (b) of Regulation (EU) 2017/1001) — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001) — Equal treatment — Principle of sound administration — Obligation to state reasons)

(2018/C 240/44)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Zhejiang Rongpeng Air Tools Co. Ltd (Pengjie Town, China) (represented by: S. Fröhlich and M. Hartmann, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 March 2017 (Case R 651/2016-4), relating to invalidity proceedings between Zhejiang Rongpeng Air Tools and Sata.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 231, 17.7.2017.

Judgment of the General Court of 18 May 2018 — Mendes v EUIPO — Actial Farmaceutica (VSL#3)

(Case T-419/17) ([1])

(EU trade mark — Revocation proceedings — EU word mark VSL#3 — Trade mark having become a common name in the trade for a product or service for which it is registered — Mark liable to mislead the public — Article 51(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 58(1)(b) and (c) of Regulation (EU) 2017/1001))

(2018/C 240/45)

Language of the case: Italian

Parties

Applicant: Mendes SA (Lugano, Switzerland) (represented by: G. Carpineti, 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 Court: Actial Farmaceutica Srl (Rome, Italy) (represented by: S. Giudici, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 3 May 2017 (Case R 1306/2016-2), relating to revocation proceedings between Mendes and Actial Farmaceutica.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mendes SA to bear the costs.*

([1]) OJ C 277, 21.8.2017.

Judgment of the General Court of 28 May 2018 — Item Industrietechnik v EUIPO (EFUSE)

(Case T-426/17) ([1])

(EU trade mark — Application for EU figurative mark EFUSE — 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))

(2018/C 240/46)

Language of the case: German

Parties

Applicant: Item Industrietechnik GmbH (Solingen, Germany) (represented by: G. Hasselblatt, V. Töbelmann and M. Vitt, 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 18 April 2017 (Case R 1881/2016-4), concerning an application for registration of the figurative sign EFUSE as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Item Industrietechnik GmbH to pay the costs.*

([1]) OJ C 277, 21.8.2017.

Judgment of the General Court of 28 May 2018 — Item Industrietechnik v EUIPO (EFUSE)

(Case T-427/17) ([1])

(EU trade mark — Application for EU word mark EFUSE — 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))

(2018/C 240/47)

Language of the case: German

Parties

Applicant: Item Industrietechnik GmbH (Solingen, Germany) (represented by: G. Hasselblatt, V. Töbelmann and M. Vitt, 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 18 April 2017 (Case R 1882/2016-4), concerning an application for registration of the word sign EFUSE as an EU trade mark,

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders Item Industrietechnik GmbH to pay the costs.*

([1]) OJ C 277, 21.8.2017.

Order of the President of the General Court of 15 May 2018 — Elche Club de Fútbol v Commission

(Case T-901/16 R)

(Application for interim measures — State aid — Aid granted by Spain to certain professional football clubs — Public guarantee provided by a public entity — Decision declaring the aid incompatible with the internal market — Application for suspension of operation of a measure — Prima facie case — Urgency — Balancing of interests)

(2018/C 240/48)

Language of the case: Spanish

Parties

Applicant: Elche Club de Fútbol, SAD (Elche, Spain) (represented by: M. Segura Catalán and M. Clayton, lawyers)

Defendant: European Commission (represented by: B. Stromsky, G. Luengo and P. Němečková, acting as Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: A. Gavela Llopis, acting as Agent)

Re:

Application based on Articles 278 and 279 TFEU seeking the suspension of operation of Commission Decision (EU) 2017/365 of 4 July 2016 on State aid SA.36387 (2013/C) (ex 2013/NN) (ex 2013/CP) granted by Spain to Valencia Club de Fútbol, SAD, Hércules Club de Fútbol, SAD and Elche Club de Fútbol (OJ 2017 L 55, p. 12).

Operative part of the order

1. *The operation of Commission Decision (EU) 2017/365 of 4 July 2016 on State aid SA.36387 (2013/C) (ex 2013/NN) (ex 2013/CP) granted by Spain to Valencia Club de Fútbol, SAD, Hércules Club de Fútbol, SAD and Elche Club de Fútbol (OJ 2017 L 55, p. 12) is suspended in respect of the recovery of aid from Elche Club de Fútbol, identified as Measure 3 in Article 1 of that decision.*

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

3. *The order of 6 March 2017, Elche Club de Fútbol v Commission (T-901/16 R) is revoked.*

4. *The costs are reserved.*

Order of the General Court of 4 May 2018 — Abel and Others v Commission

(Case T-197/17) ([1])

(Non-contractual liability — Environment — Adoption by the Commission of a regulation concerning polluting emissions from light passenger and commercial vehicles — Claim for compensation for the material and non-material harm allegedly suffered by the applicants — Harm not real and certain — Situation capable of materially affecting any person — Harm not capable of being compensated — Application for an injunction)

(2018/C 240/49)

Language of the case: French

Parties

Applicant: Marc Abel (Montreuil, France), and the 1 428 other applicants whose names appear in the annex to the order (represented by: J. Assous, lawyer)

Defendant: European Commission (represented by: J.-F. Brakeland, M. Huttunen and A. Becker, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking compensation for the harm suffered by the applicants following the adoption of Commission Regulation (EU) 2016/646 of 20 April 2016, amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6) (OJ 2016 L 109, p. 1).

Operative part of the order

1. *The action is dismissed.*

2. *Mr Marc Abel and the other applicants whose names appear in the annex to the judgment are ordered to pay the costs.*

([1]) OJ C 151, 15.5.2018.

Order of the General Court of 16 May 2018 — Argus Security Projects v Commission and EUBAM Libya

(Case T-206/17) ([1])

(Action for annulment — Public service contracts — Competitive negotiated procedure — Supply of security services as part of the European Union Integrated Border Management Assistance Mission in Libya — Rejection of one tenderer's bid and award of the contract to another tenderer — Circumstances subsequent to the award of the tender — Substantial change in the original terms of the contract — Action manifestly lacking any foundation in law)

(2018/C 240/50)

Language of the case: French

Parties

Applicant: Argus Security Projects Ltd (Limassol, Cyprus) (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, P. Aalto and L. Baumgart, acting as Agents), European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (represented by: E. Raoult, lawyer)

Re:

Application based on Article 263 TFEU seeking annulment of the decision of the EUBAM Libya of 24 January 2017 not to accept the tender submitted by the applicant for the award, by means of a competitive negotiated procedure, of the contract relating to security services as part of the EUBAM Libya for an integrated management of the borders in Libya (EUBAM-13-020 contract) and to award the contract to Garda World Ltd.

Operative part of the order

The Court:

1) *Dismisses the application;*

2) *Orders Argus Security Projects Ltd to pay the costs.*

([1]) OJ C 195, 19.6.2017.

Order of the General Court of 15 May 2018 — Sensotek v EUIPO — Senso Tecnologie (senso tek)

(Case T-470/17) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark senso tek — Earlier EU figurative mark SENSOTEC — 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) — Action manifestly lacking any foundation in law)

(2018/C 240/51)

Language of the case: German

Parties

Applicant: Sensotek GmbH (Reichenbach an der Fils, Germany) (represented by: J. Klink, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Senso Tecnologie Srl (Rome, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 16 May 2017 (Case R 1953/2016-2), relating to opposition proceedings between Senso Tecnologie and Sensotek.

Operative part of the order

The Court:

1) *Dismisses the action;*

2) *Orders Sensotek GmbH to pay the costs.*

([1]) OJ C 309, 18.9.2017.

Order of the General Court of 17 April 2018 — NeoCell v EUIPO (BIOACTIVE NEOCELL COLLAGEN)

(Case T-666/17) ([1])

(EU trade mark — Legal person governed by private law — No evidence of legal existence — Article 177 (4) of the Rules of Procedure — Manifest inadmissibility)

(2018/C 240/52)

Language of the case: English

Parties

Applicant: NeoCell Corporation (represented by: M. Edenborough QC)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 18 July 2017 (Case R 147/2017-2), relating to the international registration designating the European Union in respect of the word mark BIOACTIVE NEOCELL COLLAGEN.

Operative part of the order

1. *The action is dismissed.*

2. *NeoCell Corporation shall pay the costs.*

([1]) OJ C 5, 8.1.2018.

Order of the General Court of 15 May 2018 — Commune de Fessenheim and Others v Commission

(Case T-726/17) ([1])

(Action for annulment — Access to documents — Letter sent by the Commission to the French authorities regarding the protocol for the compensation of the EDF Group in respect of the repeal of the permit to operate the Fessenheim Nuclear Power Plant — Implied refusal of access — Time limit for commencing proceedings — Delay — Inadmissibility)

(2018/C 240/53)

Language of the case: French

Parties

Applicants: Commune de Fessenheim (France), Communauté de communes Pays Rhin-Brisach (Volgelsheim, France), Conseil départemental du Haut-Rhin (Colmar, France), Conseil régional Grand Est Alsace Champagne-Ardenne Lorraine (Strasbourg, France) (represented by: G. de Rubercy, lawyer)

Defendant: European Commission (represented by: A. Buchet, acting as Agent)

Re:

Action based on Article 263 TFEU and seeking annulment of the implied decision of 10 August 2017, by which the Commission refused to grant the applicants access to the letter sent on 22 March 2017 by the Commission to the French authorities regarding the protocol for the compensation of the Électricité de France (EDF) Group in respect of the repeal of the permit to operate the Fessenheim Nuclear Power Plant.

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *There is no longer any need to adjudicate on the French Republic's application for leave to intervene.*

3. *The Commune de Fessenheim, the Communauté de communes Pays Rhin-Brisach, the Conseil départemental du Haut-Rhin and the Conseil régional Grand Est Alsace Champagne-Ardenne Lorraine shall bear their own costs and those incurred by the European Commission.*

4. *The French Republic shall bear its own costs.*

([1]) OJ C 13, 15.1.2018.

Order of the General Court of 15 May 2018 — Seco Belgium and Vinçotte v Parliament

(Case T-812/17) ([1])

(Action for annulment — Public service contracts — Tender procedure — Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels — Rejection of the applicants' tender and award of the contract to another tenderer — Withdrawal of the contested act — Action which has become devoid of purpose — No need to adjudicate)

(2018/C 240/54)

Language of the case: French

Parties

Applicant: Seco Belgium (Brussels, Belgium) and Vinçotte (Vilvoorde, Belgium) (represented by: A. Delvaux and R. Simar, lawyers)

Defendant: European Parliament (represented initially by P. López-Carceller and Z. Nagy, and subsequently by Z. Nagy and B. Simon, acting as Agents)

Re:

Action based on Article 263 TFEU, seeking annulment of the decision of the Parliament of 1 December 2017 to reject the applicants' tender in the tender procedure 06D 20/2017/M005 entitled 'Assignments to perform inspections and provide technical opinions in the context of construction works, projects and purchases at the European Parliament in Brussels' and to award the contract to another tenderer.

Operative part of the order

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

2. *The European Parliament is ordered to pay the costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 52, 12.2.2018.

Action brought on 22 April 2018 — European Anglers Alliance v Council

(Case T-252/18)

(2018/C 240/55)

Language of the case: French

Parties

Applicant: European Anglers Alliance (Offenbach am Main, Germany) (represented by: L.-B. Buchman, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— confirm that the European Anglers Alliance has a legal interest in bringing the present proceedings;

— annul the provisions of Article 9(4) and (5) of Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters and amending Regulation (EU) 2017/127 (OJ 2018 L 27, p. 1), on the grounds that:

  — in the light of the objective that they pursue, those provisions give rise to unjustified discrimination between citizens of the European Union and infringe the principle of equality;

  — the Council of the European Union exceeded the bounds of its discretion by failing to take account of any objective data regarding the effects of harvests from marine recreational fishing on sea bass stocks;

  — they infringe the principle of proportionality and fail to comply with Article 17 of the Common Fisheries Policy in so far as the economic and sociological importance of marine recreational fishing has clearly not been taken into account.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of equal treatment in so far as, in the light of the objective pursued, the contested provisions of Regulation (EU) 2018/120 give rise to unjustified discrimination between European citizens, as well as between recreational fishermen and industrial fishing.

2. Second plea in law, alleging that the Council exceeded the bounds of its discretion.

3. Third plea in law, alleging infringement of the principle of proportionality.

Action brought on 23 April 2018 — VY v Commission

(Case T-253/18)

(2018/C 240/56)

Language of the case: French

Parties

Applicant: VY (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision appointing [*confidential*] ([1]) to the post of Head of Unit of the Delegation of the European Union to Japan and the decision rejecting the applicant's candidature;

— order the Commission to pay the costs

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the vacancy notice.

2. Second plea in law, alleging infringement of the obligation to state reasons.

3. Third plea in law, alleging infringement of Article 21 of the Charter of Fundamental Rights and of Article 1d of the Staff Regulations.

([1]) Confidential information omitted.

Action brought on 25 April 2018 — Makhlouf v Commission and ECB

(Case T-260/18)

(2018/C 240/57)

Language of the case: French

Parties

Applicant: Rami Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendants: European Commission and European Central Bank

Form of order sought

The applicant claims that the General Court should

— declare the applicant's action admissible and well founded;

— consequently, order the European Union, the defendants, to pay compensation to the applicant in respect of all of the harm suffered, in the sum of EUR 6 900 000, plus interest;

— order the defendants to pay all of the costs of the action.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement, on the part of the Commission, of Article 17(1) TEU and of Article 13(3) and (4) of the ESM Treaty in so far as it failed to ensure that the memorandum of understanding of 26 April 2013 was compatible with EU law;

2. Second plea in law, alleging misuse of powers and infringement of Article 17 of the Charter of Fundamental Rights, on the part of the ECB, in so far as it used its powers in matters of monetary policy in order to impose the terms of bank restructuring on the Eurogroup and the Government of Cyprus.

3. Third plea in law, alleging expropriation of the applicant's assets without fair compensation.

Action brought on 26 April 2018 — O'Flynn and others v Commission

(Case T-270/18)

(2018/C 240/58)

Language of the case: English

Parties

Applicants: Michael O'Flynn (Cork, Ireland), Paddy McKillen (Dublin, Ireland) and David Daly (Malahide, Ireland) (represented by: M. Cush, SC, D. Hardiman, Barrister, P. O'Brien and D. O'Keeffe, Solicitors)

Defendant: European Commission

Form of order sought

— annul European Commission decision C(2018) 464 final of 25 January 2018 (SA.43791(2017/NN)) ([1]) in so far as it raised no objection to alleged aid to and through the National Asset Management Agency (NAMA) or alternatively did not consider such a measure to constitute aid,

— award the applicants the costs including those incidental to the proceedings.

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 that the defendant should have initiated a formal investigation procedure pursuant to Article 108(2) TFEU.

   — The applicants allege, inter alia, that, by failing to initiate such a procedure, the defendants infringed the applicants' procedural rights under Article 108(2) TFEU and also the principle of good administration by failing to comply with its obligations to undertake a diligent and impartial investigation of the alleged aid.

2. Second plea in law, alleging manifest errors of assessment.

   — The applicants allege that the defendant made manifest errors of assessment in adopting the contested decision, including its finding that there was no allegation of misuse of aid by the applicants whereas such an allegation was expressly made in paragraph 5.25 of the complaint. The applicants also allege that the defendant's assessment of NAMA's activities was deficient in various ways.

3. Third plea in law, alleging a failure by the defendant to give reasons.

   — In this regard the applicants allege that the defendant failed to give reasons or failed to give adequate reasons for the contested decision by, inter alia, failing to explain adequately or at all or in any verifiable way the basis for its acceptance of NAMA's methodology in determining the viability of development projects.

4. Fourth plea in law, alleging a breach of Article 106 TFEU.

— In addition to the alleged violation of the provisions of the TFEU on State aid, the applicants allege that Article 106 TFEU was breached, as stated in their complaint, on which point they received no reply from the defendant.

([1]) OJ 2018 C 60, p. 4.

Action brought on 30 April 2018 — Bernaldo de Quirós v Commission

(Case T-273/18)

(2018/C 240/59)

Language of the case: French

Parties

Applicant: Belén Bernaldo de Quirós (Brussels, Belgium) (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well founded;

and accordingly:

— annul the decision of 6 July 2017;

— annul, in so far as appropriate, the decision of 31 January 2018 rejecting the complaint;

— order compensation for the non-material harm incurred by the applicant as a result of those decisions, estimated, symbolically, at EUR 1;

— order the defendant to pay all costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the mandate given to the Investigation and Disciplinary Office with regard to the administrative investigation carried out in relation to the applicant, and infringement of the principles of impartiality and sound administration.

2. Second plea in law, alleging, first, infringement of the principle of respect for the rights of the defence and of Article 3 of Annex IX to the Staff Regulations, and, secondly, infringement of the principle of equality of arms during the hearing of the applicant, on the basis of Article 22 of Annex IX to the Staff Regulations.

3. Third plea in law, alleging infringement of the principle of proportionality and a manifest error of assessment.

Action brought on 7 May 2018 — Azarov v Council

(Case T-286/18)

(2018/C 240/60)

Language of the case: German

Parties

Applicant: Mykola Yanovych Azarov (Kiev, Ukraine) (represented by: A. Egger and G. Lansky, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul, pursuant to Article 263 TFEU, Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48) and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5), in so far as they relate to the applicant;

— order specific measures of organisation pursuant to Article 64 of the Rules of Procedure of the General Court; and

— order the Council to pay the costs of the proceedings pursuant to Article 87(2) of the Rules of Procedure of the General Court.

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 infringement of the principle of proportionality

   The applicant claims that the restrictive measures, which have now been ordered for the fifth time, are clearly disproportionate.

2. Second plea in law, alleging manifest errors of assessment

   The applicant submits that the Council did not have a sufficiently solid factual basis, as required pursuant to case-law, in order to take the decision to extend the restrictive measures.

Action brought on 10 May 2018 — Republic of Latvia v European Commission

(Case T-293/18)

(2018/C 240/61)

Language of the case: Latvian

Parties

Applicant: Republic of Latvia (represented by: I. Kucina and V. Soņeca)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul final Commission letter C(2018) 1418 of 12 March 2018, by which the Commission defined its position, and order that institution to adopt a position which does not produce adverse legal effects for Latvia.

— Order the European Commission to bear Latvia's costs.

Pleas in law and main arguments

In support of its action, Latvia submits that, by defining its position, the Commission has infringed not only Article 263 TFEU, thus creating adverse legal effects for Latvia, but also Article 17(1) TEU, together with Article 3(1)(d) TFEU, Article 38 TFEU and Article 335 TFEU which require the Commission to guarantee that Norway correctly observes the commitments made by that State under the Treaty of Paris ([1]) regarding the rights of European Union Member States to non-discriminatory access to fish in the fishing zone of Svalbard.

([1]) Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain, Ireland, the British overseas Dominions and Sweden concerning Spitsbergen signed in Paris 9th February 1920. Available at: https://likumi.lv/ta/id/282051-par-ligumu-starp-norvegiju-amerikas-savienotajam-valstim-daniju-franciju-italiju-japanu-niderlandi-lielbritaniju-un

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Action brought on 8 May 2018 — Wirecard Technologies v EUIPO — Striatum Ventures (supr)

(Case T-297/18)

(2018/C 240/62)

Language in which the application was lodged: English

Parties

Applicant: Wirecard Technologies GmbH (Aschheim, Germany) (represented by: A. Bayer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Striatum Ventures BV (Rosmalen, Netherlands)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark supr — EU trade mark No 13 163 746

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 20 February 2018 in Case R 2028/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the Board of Appeal, if it joins as intervener, to pay the costs.

Pleas in law

— Infringement of Article 8(1) (b) of Regulation No 2017/1001.

Action brought on 16 May 2018 — Klyuyev v Council

(Case T-305/18)

(2018/C 240/63)

Language of the case: English

Parties

Applicant: Andriy Klyuyev (Donetsk, Ukraine) (represented by: B. Kennelly, QC, J. Pobjoy, Barrister, R Gherson and T. Garner, Solicitors)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should annul:

— Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48), and

— Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5),

insofar as those measures apply to the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council made errors of assessment in considering that the criterion for listing the applicant in Article 1(1) of the contested decision and Article 3(1) of the contested regulation is satisfied.

2. Second plea in law, alleging that the violation of the applicant's rights under Article 6, read with Articles 2 and 3, TEU, and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union by the Council's assumption that the Applicant's treatment in Ukraine complied with fundamental human rights.

3. Third plea in law, alleging that the Council violated the applicant's rights of defence and the right to good administration and effective judicial protection.

4. Fourth plea in law, alleging that the Council infringed, without justification or proportion, the applicant's rights to property and reputation.

Action brought on 16 May 2018 — Zhejiang Jiuli Hi-Tech Metals v Commission

(Case T-307/18)

(2018/C 240/64)

Language of the case: English

Parties

Applicant: Zhejiang Jiuli Hi-Tech Metals Co. Ltd (Huzhou City, Chine) (represented by: K. Adamantopoulos and P. Billiet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2018/330 of 5 March 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council in so far as the applicant is concerned; and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Regulation 2018/330 was adopted by the Commission in a manner that materially violates the rights of defence of the applicant in breach of Articles 3(2), 16(1), 19(2), 19(4), 20(2), 20(4), 21(5) and 21(7) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on the Protection against dumped imports from countries not members of the European Union as well as Articles 3(1), 5(3), 6(1), 6(1)(2), 6(2), 6 (4), 6(5)(1), 6(6) and 6(9) of the WTO Anti-Dumping Agreement.

2. Second plea in law, alleging that the Commission, in adopting Regulation 2018/330, committed manifest errors of assessment of the law and of facts by having recourse to the analogue country methodology for the calculation of the normal value for the applicant in breach of Articles 1(2), 1(3), 2(a)(1), 2(a)(7) and 11(9) of Regulation 2016/1036 as well as Articles 2.2 and 6.10.1 of the WTO Anti-Dumping Agreement. The Commission failed to provide any reasons whatsoever for the application, in the case of the applicant, of Article 2(7) of Regulation 2016/1036.

3. Third plea in law, alleging that the Commission, in adopting Regulation 2018/330, committed manifest errors of assessment of the law and of facts by adopting an erroneous PCN coding of the product concerned in breach of Articles 2(a)(2), 2(a)(5), 2(a)(6), 6(7),6(8) and 16(1) of Regulation 2016/1036 as well as Articles 2(2)(1)(1), 2(2)(2), 2(4) and 2(6) of the WTO Anti-Dumping Agreement.

4. Fourth plea in law, alleging that the Commission, in adopting Regulation 2018/330, committed manifest errors of assessment of the law and of facts since the applied methodology materially distorted the dumping margin of the applicant in breach of Articles 1(4), 2(a)(6), 2(c)(10), 2(d)(11), 17(1), 17(2) and 18(3) of Regulation 2016/1036 as well as Articles 2(2), 2(2)(2), 2(4), 2(4)(2), 2(6), 3(6) and 9(2) of the WTO Anti-Dumping Agreement.

5. Fifth plea in law, alleging that the Commission, in adopting Regulation 2018/330, committed manifest errors of assessment of the law and of facts in finding injury as well as likelihood of recurrence of injury and in not verifying causality in breach of Articles 1(1), 1(2), 1(3), 2(d)(12), 2(b)(9), 3(2), 3(3), 3(6), 3(7), 3(9) and 11(1) of Regulation 2016/ 1036 as well as Articles 1, 2(1), 2(4)(2), 3(1), 3(5), 3(7) and 9(3) of the WTO Anti-Dumping Agreement.

Action brought on 17 May 2018 — Buck v EUIPO — Unger Holding (BUCK)

(Case T-311/18)

(2018/C 240/65)

Language in which the application was lodged: English

Parties

Applicant: Društvo za proizvodnju inženjering i usluge Buck d.o.o. (Belgrade, Serbia) (represented by: I. Lázaro Betancor, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Unger Holding GmbH (Herne, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the figurative mark BUCK in colours white and red — International registration designating the European Union No 1 218 386

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 7 March 2018 in Case R 1024/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 47(2) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 14 May 2018 — Dentsply De Trey v EUIPO — IDS (AQUAPRINT)

(Case T-312/18)

(2018/C 240/66)

Language in which the application was lodged: English

Parties

Applicant: Dentsply De Trey GmbH (Konstanz, Germany) (represented by: S. Clark, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: IDS SpA (Savona, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark AQUAPRINT — Application for registration No 12 272 407

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 February 2018 in Case R 1438/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision except in so far as the Board of Appeal determined that the goods are identical/similar and that the relevant public is specialized in the dental field;

— order, pursuant to Article 134 of the Rules of Procedure of the General Court, EUIPO and the intervener, if any, to pay the costs incurred by Dentsply in the present proceedings;

— alter the decision also with regard to the order for costs and order, pursuant to Article 134(1) of the Rules of Procedure of the General Court, EUIPO that the unsuccessful intervener to pay the costs incurred by the Board of Appeal and the Opposition Division.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation No 2017/1001;

— Infringement of Article 8(4) of Regulation No 2017/1001.

Action brought on 15 May 2018 — Hashem and Assi v SRB

(Case T-314/18)

(2018/C 240/67)

Language of the case: Spanish

Parties

Applicants: Hashem Asad Mohammad Hashem (Amman, Jordan) and Souhair H. B. Assi (Amman) (represented by: R. Vallina Hoset, A. Sellés Marco, C. Iglesias Megías and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim 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 applicants as a result of both its actions and omissions which resulted in the applicants losing in full their investments in subordinated bonds of the BANCO POPULAR ESPAÑOL, S.A.;

— Order the Board to pay to the applicants, as compensation for the harm suffered by them, an amount for reimbursement of the investments made of EUR 5 571 434,73in Banco Popular shares or, in the alternative, in relation to the latter, EUR 2 341 142,51;

— 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 ECB for main refinancing operations, increased by two percentage points;

— Order the Board 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 *Single Resolution Board* (OJ 2017 C 424, p. 42).

Action brought on 16 May 2018 — Calvo Gutierrez and Others v SRB

(Case T-315/18)

(2018/C 240/68)

Language of the case: Spanish

Parties

Applicants: Maria Graciela Calvo Gutierrez (Alcobendas, Spain) and 21 other applicants (represented by: R. Vallina Hoset, A. Sellés Marco, C. Iglesias Megías and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim 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 applicants as a result of both its actions and omissions which caused the total loss of the investment in BANCO POPULAR ESPAÑOL, S.A. subordinated bonds;

— Order the Board to pay the following amounts to the applicants as compensation for the pecuniary and non-pecuniary damage suffered:

As compensation for pecuniary damage, the total sum of EUR 7 570 098,17in respect of the redemption of shares in Banco Popular, divided on a pro rata basis, according to the shareholdings of each of the applicants, as follows:

— María Graciela Calvo Gutiérrez: EUR 8 836,67;

— Eric Gancedo Holmer: EUR 35 257,42;

— María Graciela Calvo Gutiérrez and Eric Gancedo Holmer: EUR 39 358,01;

— Carlos Eric Gancedo Calvo: EUR 7 374,19;

— Gabriel Gancedo Calvo: EUR 7 062,93;

— Jorge Gancedo Calvo: EUR 8 545,24;

— Lucía Gancedo Calvo: EUR 7 388,69;

— Manuel Gancedo Calvo: EUR 9 472,17;

— José Gancedo Calvo: EUR 7 389,45;

— Claudia Sáez de Montagut Gancedo: EUR 763,66;

— Bosco Sáez de Montagut Gancedo: EUR 2 879,18;

— Yago Sáez de Montagut Gancedo: EUR 379,16;

— VICA58, S.L.: EUR 265 763,84;

— Diana Luisa Gancedo Holmer: EUR 175 499,04;

— Guillermo de Zavala Gancedo: EUR 722,47;

— Alfredo de Zavala Gancedo: EUR 718,65;

— Cosme de Zavala Gancedo: EUR 1 006,27;

— Bruno de Zavala Gancedo: EUR 689,66;

— María Astrid Gancedo Holmer: EUR 442 136,41;

— Marco Gancedo Holmer: EUR 442 135,64;

— LOS PRUNOS DEL SETO, S.L.: EUR 6 898,14;

— MANUEL GANCEDO, S.A.: EUR 5 340 911,85;

— EVEDAM INMUEBLES, S.L.: EUR 620 238,46;

— GANCEDO Y GONZÁLEZ, S.L.: EUR 138 671,57; and

As compensation for non-pecuniary damage, the sum of up to EUR 7 570 098,78or such amount as the General Court shall see fit to award, divided on a pro rata basis for each of the applicants in the same proportion as the amount awarded as compensation for pecuniary damage.

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

— Order the Board to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied upon in Case T-659/17, *Vallina Fonseca* v *Single Resolution Board* (OJ 2017 C 424, p. 42).

Action brought on 18 May 2018 — Fugro v Commission

(Case T-317/18)

(2018/C 240/69)

Language of the case: English

Parties

Applicant: Fugro NV (Leidschendam, Netherlands) (represented by: T. Snoep and V. van Weperen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, partially annul the contested decision, in particular Article 1(2) of the decision;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Decision breaches the principle of proportionality.

   — The Commission did not enjoy a broad discretionary power in adopting the Decision and the review of whether the Decision breaches the principle of proportionality should not be limited to reviewing whether the Decision is clearly or manifestly inappropriate in light of the objectives pursued. The Decision breaches the principle of proportionality since:

      — the Decision exceeds the limits of what is necessary to attain the pursued objectives;

      — the Commission did not choose the least onerous measure from the available appropriate measures; and

      — the disadvantages caused by the Decision are disproportionate to the objectives pursued.

   — Even if the Commission would enjoy a wide discretionary power, the Decision is nonetheless a manifestly inappropriate means of achieving the objectives pursued.

2. Second plea in law, alleging that the Decision infringes Fugro's right to property ex Article 17 of the Charter of Fundamental Rights of the European Union and Fugro's freedom to conduct a business ex Article 16 of the Charter of Fundamental Rights of the European Union.

   — The Decision infringes Fugro's right to property as it destroys Fugro's business. The loss of property is significant and goes beyond a reasonable economic risk; and

   — the Decision affects the very existence of Fugro's freedom to conduct a business.

3. Third plea in law, alleging that the Decision breaches the principle of non-distortion of competition.

   — The Decision prevents the European Union from fulfilling the essential task of establishing an internal market free from distortion since:

      — the Decision results in a public sector intervention in the offshore GNSS Augmentation services market incompatible with the principles of undistorted competition; and

      — contrary to Article 3(3) TEU and Protocol No 27, the Decision interferes with the offshore GNSS Augmentation services market where there is no market failure.

Action brought on 18 May 2018 — Serenity Pharmaceuticals v EUIPO — Gebro Holding (NOCUVANT)

(Case T-321/18)

(2018/C 240/70)

Language in which the application was lodged: English

Parties

Applicant: Serenity Pharmaceuticals LLC (Milford, Pennsylvania, United States) (represented by: J. Day, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gebro Holding GmbH (Fieberbrunn, Austria)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark NOCUVANT — Application for registration No 13 053 434

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 8 March 2018 in Case R 584/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of 27 January 2018 in Opposition No. B 002437922;

— order EUIPO and Gebro Holdings GmbH to bear their own costs and pay those of the Applicant.

Pleas in law

— Infringement of Article 47(2) of Regulation No 2017/1001;

— Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 22 May 2018 — Fomanu v EUIPO — Fujifilm Imaging Germany (Representation of a butterfly)

(Case T-323/18)

(2018/C 240/71)

Language in which the application was lodged: German

Parties

Applicant: Fomanu AG (Neustadt a.d. Waldnaab, Germany) (represented by: S. Reichart, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fujifilm Imaging Germany GmbH & Co. KG (Willich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark No 5 481 403

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 16 March 2018 in Case R 2241/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it declared the contested EU trade mark to have expired for the following goods and services:

Class 9 — CDs; DVDs; computer programs and software, in particular software for the exchange, storage, reproduction and systematic capture of data;

Class 16 — Printed matter included in Class 16, excluding printed matter customised with personal photos (in particular photo books, photo calendars, photo canvases, photo puzzles, photo notebooks and photo folders);

Class 38 — Providing access to a computer database for downloading information via electronic media (the Internet); computer-aided transmission of messages and images;

Class 40 — Bookbinding;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 58(1)(a) and (2), in conjunction with Article 18(1), of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 19(1), in conjunction with Article 10, of Commission Delegated Regulation (EU) 2017/1430.

Order of the General Court of 16 May 2018 — C & J Clark International v Commission

(Case T-230/16) ([1])

(2018/C 240/72)

Language of the case: English

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

([1]) OJ C 260, 18.7.2016.

Order of the General Court of 15 May 2018 — Aide et Action France v Commission

(Case T-357/17) ([1])

(2018/C 240/73)

Language of the case: French

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

([1]) OJ C 269, 14.8.2017.

Order of the General Court of 4 May 2018 — Deutsche Lufthansa v Commission

(Case T-1/18) ([1])

(2018/C 240/74)

Language of the case: English

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

([1]) OJ C 63, 19.2.2018.

Order of the General Court of 16 May 2018 — Teollisuuden Voima v Commission

(Case T-52/18) ([1])

(2018/C 240/75)

Language of the case: English

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

([1]) OJ C 112, 26.3.2018.

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