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Information and Notices

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(2018/C 285/01)

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 21 June 2018 — European Commission v Republic of Malta

(Case C-557/15) ([1])

(Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Live-capturing and keeping — Species belonging to the finch family — Prohibition — National derogation regime — Member States' power of derogation — Conditions)

(2018/C 285/02)

Language of the case: English

Parties

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

Defendant: Republic of Malta (represented by: A. Buhagiar, acting as Agent, and by J. Bouckaert, advocaat, and L. Cassar Pullicino, avukat)

Operative part of the judgment

The Court:

1. *Declares that, by adopting a derogation regime allowing the live-capturing of seven species of wild finches (Chaffinch Fringilla coelebs, Linnet Carduelis cannabina, Goldfinch Carduelis carduelis, Greenfinch Carduelis chloris, Hawfinch Coccothraustes coccothraustes, Serin Serinus serinus and Siskin Carduelis spinus), the Republic of Malta has failed to fulfil its obligations under Article 5(a) and (e) and Article 8(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, read in conjunction with Article 9(1) of that directive;*

2. *Orders the Republic of Malta to pay the costs.*

([1]) OJ C 7, 11.1.2016.

Judgment of the Court (Second Chamber) of 21 June 2018 — Republic of Poland v European Parliament, Council of the European Union

(Case C-5/16) ([1])

(Action for annulment — Decision (EU) 2015/1814 — Determination of legal basis — No taking into account of the effects of a measure — Article 192(1) TFEU — Article 192(2)(c) TFEU — Measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply — Principle of sincere cooperation — Article 15 TEU — Powers of the European Council — Principles of legal certainty and protection of legitimate expectations — Principle of proportionality — Impact assessment)

(2018/C 285/03)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna and K. Rudzińska, acting as Agents, and by I. Tatarewicz, ekspert)

Defendants: European Parliament (represented by: A. Tamás and A. Pospíšilová Padowska, acting as Agents), Council of the European Union (represented by: M. Simm, A. Sikora, and K. Pleśniak, acting as Agents)

Interveners in support of the defendants: Kingdom of Denmark (represented by: M. Wolff, J. Nymann-Lindegren and C. Thorning, acting as Agents), Federal Republic of Germany (represented by: T. Henze, acting as Agent), Kingdom of Spain (represented by: A. Gavela Llopis and M. A. Sampol Pucurull, acting as Agents), French Republic (represented by: D. Colas, G. de Bergues, J. Traband, T. Deleuil and S. Ghiandoni, acting as Agents), Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren and L. Swedenborg, acting as Agents), European Commission (represented by: K. Herrmann, A. C. Becker, E. White and K. Mifsud-Bonnici, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Poland to pay the costs incurred by the European Parliament and the Council of the European Union;*

3. *Orders the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Kingdom of Sweden and the European Commission to bear their own costs.*

([1]) OJ C 98, 14.3.2016.

Judgment of the Court (Grand Chamber) of 19 June 2018 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesanstalt für Finanzdienstleistungsaufsicht v Ewald Baumeister

(Case C-15/16) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 2004/39/EC — Article 54 (1) — Scope of the obligation of professional secrecy on national financial supervision authorities — Concept of 'confidential information')

(2018/C 285/04)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesanstalt für Finanzdienstleistungsaufsicht

Defendant: Ewald Baumeister

Intervener: Frank Schmitt, in his capacity as liquidator of Phoenix Kapitaldienst GmbH

Operative part of the judgment

1. *Article 54(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that all information relating to the supervised entity and communicated by it to the competent authority, and all statements of that authority in its supervision file, including its correspondence with other bodies, do not constitute, unconditionally, confidential information that is covered, consequently, by the obligation to maintain professional secrecy laid down in that provision. Information held by the authorities established by the Member States to perform the functions laid down by that directive that is information (i) which is not public and (ii) the disclosure of which is likely to affect adversely the interests of the natural or legal person who provided that information or of third parties, or the proper functioning of the system for monitoring the activities of investment firms that the EU legislature established in adopting Directive 2004/39, is to be so classified.*

2. *Article 54(1) of Directive 2004/39 must be interpreted as meaning that the confidentiality of information relating to the supervised entity and communicated to the authorities established by the Member States to perform the functions laid down by that directive must be assessed at the time of the examination which those authorities must undertake in order to decide on a request for disclosure relating to that information, irrespective of how that information was classified at the time when it was communicated to those authorities.*

3. *Article 54(1) of Directive 2004/39 must be interpreted as meaning that information held by the authorities established by the Member States to perform the functions laid down by that directive that could constitute business secrets, but is at least five years old, must, as a rule, on account of the passage of time, be considered historical and therefore as having lost its secret or confidential nature unless, exceptionally, the party relying on that nature shows that, despite its age, that information still constitutes an essential element of its commercial position or that of interested third parties. Such considerations have no bearing in relation to information held by those authorities the confidentiality of which might be justified for reasons other than the importance of that information with respect to the commercial position of the undertakings concerned.*

([1]) OJ C 111, 29.3.2016.

Judgment of the Court (Grand Chamber) of 19 June 2018 (request for a preliminary ruling from the Conseil d'État — Belgium) — Sadikou Gnandi v État belge

(Case C-181/16) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Return of illegally staying third-country nationals — Directive 2008/115/EC — Article 3(2) — Concept of 'illegal stay' — Article 6 — Adoption of a return decision before resolution of an appeal against the decision of the determining authority rejecting the application for international protection — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Principle of non-refoulement — Right to an effective remedy — Authorisation to remain in a Member State)

(2018/C 285/05)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Sadikou Gnandi

Respondent: État belge

Operative part of the judgment

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and in the light of the principle of non-refoulement and the right to an effective remedy, enshrined in Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the adoption of a return decision, under Article 6(1) of Directive 2008/115, in respect of a third-country national who has applied for international protection, immediately after the rejection of that application by the determining authority or together in the same administrative act, and thus before the conclusion of any appeal proceedings brought against that rejection, provided, inter alia, that the Member State concerned ensures that all the legal effects of the return decision are suspended pending the outcome of the appeal, that the applicant is entitled, during that period, to benefit from the rights arising under Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, and that he is entitled to rely on any change in circumstances that occurred after the adoption of the return decision which may have a significant bearing on the assessment of his situation under Directive 2008/115, and in particular under Article 5 thereof, those being matters for the referring court to determine.

([1]) OJ C 191, 30.5.2016.

Judgment of the Court (Fifth Chamber) of 21 June 2018 (request for a preliminary ruling from the Østre Landsret — Denmark) — Fidelity Funds and Others v Skatteministeret

(Case C-480/16) ([1])

(Reference for a preliminary ruling — Free movement of capital and liberalisation of payments — Restrictions — Taxation of dividends paid to undertakings for collective investment in transferable securities (UCITS) — Dividends paid by companies resident in one Member State to non-resident UCITS — Tax exemption for dividends paid by companies resident in one Member State to resident UCITS — Justifications — Balanced allocation between Member States of the power to impose taxes — Coherence of the tax system — Proportionality)

(2018/C 285/06)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Fidelity Funds and Others

Defendant: Skatteministeret

Intervener: NN (L) SICAV

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which the dividends distributed by a company resident in that Member State to a non-resident undertaking for collective investment in transferable securities (UCITS) are subject to withholding tax, while dividends distributed to a UCITS resident in that same Member State are exempt from such tax, provided that that undertaking makes a minimum distribution to its members, or technically calculates a minimum distribution, and withholds on that actual or notional distribution the tax payable by its members.

([1]) OJ C 419, 14.11.2016.

Judgment of the Court (Ninth Chamber) of 21 June 2018 — European Commission v Federal Republic of Germany

(Case C-543/16) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Article 5(5) and (7) — Annex II, A, points 1 to 3 and 5 — Annex III(1), points 1 to 3, and (2) — Protection of waters against pollution caused by nitrates from agricultural sources — Inadequacy of measures in force — Supplemental or enhanced measures — Review of the action programme — Limitation of land application — Balanced fertilisation — Periods of land application — Capacity of tanks for storing manure — Land application on steeply-sloping surfaces and on frozen or snow-covered land)

(2018/C 285/07)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented by: C. Thorning and M. Wolff, acting as Agents)

Operative part of the judgment

The Court:

1) *Declares that, by failing to adopt supplemental or enhanced measures as soon as it became apparent that the measures of the German action programme were inadequate and by failing to review that action programme, the Federal Republic of Germany failed to fulfil its obligations under Article 5(5) and (7) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008, read in conjunction with Annex II, A, points 1 to 3 and 5, and Annex III(1), points 1 to 3, and (2) to that directive;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 6, 9.1.2017.

Judgment of the Court (Second Chamber) of 21 June 2018 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — Pfizer Ireland Pharmaceuticals, Operations Support Group v Orifarm GmbH

(Case C-681/16) ([1])

(Reference for a preliminary ruling — Intellectual and industrial property — Patent law — Acts of Accession to the European Union of 2003, 2005 and 2012 — Specific Mechanism — Whether applicable to parallel imports — Regulation (EC) No 469/2009 — Product protected by a supplementary protection certificate in a Member State and marketed by the holder of the basic patent in another Member State — Exhaustion of intellectual and industrial property rights — No basic patent in the new Member States — Regulation (EC) No 1901/2006 — Extension of the protection period)

(2018/C 285/08)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Pfizer Ireland Pharmaceuticals, Operations Support Group

Defendant: Orifarm GmbH

Operative part of the judgment

1. *The Specific Mechanisms laid down in Chapter 2 of Annex IV to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, in Chapter 1 of Annex V to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, and in Chapter 1 of Annex IV to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, must be interpreted as authorising the holder of a supplementary protection certificate issued in a Member State other than the new Member States referred to in those Acts of Accession to oppose the parallel importation of a medicinal product from those new Member States in a situation where the legal systems of those States provided for the possibility of obtaining equivalent protection at the time when the application for the basic patent was published and/or the application for a supplementary protection certificate in the importing Member State was filed, but did not yet provide for such a possibility at the time when the application for a basic patent was filed, with the result that it was impossible for the patent holder to obtain an equivalent patent and a supplementary protection certificate in the exporting States.*

2. *The Specific Mechanisms laid down in Chapter 2 of Annex IV to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, in Chapter 1 of Annex V to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, and in Chapter 1 of Annex IV to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, must be interpreted as applying to the extension provided for in Article 36(1) of Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004.*

([1]) OJ C 104, 3.4.2017.

Judgment of the Court (Third Chamber) of 21 June 2018 (request for a preliminary ruling from the Corte d'appello di Torino — Italy) — Petronas Lubricants Italy SpA v Livio Guida

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

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction over individual contracts of employment — Article 20(2) — Employer sued before the courts of the Member State in which it is domiciled — Counter-claim by the employer — Determination of the court with jurisdiction)

(2018/C 285/09)

Language of the case: Italian

Referring court

Corte d'appello di Torino

Parties to the main proceedings

Applicant: Petronas Lubricants Italy SpA

Defendant: Livio Guida

Operative part of the judgment

Article 20(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, it gives an employer the right to bring, before the court properly seised of the original proceedings brought by an employee, a counter-claim based on a claim-assignment agreement concluded, after the introduction of the original proceedings, between the employer and the original holder of that claim.

([1]) OJ C 112, 10.4.2017.

Judgment of the Court (Second Chamber) of 21 June 2018 (request for a preliminary ruling from the Kammergericht Berlin — Germany) — proceedings brought by Vincent Pierre Oberle

(Case C-20/17) ([1])

(Request for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 650/2012 — Article 4 — General jurisdiction of a court of a Member State to rule on the succession as a whole — National legislation governing international jurisdiction to issue national certificates of succession — European Certificate of Succession)

(2018/C 285/10)

Language of the case: German

Referring court

Kammergericht Berlin

Party to the main proceedings

Appellant: Vincent Pierre Oberle

Operative part of the judgment

Article 4 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that, although the deceased did not, at the time of death, have his habitual residence in that Member State, the courts of that Member State are to retain jurisdiction to issue national certificates of succession, in the context of a succession with cross-border implications, where the assets of the estate are located in that Member State or the deceased was a national of that Member State.

([1]) OJ C 112, 10.4.2017.

Judgment of the Court (Fourth Chamber) of 20 June 2018 (request for a preliminary ruling from the Vilniaus apygardos administracinis teismas — Lithuania) — UAB 'Enteco Baltic' v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

(Case C-108/17) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(d) and Article 143(2) — Exemptions from VAT on importation — Importation followed by an intra-Community supply — Conditions — Evidence of dispatch or transport of the goods to another Member State — Transport under an excise duty suspension arrangement — Transfer to the purchaser of the right to dispose of goods as owner — Tax evasion — No obligation of the competent authority to help the taxable person collect the necessary information to show that the conditions for exemption are satisfied)

(2018/C 285/11)

Language of the case: Lithuanian

Referring court

Vilniaus apygardos administracinis teismas

Parties to the main proceedings

Applicant: UAB 'Enteco Baltic'

Defendant: Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Operative part of the judgment

1. *Article 143(1)(d) and Article 143(2)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted as precluding the competent authorities of a Member State from refusing exemption from value added tax on importation on the sole ground that, following a change of circumstances after the importation, the goods in question have been supplied to a taxable person other than the person whose value added tax identification number was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities of the Member State of import, provided that it is shown that the substantive conditions for the exemption of the subsequent intra-Community supply are actually satisfied.*

2. *Article 143(1)(d) in conjunction with Article 138 and Article 143(2)(c) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as meaning that:*

— *documents which confirm the transport of goods from a tax warehouse in the Member State of import, not to the purchaser but to a tax warehouse in another Member State, may be regarded as sufficient evidence of dispatch or transport of the goods to another Member State;*

— *documents such as consignment notes on the basis of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978, and electronic administrative documents accompanying movements under suspension of excise duty may be taken into account to show that, at the time of importation into a Member State, the goods concerned are intended to be dispatched or transported to another Member State within the meaning of Article 143(2)(c) of Directive 2006/112, as amended, provided that the documents are submitted at that time and include all the necessary information. Those documents, as also the electronic confirmations of the supply of the goods and the report of receipt issued following a movement under suspension of excise duty, are capable of showing that the goods have actually been dispatched or transported to another Member State in accordance with Article 138(1) of Directive 2006/112, as amended.*

3. *Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as precluding the authorities of a Member State from refusing an importer the right to the exemption from value added tax laid down in that provision for imports of goods into that Member State carried out by him and followed by intra-Community supplies on the ground that the goods were not transferred directly to the purchaser but were handled by transport undertakings and tax warehouses designated by the purchaser, where the power to dispose of the goods as owner was transferred to the purchaser by the importer. In this context, the concept of 'supply of goods' within the meaning of Article 14(1) of that directive, as amended, must be interpreted in the same way as in the context of Article 167 of the directive, as amended.*

4. *Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as precluding an administrative practice under which, in circumstances such as those of the dispute in the main proceedings, an importer acting in good faith is refused the right to the exemption from value added tax on importation where the conditions for the exemption of the subsequent intra-Community supply are not satisfied, because of tax evasion on the part of the purchaser, unless it is shown that the importer knew or ought to have known that the transaction was involved in tax evasion committed by the purchaser and did not take all reasonable steps in his power to avoid participation in the evasion. The mere fact that the importer and the purchaser communicated by electronic means of communication cannot allow it to be presumed that the importer knew or could have known that he was participating in tax evasion.*

5. *Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as meaning that the competent national authorities are not obliged, when examining the transfer of the power to dispose of goods as owner, to collect information to which only the public authorities have access.*

([1]) OJ C 161, 22.5.2017.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 26 May 2017 — EUflight.de GmbH v TUIfly GmbH

(Case C-307/17)

(2018/C 285/12)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: EUflight.de GmbH

Defendant: TUIfly GmbH

By decision of the Court of Justice of 8 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 29 May 2017 — Jeannine Wieczarkowiecz v TUIfly GmbH

(Case C-311/17)

(2018/C 285/13)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Jeannine Wieczarkowiecz

Defendant: TUIfly GmbH

By decision of the Court of Justice of 8 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 30 May 2017 — Rainer Hadamek and Others v TUIfly GmbH

(Case C-316/17)

(2018/C 285/14)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Rainer Hadamek, Heike Hadamek, Florian Hadamek, Carina Hadamek

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 30 May 2017 — Gerhard Schneider and Christa Schneider v TUIfly GmbH

(Case C-317/17)

(2018/C 285/15)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Gerhard Schneider, Christa Schneider

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Iris Michardt and Detlef Michardt v TUIfly GmbH

(Case C-353/17)

(2018/C 285/16)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Iris Michardt, Detlef Michardt

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Birgit Förg v TUIfly GmbH

(Case C-354/17)

(2018/C 285/17)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Birgit Förg

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Lutz Leupolt v TUIfly GmbH

(Case C-355/17)

(2018/C 285/18)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Lutz Leupolt

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Johannes Büker and Ursula Münsterteicher v TUIfly GmbH

(Case C-356/17)

(2018/C 285/19)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Johannes Büker, Ursula Münsterteicher

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Lydia Wieczorek and Paul Wieczorek v TUIfly GmbH

(Case C-357/17)

(2018/C 285/20)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Lydia Wieczorek, Paul Wieczorek

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Walter Langguth and Elke Langguth v TUIfly GmbH

(Case C-358/17)

(2018/C 285/21)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Walter Langguth, Elke Langguth

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Marcel Lutz and Others v TUIfly GmbH

(Case C-359/17)

(2018/C 285/22)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Marcel Lutz, Janine Lutz, Michelle Lutz, Sarah Lutz

Defendant: TUIfly GmbH

By decision of the Court of Justice of 18 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Nicole Hofmann v TUIfly GmbH

(Case C-360/17)

(2018/C 285/23)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Nicole Hofmann

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Ole Feuser v TUIfly GmbH

(Case C-361/17)

(2018/C 285/24)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Ole Feuser

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 9 June 2017 — Boris Feuser v TUIfly GmbH

(Case C-362/17)

(2018/C 285/25)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Boris Feuser

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 30 June 2017 — Ines Ewen v TUIfly GmbH

(Case C-394/17)

(2018/C 285/26)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Ines Ewen

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 4 July 2017 — Petra Nünemann v TUIfly GmbH

(Case C-403/17)

(2018/C 285/27)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Petra Nünemann

Defendant: TUIfly GmbH

By decision of the Court of Justice of 17 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 7 July 2017 — Barbara Yvette Müller and Others v TUIfly GmbH

(Case C-409/17)

(2018/C 285/28)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Barbara Yvette Müller, Stefanie Müller, Michelle Müller

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 17 July 2017 — Bially e.a. v TUIfly GmbH

(Case C-429/17)

(2018/C 285/29)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Bially e.a.

Defendant: TUIfly GmbH

By decision of the Court of Justice of 28 May 2018 the case was removed from the Court's register.

Request for a preliminary ruling from the Arbeits- und Sozialgericht Wien (Austria) lodged on 23 April 2018 — Minoo Schuch-Ghannadan v Medizinische Universität Wien

(Case C-274/18)

(2018/C 285/30)

Language of the case: German

Referring court

Arbeits- und Sozialgericht Wien

Parties to the main proceedings

Applicant: Minoo Schuch-Ghannadan

Defendant: Medizinische Universität Wien

Questions referred

1. Is the principle of *pro rata temporis* under point 2 of clause 4 of the Framework Agreement annexed to Council Directive 97/81/EC of 15 December 1997 ([1]) concerning the Framework Agreement on part-time work, in conjunction with the principle of non-discrimination under point 1 of clause 4, to be applied to legislation under which the total duration of immediately consecutive employment contracts of an employee of an Austrian university working within the framework of externally funded projects or research projects is 6 years for full-time employees, but 8 years for part-time employees, and moreover, if there is objective justification, in particular for the continuation or completion of research projects or publications, a further one-off extension up to a total of 10 years for full-time employees and of 12 years for part-time employees is permissible?

2. Does legislation such as that described in Question 1 constitute indirect discrimination based on sex within the meaning of Article 2(1)(b) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) in the case where, within the group of workers subject to that legislation, a significantly higher percentage of women is affected as compared with the percentage of men so affected?

3. Is Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 ([2]) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) to be interpreted as meaning that a woman who, in the area of application of legislation such as that set out in Question 1, claims to have suffered indirect discrimination based on sex on the ground that significantly more women than men are employed on a part-time basis, must assert this fact, in particular that women are statistically much more significantly affected, by submitting specific statistics or specific facts and must substantiate this by means of appropriate evidence?

([1]) OJ 1998 L 14, p. 9.
([2]) OJ 2006 L 204, p. 23.

Appeal brought on 25 April 2018 by The Green Effort Ltd against the order of the General Court (Second Chamber) delivered on 23 February 2018 in Case T-794/17: The Green Effort Ltd v European Union Intellectual Property Office

(Case C-282/18 P)

(2018/C 285/31)

Language of the case: English

Parties

Appellant: The Green Effort Ltd (represented by: A. Ziehm, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the General Court (Second Chamber), 23 February 2018, Case T-794/17 in whole;

— annul the contested decisions;

— cancel the revocation of the registered EUTM 9 528 001;

— reject the application for revocation of rights;

— grant its application for 'Restitution in integrum';

— obtain and refer to the documents in the EUIPO proceedings Cancellation 12343 C, 10757 C, 10524 C, Oppositions Proceedings B 002165119; B 002199274; B 002344565; B 002367038; B 002513086, and B 002513151;

— order EUIPO and the Cancellation Applicant to pay their own costs and those of the applicant.

Pleas in law and main arguments

The appellant is basing the appeal on the following six grounds of appeal, whereby the General Court's ruling was based on the 1st ground of appeal and the 2nd to 6th grounds show that the decision does not prove to be correct for other reasons.

1st ground of appeal: Infringement Article 3 (4) Decision No. 17-4 of the Executive Director of the Office of 16 August 2017 concerning communication by electronic means.

Arguments in support of the appeal: The General Court disregarded the fact that a notification shall be deemed to have taken place on the fifth calendar day following the day on which the document was created by EUIPO's systems. For this reason the General Court incorrectly calculated the period for bringing an action against the decision of 11 September 2017 of the Second Board of Appeal of EUIPO.

2nd ground of appeal: the appeal must be declared well-founded since the contested EUIPO decisions infringe the appellant's rights because the application for revocation by the Cancellation Applicant was inadmissible due to bad faith and incorrect statement of facts.

3rd ground of appeal: the appeal must be declared well-founded since the contested EUIPO decisions infringe the appellant's rights because the proprietor's proof of genuine use has been submitted to EUIPO within the lawful time limits under Commission Regulation (EC) No. 2868/95 ([1]).

4th ground of appeal: the appeal must be declared well-founded since the contested EUIPO decisions infringe the appellant's rights because the proprietor's proof of genuine use was submitted to EUIPO within the time limits set by EUIPO.

5th ground of appeal: the appeal must be declared well-founded since the contested EUIPO decisions infringe the appellant's rights because, if EUIPO failed to receive the genuine proof of use by means of the electronic communication system and/or by fax transmission, then this was due to technical failures in those systems.

6th ground of appeal: the appeal must be declared well-founded since the contested EUIPO decisions infringe the appellant's rights because EUIPO, and subsequently the Second Board of Appeal, have wrongfully denied the appellant's application for restitutio in integrum.

([1]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995, L 303, p. 1).

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 26 April 2018 — KAMU Passenger & IT Services GmbH v Türk Hava Yollari A.O. — T.H.Y. Turkish Airlines

(Case C-289/18)

(2018/C 285/32)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: KAMU Passenger & IT Services GmbH

Defendant: Türk Hava Yollari A.O. — T.H.Y. Turkish Airlines

Question referred

Is an onward flight from the destination airport of the preceding flight which a passenger booked together with the first flight and for which he obtained just one ticket with one ticket number, where there is a scheduled period of just over 13 hours between the two flights, to be classified as a 'directly connecting flight' within the meaning of Article 2(h) of Regulation (EC) No 261/2004 of the European Parliament and of the Council? ([1])

([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 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 2 May 2018 — Stefan Neldner v Eurowings GmbH

(Case C-299/18)

(2018/C 285/33)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Stefan Neldner

Defendant: Eurowings GmbH

Questions referred

1. May compensation under Article 7 of the regulation ([1]) be deducted from compensation granted under national law which is intended to reimburse additional travel costs incurred as a result of the cancellation of a booked flight if the air carrier has fulfilled its obligations under Article 8(1) of the regulation?

2. If deduction is possible: does it also apply to the costs of alternative transportation to a destination other than the final destination of the flight if the passenger turns down alternative transport offered by the air carrier to the final destination of the flight?

3. In so far as deduction is possible: may the air carrier make the deduction in all cases or is it dependent on the extent to which it is permitted by national law or the court considers it equitable?

4. In so far as national law is applicable or the court is required to take a discretionary decision: is the compensation under Article 7 of the regulation intended to redress only the inconvenience and the loss of time suffered by passengers as a result of the cancellation, or is it also intended to address material damage?

([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 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Landgericht Bonn (Germany) lodged on 4 May 2018 — Thomas Leonhard v DSL Bank

(Case C-301/18)

(2018/C 285/34)

Language of the case: German

Referring court

Landgericht Bonn

Parties to the main proceedings

Applicant: Thomas Leonhard

Defendant: DSL Bank

Question referred

Is Article 7(4) of Directive 2002/65/EC ([1]) to be interpreted as precluding legislation of a Member State which provides that, after withdrawal from a distance consumer loan contract has been declared, the supplier must also pay to the consumer, beyond the sum he has received from the consumer in accordance with the distance contract, compensation for the benefit of use in respect of this sum?

([1]) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ 2002 L 271, p. 16).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 14 May 2018 — Schiaffini Travel SpA v Comune di Latina

(Case C-322/18)

(2018/C 285/35)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Schiaffini Travel SpA

Defendant: Comune di Latina

Questions referred

1. Does Article 5(2) of Regulation (EC) No 1370/2007 ([1]) (in particular, the prohibition, laid down in subparagraphs (b) and (d), on the participation of internal operators in extra moenia tendering procedures) apply equally where a contract has been awarded prior to the entry into force of that regulation?

2. May a legal person governed by public law which has been directly awarded a contract by a State authority for the provision of local transport services and which has a direct relationship with the State authority in terms of organisation and control and whose capital is owned by the State (either wholly or in part, together with other public entities) be regarded, in the abstract, as an 'internal operator' within the meaning of the regulation and, as the case may be, by analogy with the case-law on the subject of 'in house provision'?

3. In the case of the direct award of a contract for the provision of services falling within the scope of Regulation (EC) No 1370/2007, if, after that award, the State authority in question (while itself retaining sole power to award concessions) establishes a public administrative authority that has power to organise the services in question but does not have 'similar control' over the contractor, does that fact take the award in question outside the scope of the rules in Article 5(2) of the regulation?

4. If the date of expiry of a directly awarded contract falls after the end of the 30-year period ending on 3 December 2039 (that period commencing on the date of entry into force of Regulation (EC) No 1370/2007) does that render the award inconsistent with the principles laid down in the combined provisions of Articles 5 and 8(3) of the regulation, or may such an irregularity be regarded as automatically remedied, for all legal purposes, by an implied shortening of the length of the contract by operation of law (Article 8(3)), so as to fall within the 30-year period?

([1]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 15 May 2018 — Sicilville Srl v Comune di Brescia

(Case C-324/18)

(2018/C 285/36)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Sicilville Srl

Respondent: Comune di Brescia

Question referred

Does EU law, more specifically Article 57(4) of Directive 2014/24/EU ([1]) on public procurement, in conjunction with recital 101 of the directive and the principles of proportionality and equal treatment, preclude national legislation, such as that at issue, which categorises 'grave professional misconduct' as a mandatory ground of exclusion of an economic operator and provides that, where the professional misconduct has led to the early termination of a public contract, the operator may be excluded only if the termination is not contested or is confirmed at the conclusion of judicial proceedings?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Appeal brought on 21 May 2018 by Mytilinaios Anonymos Etairia — Omilos Epicheiriseon against the judgment of the General Court (Fifth Chamber) delivered on 13 March 2018 in Case T-542/11 RENV Alouminion tis Ellados VEAE v European Commission

(Case C-332/18 P)

(2018/C 285/37)

Language of the case: Greek

Parties

Appellant: Mytilinaios Anonymos Etairia — Omilos Epicheiriseon (represented by: N. Korogiannakis, N. Keramidas, E. Chrysafis and D. Diakopoulos, dikigoroi, and K. Struckmann, Rechtsanwalt)

Other parties to the proceedings: European Commission, Dimosia Epicheirisi Ilektrismou AE (DEI)

Form of order sought

By the present action, Mytilinaios Anonymos Etairia — Omilos Epicheiriseon claims that the Court should:

— set aside the judgment of the General Court (Fifth Chamber) of 13 March 2018 in Case T-542/11 RENV (ECLI:EU:T:2018:132);

— decide the case itself;

— annul the Commission decision of 13 July 2011; and

— order the European Commission to pay the appellant's costs in respect of the entire proceedings.

Grounds of appeal and main arguments

The appellant puts forward three grounds of appeal:

1. Errors of law and distortion of the facts in the context of the General Court's assessment as to whether the measure at issue constituted State aid, and in particular relating to whether the measure constituted an 'advantage', to the assessment of the advantage, to the refusal to examine the issue of economic justification and to the incorrect application of the burden of proof since the Hellenic Republic did not put forward such arguments in the administrative procedure, and an error of law relating to the treatment of the appellant's arguments as regards the 'private investor test'.

2. Error of law as regards the assessment of the selectivity of the advantage.

3. Errors of law and distortion of the clear sense of the evidence as regards the effects of the measure at issue on trade and competition.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 23 May 2018 — Lombardi Srl v Comune di Auletta and Others

(Case C-333/18)

(2018/C 285/38)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Lombardi Srl

Respondents: Comune di Auletta, Delta Lavori SpA, Msm Ingegneria Srl

Question referred

Can the third paragraph of Article 1(1) and Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, ([1]) as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, ([2]) be interpreted as allowing, where several undertakings have participated in the tendering procedure and have not been joined to the legal proceedings (and in any event no objection has been lodged in respect of the tenders submitted by some of them), it to be left to the court concerned, by virtue of the procedural autonomy accorded to the Member States, to assess whether the interest claimed in the main action by the candidate against whom an 'excluding' counterclaim, considered to be well-founded, has been brought, is a vested interest, using the procedural instruments available to it under the national legal order and thus ensuring that the protection of that subjective position is in line with the consolidated national principles: (i) that the court must address all the parties' claims but can grant only the relief sought by them (Article 112 of the Code of Civil Procedure); (ii) relating to proof of the interest alleged (Article 2697 of the Civil Code); and (iii) that a judgment having the force of *res judicata* has effect only as between the parties to the proceedings and cannot concern the position of persons not involved in the dispute (Article 2909 of the Civil Code)?

([1]) OJ 1989 L 395, p. 33.

([2]) Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 23 May 2018 — Via Lattea Scrl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-337/18)

(2018/C 285/39)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Via Lattea Scrl, Alba Gilberto, Antonio Barausse, Gabriele Barausse, Azienda Agricola Benvegnù Gianni Battista e Giangaetano s.s., Domenico Brogliato s.s., Cesare Filippi, Michele Filippi, Fontana Fidenzio e Fabrizio s.s., Giovanni Gastaldello, Tiziano Giaretta, Azienda Agricola Guadagnin Gianni ed Emanuele s.s., Il Moretto di Martinazza Laura s.s., Marini Alessandro e Domenico s.s., Azienda Agricola Milan Sergio & C. s.s., Matteo Mosele, Luciano Mosele, Ennio Mosele, Renato Munaretto, Azienda Agricola Pain di Gazzola Luigi, Azienda Agricola Parise Luigi, Angelo, Francesco e Giancarlo, Sillo Zefferino Maurizio s.s., Storti Danilo e Nicoletta s.s., Tosatto Paolo e Federico s.s., Vivaldo Emilio e Pierino s.s., Giuseppe Zanettin

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 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 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 Republic of Italy, 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 23 May 2018 — Cooperativa Novalat Scrl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-338/18)

(2018/C 285/40)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Cooperativa Novalat Scrl, Antico Giuseppe e Figli s.s., Impresa Barutta Livio, Impresa Cusinato Giulio, Impresa Danesa Cisino, Impresa Faggian Rudi, Furlan Diego e Stefano s.s., Impresa Furlan Marco, Impresa Massaro Leo Valter, Impresa Reginato Guido, Impresa Sachespi Lucio, Impresa Salmaso Luigi, Impresa Schiavon Denis, Impresa Zanetti Narciso

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 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 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 Republic of Italy, 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 23 May 2018 — Veneto Latte Scrl and Others v Agenzia per le Erogazioni in Agricoltura (AGEA), Regione Veneto

(Case C-339/18)

(2018/C 285/41)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Veneto Latte Scrl, Bovolenta Luca e Matteo s.s., Greco Andrea e Alessando s.s., Ruzza Vanel e Gloriano s.s., Azienda Agricola Marangona di Tamiso Rossano

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 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 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 Republic of Italy, 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 Tribunale di Milano (Italy) lodged on 28 May 2018 — Avv. Alessandro Salvoni v Anna Maria Fiermonte

(Case C-347/18)

(2018/C 285/42)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicant: Avv. Alessandro Salvoni

Defendant: Anna Maria Fiermonte

Question referred

Should Article 53 of Regulation (EU) No 1215/2012 ([1]) and Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that it is not possible for the court of origin, which has been requested to issue the certificate provided for in Article 53 of Regulation (EU) No 1215/2012 with regard to a judgment that has acquired the force of a *res judicata*, to exercise powers of its own motion to ascertain whether there has been a breach of the rules set out in Chapter II, Section 4 of the Brussels Ibis Regulation, so that it may inform the consumer of any breach that is established and enable the consumer to consider, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of the Regulation?

([1]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Reus (Spain) lodged on 30 May 2018 — Jaime Cardus Suarez v Catalunya Caixa S.A.

(Case C-352/18)

(2018/C 285/43)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Reus

Parties to the main proceedings

Applicant: Jaime Cardus Suarez

Defendant: Catalunya Caixa S.A.

Questions referred

1. 1.1 Is Article 1(2) of Directive 93/13 ([1]) to be interpreted as meaning that a contractual term that incorporates an official index, the IRPH, regulated by a statutory provision, is not subject to the provisions of the directive, even if that index does not have to be applied unless the parties so wish and it is not of a supplementary nature in the absence of agreement between the parties?

   1.2 Is Article 1(2) of Directive 93/13 to be interpreted as meaning that a contractual term that incorporates an official index, the IRPH, even if regulated by a statutory provision, is subject to the provisions of the directive, where that contractual term amends the stipulation contained in the administrative provision defining the IRPH on the negative differential that would need to be applied where that index is used as a contractual rate, in order to match the APR of the mortgage transaction to the market APR, with it then being presumed that the contractual balance struck by the national legislature has been altered?

2. 2.1 Does the fact that the reference index, the IRPH, incorporated by the seller or supplier in a loan contract term, is regulated by laws or regulations preclude the court from having to verify that all the information on that index that may impact on the scope of the consumer's commitment was communicated to the consumer, in order to find that the term was drafted in plain intelligible language within the meaning of Article 4(2) of Directive 93/13?

2.2 Is Directive 93/13 contrary to the case-law pursuant to which the obligation of transparency is satisfied by the mere reference to the official index in the preformulated term, without any other information in that regard being required from the seller or supplier, who included the term, or, on the contrary, is it necessary, in order to comply with the obligation of transparency, for information on the configuration, scope and practical operation of the mechanism of this reference index to be supplied by the seller or supplier who included the term?

2.3 Is Article 4(2) of Directive 93/13 to be interpreted as meaning that the omission of consumer information on the configuration, operation and previous development of the IRPH and its foreseeable future development, at least in the short or medium term, taking account of the knowledge of the seller or supplier on those elements at the time of contracting, allows it to be considered that the term incorporated in the contract is not drafted in plain intelligible language within the meaning of Article 4(2) of Directive 93/13?

2.4 Is the requirement for transparency of the term in Article 4(2) of the directive to be interpreted as requiring the consumer to have been informed about the specific regulations governing the reference index and its contents, as relevant information for properly understanding the economic and legal importance of the term incorporating that index?

2.5 Can promotional material and information provided by the seller or supplier who included the term, which may mislead the consumer when concluding his loan contract referenced to the IRPH, constitute a factor on which the court can base its assessment of the unfair character of the contractual term under Article 4(2) of Directive 93/13?

3. 3.1 If the term is found to be unfair, such that the loan must be repaid without interest, given that, by annulling and removing the variable interest term, the basis for concluding the contract would disappear from the bank's perspective only, should the option of integrating this contract by amending the content of the unfair term, and applying another reference index in replacement for the one declared invalid, be permitted? In such a case, would such an interpretation and integration of the contract be contrary to Article 6 of Directive 93/13?

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

Request for a preliminary ruling from the Justice de paix du troisième canton de Charleroi (Belgium) lodged on 5 June 2018 — Frank Casteels v Ryanair DAC, formerly Ryanair Ltd

(Case C-368/18)

(2018/C 285/44)

Language of the case: French

Referring court

Justice de paix du troisième canton de Charleroi

Parties to the main proceedings

Applicant: Frank Casteels

Defendant: Ryanair DAC, formerly Ryanair Ltd

Questions referred

The following questions concerning the interpretation of Article 5(3) of 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, ([1]) are referred:

— Does the circumstance at issue in the present proceedings, that is to say, strike action by the employees of the handling company at the departure airport of the flight concerned, fall to be classified under the notion of an 'event' within the meaning of paragraph 22 of the judgment of 22 December 2008, *Wallentin-Hermann* (C-549/07, EU:C:2008:771), or under that of 'extraordinary circumstances' within the meaning of recital 14 of that regulation, as interpreted by the judgment of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43), or do those two concepts merge?

— Must Article 5(3) of 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, be interpreted as meaning that an event such as that at issue in the present proceedings, that is to say, strike action by the employees of the handling company at the departure airport of the flight concerned, must be found to be an event inherent in the normal exercise of the activity of an air carrier and, accordingly, cannot be classified as an 'extraordinary circumstance' exonerating the air carrier from its obligation to compensate passengers where a flight operated by the aircraft concerned is cancelled?

— If an event such as that at issue in the present proceedings, that is to say, strike action by the employees of the handling company at the departure airport of the flight concerned, must be found to be an 'extraordinary circumstance', must it be inferred from this that, for the air carrier, this is an 'extraordinary circumstance' that could not have been avoided even if all reasonable measures had been taken?

— Must the fact that the strike was announced be regarded as having the effect that an event such as that at issue in the present proceedings, that is to say, strike action by the employees of the handling company at the departure airport of the flight concerned, is not covered by the concept of 'extraordinary circumstances' within the meaning of Article 5(3) of 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?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Justice de paix du troisième canton de Charleroi (Belgium) lodged on 5 June 2018 — Giovanni Martina v Ryanair DAC, formerly Ryanair Ltd

(Case C-369/18)

(2018/C 285/45)

Language of the case: French

Referring court

Justice de paix du troisième canton de Charleroi

Parties to the main proceedings

Applicant: Giovanni Martina

Defendant: Ryanair DAC, formerly Ryanair Ltd

Questions referred

The following questions concerning the interpretation of Article 5(3) of 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, ([1]) are referred:

— Does the circumstance at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, fall to be classified under the notion of an 'event' within the meaning of paragraph 22 of the judgment of 22 December 2008, *Wallentin-Hermann* (C-549/07, EU:C:2008:771), or under that of 'extraordinary circumstances' within the meaning of recital 14 of that regulation, as interpreted by the judgment of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43), or do those two concepts merge?

— Must Article 5(3) of 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, be interpreted as meaning that an event such as that at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, must be found to be an event inherent in the normal exercise of the activity of an air carrier and, accordingly, cannot be classified as an 'extraordinary circumstance' exonerating the air carrier from its obligation to compensate passengers in the case where a flight operated by that carrier is subjected to a significant delay?

— If an event such as that at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, must be found to be an 'extraordinary circumstance', must it be inferred from this that, for the air carrier, this is an 'extraordinary circumstance' that could not have been avoided even if all reasonable measures had been taken?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Cour administrative d'appel de Nancy (France) lodged on 7 June 2018 — Ministre de l'Action et des Comptes publics v Mr and Mrs Raymond Dreyer

(Case C-372/18)

(2018/C 285/46)

Language of the case: French

Referring court

Cour administrative d'appel de Nancy

Parties to the main proceedings

Appellant: Ministre de l'Action et des Comptes publics

Respondents: Mr and Mrs Raymond Dreyer

Question referred

Do the contributions allocated to the Caisse nationale de solidarité pour l'autonomie (National Solidarity Fund for Independent Living), which contribute to the funding of the benefits in question, have a direct and sufficiently relevant link with certain branches of social security listed in Article 3 of Regulation (EC) No 883/2004 ([1]) and do they therefore come within the scope of that regulation solely on the ground that those benefits relate to one of the risks set out in that Article 3 and are granted without any discretionary assessment on the basis of a legally defined position?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 7 June 2018 — Slovenské elektrárne a.s. v Daňový úrad pre vybrané daňové subjekty

(Case C-376/18)

(2018/C 285/47)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Slovenské elektrárne a.s.

Defendant: Daňový úrad pre vybrané daňové subjekty

Questions referred

1. Must Directive 2009/72/EC ([1]) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('Third Electricity Directive') be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which establishes a special measure consisting of a compulsory levy on regulated entities, including the holders of an authorisation to supply electricity granted by the competent regulatory authority of the Member State concerned ('the regulated entity' and 'the Office' respectively), set in accordance with the financial performance which they achieved not only at national level but also from activity abroad, is contrary to the objective thereof, and in particular Article 3 thereof, where that levy

   (i) affects the freedom of regulated entities to set a fully competitive price for the supply of electricity on foreign electricity markets, and thus also the competitive process on those markets;

   (ii) reduces the competitiveness of the regulated entities in comparison with foreign electricity suppliers operating on the Slovak electricity market where both supply electricity to a particular foreign market since the foreign operator is not subject to such a compulsory levy in respect of the supply of electricity abroad;

   (iii) discourages new competitors from entering the electricity supply market in the Slovak Republic and abroad since such a compulsory levy would apply equally to revenue from their non-regulated activities even if, subsequently during a particular period, they were to hold an authorisation to supply electricity but the revenue they received from that supply was zero; and

   (iv) may induce Slovak regulated entities to ask the [Slovak] Office — or foreign electricity suppliers to ask the regulatory authority of the respective State of origin which issued them — to revoke the authorisation to supply electricity since for an entity who does not wish the proceeds from its other activities to be subject to the levy in question, revocation of that authorisation is the only way of ridding itself of the status of regulated entity laid down by the legislation at issue?

2. Must the Third Electricity Directive be interpreted as meaning that it is not possible to include among the measures which the Third Electricity Directive permits a Member State to adopt, even where they conflict with the objective which the directive pursues, a special measure, such as that at issue in the main proceedings, consisting of a compulsory levy on regulated entities, including the holders of an authorisation to supply electricity granted by the Office, set in accordance with their financial performance, including performance from activity abroad, given that that measure does not constitute a tool to combat climate change and does not serve to guarantee the supply of electricity or pursue any other objective of the Third Electricity Directive?

3. Must the Third Electricity Directive be interpreted as meaning that national law, such as that at issue in the main proceedings, which establishes a special measure consisting of a compulsory levy on regulated entities, including the holders of an authorisation to supply electricity granted by the Office, set in accordance with their financial performance, including performance achieved from activity abroad, fails to satisfy the requirements relating to transparency **[Or. 3]**, non-discrimination and equality of access to consumers as provided for in Article 3 of the directive since — in the case of a regulated entity — it also affects revenue obtained (from the supply of electricity or other means) abroad whereas — in the case of the holder of an authorisation to provide energy on the basis of a 'passport' authorisation to supply electricity granted in the relevant State of origin — it affects only the revenue obtained in the Slovak Republic?

(1) OJ 2009 L 211, p. 55.

Action brought on 8 June 2018 — European Commission v Kingdom of Belgium

(Case C-384/18)

(2018/C 285/48)

Language of the case: French

Parties

Applicant: European Commission (represented by: H. Tserepa-Lacombe and L. Malferrari, acting as Agents,)

Defendant: Kingdom of Belgium

Form of order sought

— Find that the Kingdom of Belgium has failed to fulfil its obligations under Article 25 of Directive 2006/123/EC (1) and Article 49 TFEU;

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By (i) prohibiting the joint exercise of work as accountants, on the one hand, and as brokers, insurance agents, estate agents or all banking and financial services work, on the other, and by (ii) permitting the Chambers of the Institut Professionnel des Comptables et Fiscalistes Agréés (Institute of Accounting professionals and Tax Experts; IPCF) to prohibit the joint exercise of work as accountants, on the one hand, with any craft or commercial agricultural activity, on the other, the Kingdom of Belgium has failed to fulfil its obligations under Article 25 of Directive 2006/123/EC and Article 49 TFEU.

(1) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Action brought on 29 June 2018 — European Commission v Italian Republic

(Case C-434/18)

(2018/C 285/49)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— find that, by not having sent its national programme for the management of spent nuclear fuel and radioactive waste to the Commission, the Italian Republic has failed to fulfil its obligation under Article 15(4), in conjunction with Article 13 (1), of Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste. ([1])

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 15(4), in conjunction with Article 13(1), of Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste establishes that Member States are to notify the Commission for the first time 'as soon as possible', but not later than 23 August 2015, of the content of their national programmes regarding all items set out in Article 12 of the directive.

The Commission claims that it is apparent from the information provided by the Italian Republic during the pre-litigation stage that that notification never took place, in as much as the Italian authorities have not yet sent the Commission the final text of the national programme adopted for the management of spent nuclear fuel and radioactive waste.

([1]) OJ 2011 L 199, p 48.

GENERAL COURT

Action brought on 17 May 2018 — Adis Higiene v EUIPO — Farecla Products (G3 EXTRA PLUS)

(Case T-309/18)

(2018/C 285/50)

Language in which the application was lodged: Spanish

Parties

Applicant: Adis Higiene (Pozuelo de Alarcón, Spain) (represented by: M. Sanmartín Sanmartín, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Farecla Products Ltd (Ware, United Kingdom)

Details of the proceedings before EUIPO

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

Trade mark at issue: Word mark 'G3 EXTRA PLUS' — European Union trade mark No 15 064 207

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 2 March 2018 in Case R 2134/2017-4

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 42 of Regulation No 207/2009, read in conjunction with Rule 22 of Regulation No 2868/95;

— Infringement of Articles 94, 95 and 107 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

— Infringement of the obligation to state reasons.

Action brought on 23 May 2018 — Carvalho and Others v Parliament and Council

(Case T-330/18)

(2018/C 285/51)

Language of the case: English

Parties

Applicants: Armando Carvalho (Santa Comba Dão, Portugal), and 36 others (represented by: G. Winter, professsor, R. Verheyen, lawyer, and H. Leith, Barrister)

Defendants: Council of the European Union, European Parliament

Form of order sought

— declare the 'GHG Emissions Acts' ([1]) unlawful insofar as they allow the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80 % of the 1990 emissions in 2021 and decreasing to 60 % of the 1990 emissions in 2030;

— annul the GHG Emissions Acts insofar as they set targets to reduce GHG emissions by 2030 by 40 % of 1990 levels, and in particular, Article 9, paragraph 2, of Directive 2003/87/EC, as last amended by Directive 2018/410, Article 4(2) of and Annex I to Regulation 2018/842, and Article 4 of Regulation 2018/841;

— order the defendants to adopt measures under the GHG Emissions Acts requiring a reduction in greenhouse gas emissions by 2030 by 50 %-60 % of 1990 levels, or such higher level of reduction as the Court thinks fit;

— in the alternative, if the Court is not minded to grant an injunction and its decision to annul the reduction targets comes too late to allow for a modification of the relevant provisions before 2021, the applicants claim that the Court should order that the contested provisions of the GHG Emissions Acts shall remain in force until a defined date, by which time they must be modified in accordance with the higher ranking legal requirements;

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

Pleas in law and main arguments

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

1. First plea in law, relating to their claim for annulment, alleging that the Union is obliged by rules of higher ranking law to avoid harm caused by climate change, under the customary international law duty prohibiting states from causing harm and to prevent damage under Article 191 TFEU. The Union is likewise obliged to prevent infringements of fundamental rights protected by the Charter of Fundamental Rights of the EU caused by climate change. These rights include the right to life and physical integrity, the right to pursue an occupation, the right to property, the rights of children and the right to equal treatment.

2. Second plea in law, relating to their claim for annulment, alleging that, given the causal connection between the emission of greenhouse gases and dangerous climate change, the Union is responsible for taking measures to regulate emissions of greenhouse gases from within the Union to avoid this harm and to prevent infringements of fundamental rights.

3. Third plea in law, relating to their claim for annulment, alleging that climate change is already causing harm and infringements of fundamental human rights and will continue to do so. Any further emission of greenhouse gases contributing to these effects will therefore be unlawful unless that emission can be justified on objective grounds, and where the Union has sought to make reductions to the extent of its technical and economic capability.

4. Fourth plea in law, relating to their claim for annulment, alleging that no such justification is available to the Union in adopting the targets set by the GHG Emissions Acts for the following reasons:

   — The targets authorise emissions in quantities that significantly exceed the EU's equitable share of the budget of emissions implied by the objective set by the Paris Agreement of a maximum increase in global average temperature of 1,5 °C or well below 2 °C;

   — The targets were set without the defendants examining the extent of the technical and economic capability of the Union to make reductions. The targets chosen were rather selected as the most cost-effective means of meeting a prior long-term emissions target, which has since been superseded by the Paris Agreement;

   — The evidence available to the defendants shows that the Union did in fact have the capability to pursue measures providing for reductions in greenhouse gases of at least 50 %-60 % below 1990 levels by 2030.

5. Fifth plea in law, relating to their claim for injunctive relief, again alleging that the Union is obliged by rules of higher ranking law to avoid harm caused by climate change, under the customary international law duty prohibiting states from causing harm and to prevent damage under Article 191 TFEU. It is also obliged to avoid and prevent infringements of fundamental rights arising from climate change under the Charter of Fundamental Rights of the EU.

6. Sixth plea in law, relating to their claim for injunctive relief, alleging that the Union has been, by virtue of its responsibility for the emission of greenhouse gases, in breach of these duties at earlier times:

   — It was in breach of the duty to avoid inflicting harm since 1992, when the UN Framework Convention on Climate Change was adopted and knowledge of climate change became general;

   — The Union's breach of duty was compounded in 2009, when both Article 191 TFEU and the Charter of Fundamental Rights of the EU were in force;

   — At these points in time, the continued emission of greenhouse gases would be prohibited unless that conduct was objectively justified. The Union has not and cannot contend that the level of emissions that it continued to permit throughout this period were consistent with its technical and economic capacity to reduce emissions.

7. Seventh plea in law, relating to their claim for injunctive relief, alleging that the Union continues to be in breach of its obligations now, in adopting the emissions reductions targets in the GHG Emissions Acts. As set out in the pleas in law relating to their action for annulment, the GHG Emissions Acts fail to reduce emissions, and allow the continued release of emissions, at levels that are unlawful and cannot be justified.

8. Eighth plea in law, relating to their claim for injunctive relief, alleging that the Union's breach of obligations is a sufficiently serious breach of a rule of law conferring rights on individuals. The Union has no discretion to decline to consider or adopt measures within its technical and economic capability for the reduction of emissions.

9. Ninth plea in law, relating to their claim for injunctive relief, alleging that the breaches of duty have caused dangerous climate change which has caused material damage to certain of the applicants and will cause further and additional types of damage to the applicants in the future.

10. Tenth plea in law, relating to their claim for injunctive relief, alleging that the Union is obliged to ensure its conduct conforms to its legal obligation to make emissions reductions commensurate with its technical and economic capability, which the evidence shows to be a reduction of at least 50 %-60 % by 2030 of 1990 level emissions. The applicants seek an injunction from the Court to this effect.

(1) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3); Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26); and Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1). (In their application, the applicants refer to Regulations 2018/842 and 2018/841 in the versions adopted by the Council on 14 May 2018, before signature and publication in the Official Journal.)

Action brought on 1st of June 2018 — Laboratoire Pareva v Commission

(Case T-337/18)

(2018/C 285/52)

Language of the case: English

Parties

Applicant: Laboratoire Pareva (Saint Martin de Crau, France) (represented by: K. Van Maldegem and S. Englebert, lawyers)

Defendant: European Commission

Form of order sought

— declare the application admissible and well-founded;

— annul the European Commission's Implementing Decision (EU) 2018/619 (1) of 20 April 2018 not approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 1, 5 and 6 under Regulation 528/2012 (2) (the '*Contested Decision*'); and

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

Pleas in law and main arguments

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

The applicant submits that the Contested Decision was adopted by the defendant in violation of the Treaty on the Functioning of the European Union ("TFEU"), the EU secondary legislation and the principles of EU law. Therefore, the applicant seeks annulment of the Contested Decision on the following three grounds:

1. First plea in law, alleging substantive procedural errors:

— the defendant has failed to follow procedural steps that were required of it prior to adopting the Contested Decision. The defendant has infringed substantive procedural rules of Article 6(7)(a) and Article 6(7)(b) of Commission Delegated Regulation (EU) 1062/2014 (3) which, if they had been respected, could have led to a different outcome.

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

— The defendant has committed a manifest error of assessment by taking into account irrelevant factors in its assessment of PHMB and by failing to give sufficient and due weight to factors which are specific and relevant to the applicant's PHMB.

3. Third plea in law, alleging breach of fundamental principles of EU law and of the rights of defence:

— The defendant did not guarantee that the applicant was given a full, proper and effective opportunity to submit comments during the procedure.

(1) Commission Implementing Decision (EU) 2018/619 of 20 April 2018 not approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 1, 5 and 6 (OJ 2018, L 102, p. 21)
(2) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012, L 167, p. 1)
(3) Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ 2014, L 294, p. 1)

Action brought on 1st of June 2018 — Laboratoire Pareva and Biotech3D v Commission

(Case T-347/18)

(2018/C 285/53)

Language of the case: English

Parties

Applicants: Laboratoire Pareva (Saint Martin de Crau, France) and Biotech3D Ltd & Co. KG (Gampern, Austria) (represented by: K. Van Maldegem and S. Englebert, lawyers)

Defendant: European Commission

Form of order sought

— declare the application admissible and well-founded;

— annul the European Commission's Implementing Regulation (EU) 2018/613 (1) of 20 April 2018 approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 2 and 4 under Regulation 528/2012 (2) (the 'Contested Act'); and

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

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law which are in essence identical or similar to those relied on in Case T-337/18, *Laboratoire Pareva* v *Commission*.

(1) Commission Implementing Regulation (EU) 2018/613 of 20 April 2018 approving PHMB (1415; 4.7) as an existing active substance for use in biocidal products of product-types 2 and 4 (OJ 2018, L 102, p. 1)
(2) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012, L 167, p. 1)

Action brought on 8 June 2018 — Spain v Commission

(Case T-355/18)

(2018/C 285/54)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. García-Valdecasas Dorrego, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the notice of open competitions;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

The present action is directed against the notice of open competitions to fill posts in the civil service as administrators (AD 6), EPSO/AD/340/18 and EPSO/AD/341/18.

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

1. First plea in law, alleging infringement of Articles 1 and 2 of Regulation No 1/58, Article 22 of the Charter of Fundamental Rights of the European Union ('the Charter'), and Article 1d of the Staff Regulations, by imposing the restriction, which extends to the application form, that communication between EPSO and the applicant should be solely in English, French and German.

2. Second plea in law, alleging infringement of Articles 1 and 6 of Regulation No 1/58; Article 22 of the Charter; and Article 1d(1) and (6), Article 27 and Article 28(f) of the Staff Regulations, by improperly restricting the selection of the second language to four languages only, namely English, French, German and Italian, thereby excluding the other official languages of the European Union.

3. Third plea in law, alleging that the selection of English, French, German and Italian constitutes an arbitrary selection giving rise to discrimination on the ground of language, prohibited by Article 1 of Regulation No 1/58; Article 22 of the Charter; and Article 1d(1) and (6), Article 27 and Article 28(f) of the Staff Regulations.

4. Fourth plea in law, alleging that the fact that the contested notice fails expressly to specify that language 1 must be the language in which candidates have a minimum level C1 (thorough knowledge) gives rise to discrimination on the ground of nationality and discrimination on the ground of the language 'spoken', in breach of Article 1 of Regulation No 1/58; Article 22 of the Charter; and Article 1d(1) and (6), Article 27 and Article 28(f) of the Staff Regulations.

Action brought on 19 June 2018 — Labiri v EESC

(Case T-374/18)

(2018/C 285/55)

Language of the case: French

Parties

Applicant: Vassiliki Labiri (Brussels, Belgium) (represented by: J.-N. Louis, lawyer)

Defendant: European Economic and Social Committee

Form of order sought

— Request the defendant, as a measure of organisation of procedure, to produce the decision of 30 March 2016 of the Secretary General of the EESC by which he decides that no charges are to be brought against the applicant's Head of Unit;

— Declare and rule:

  — that the decision of 30 March 2016 of the Secretary General of the EESC to bring no charges against the applicant's Head of Unit and to close her request for assistance/complaint of 14 December 2007 without taking further action is annulled;

  — that the EESC is ordered 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 obligation to state reasons which flows from the second paragraph of Article 25 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') and infringement of the principles of cooperation flowing from the Administrative Cooperation Agreement between the EESC and the Committee of the Regions of 17 December 2007.

2. Second plea in law, alleging infringement of the first paragraph of Article 24 of the Staff Regulations and of Article 41 of the Charter of Fundamental Rights of the European Union conferring the right to proper administration on all persons. In particular, the contested decision was taken in breach of the applicant's right to be heard and of observance of the rights of the defence.

3. Third plea in law, alleging a manifest error of assessment committed by the EESC in adopting a decision to close the matter without further action which referred unlawfully to a settlement reached in an action before the Civil Service Tribunal and to the findings of the administrative inquiry which had never examined whether the facts on which the applicant's complaint was based could objectively have constituted psychological harassment.

Action brought on 25 June 2018 — Aldi v EUIPO — Crone (CRONE)

(Case T-385/18)

(2018/C 285/56)

Language in which the application was lodged: German

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Christoph Michael Crone (Krefeld, Germany)

Details of the proceedings before EUIPO

Applicant for registration: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for EU figurative mark CRONE No 14 854 533

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 March 2018 in Case R 1100/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 25 June 2018 — Delta-Sport v EUIPO — Delta Enterprise (DELTA SPORT)
(Case T-387/18)

(2018/C 285/57)

Language of the case: English

Parties

Applicant: Delta-Sport Handelskontor GmbH (Hamburg, Germany) (represented by: M. Krogmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Delta Enterprise Corp. (New York, New York, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark DELTA SPORT — Application for registration No 14 327 911

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 17 April 2018 in Case R 1894/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those relating to the proceedings before the Fifth Board of Appeal;

— take any other measures that it may consider appropriate.

Plea in law

— Infringement of Article 8(1)(b) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2018 — Nonnemacher v EUIPO — Ingram (WKU)

(Case T-389/18)

(2018/C 285/58)

Language in which the application was lodged: German

Parties

Applicant: Klaus Nonnemacher (Karlsruhe, Germany) (represented by: C. Zierhut, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Paul Ingram (Birmingham, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark WKU — EU trade mark No 11 482 841

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 17 April 2018 in Case R 399/2017-1

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 61 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2018 — Nonnemacher v EUIPO — Ingram (WKU WORLD KICKBOXING AND KARATE UNION)

(Case T-390/18)

(2018/C 285/59)

Language in which the application was lodged: German

Parties

Applicant: Klaus Nonnemacher (Karlsruhe, Germany) (represented by: C. Zierhut, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Paul Ingram (Birmingham, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark WKU WORLD KICKBOXING AND KARATE UNION — EU trade mark No 11 523 958

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 17 April 2018 in Case R 409/2017-1

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 61 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 28 June 2018 — Innocenti v EUIPO — Gemelli (Innocenti)

(Case T-392/18)

(2018/C 285/60)

Language in which the application was lodged: Italian

Parties

Applicant: Innocenti SA (Lugano, Switzerland) (represented by: N. Ferretti, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Filippo Gemelli (Turin, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the Board of Appeal

Trade mark at issue: European Union word mark 'Innocenti' – Application for registration No 7 502 181

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 19 April 2018 in Case R 2336/2010-5

Form of order sought

The applicant claims that the Court should:

— Alter Decision No 2336/2010-5 of the Fifth Board of Appeal by annulling it and reject Filippo Gemelli's opposition to mark 007502181.

Pleas in law

— Failure to comply with the time limit for submission of documentary evidence of the decision of the Tribunale di Torino (District Court, Turin, Italy) revoking the earlier mark on the ground of non-use;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 25 June 2018 — Pielczyk v EUIPO — Thalgo TCH (DERMAEPIL SUGAR EPIL SYSTEM)

(Case T-398/18)

(2018/C 285/61)

Language of the case: English

Parties

Applicant: Radoslaw Pielczyk (Klijndijk, Netherlands) (represented by: K. Kielar, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Thalgo TCH (Roquebrune-sur-Argens, France)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: European Union trade mark No 11 649 324

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 April 2018 in Joined Cases R 979/2017-4 and R 1070/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in part, namely in so far as the Board of Appeal

a) dismissed the Applicant's appeal R 979/2017-4

b) partially allowed the cancellation Thalgo TCH's appeal R 1070/2017-4 for the goods in Class 3 of the Nice Classification;

c) declared the EUTM No 11 649 324 also invalid for the indicated goods in Class 3;

d) upheld EUIPO's decision of 21/03/2017 (Cancellation proceedings No 11 974 C) in part in which pursuant to the decision the Applicant's trade mark has been declared invalid for goods in Class 3;

— order Thalgo TCH to pay the costs incurred in the proceedings before the cancellation Division of the EUIPO and the Board of Appeal;

— order EUIPO to pay the costs of the present proceedings.

Pleas in law

— Infringement of Article 60(1)(a) in connection with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Rule 22(3)(4) in connection with Rule 40(6) of the Commission Regulation (Ec) No 2868/95;

— Infringement of Article 64(2)(3) in connection with Article 18(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 July 2018 — Silgan Closures and Silgan Holdings v Commission

(Case T-410/18)

(2018/C 285/62)

Language of the case: German

Parties

Applicants: Silgan Closures GmbH (Munich, Germany), Silgan Holdings Inc. (Stamford, Connecticut, United States) (represented by: H. Wollmann, D. Seeliger, R. Grafunder and V. Weiss, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the contested decision pursuant to Article 264 TFEU in so far as it relates to the applicants;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

By the present action, the applicants request that the Court annul in part Commission Decision C(2018) 2466 final of 19 April 2018 on the initiation of proceedings pursuant to Article 2(1) of Commission Regulation (EC) No 773/2004 ([1]) in case AT.40522 — Pandora.

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

1. Infringement of the principle of subsidiarity

   In the first plea in law the applicants complain that, by the contested decision, the Commission has withdrawn the legal basis from proceedings before the German Federal Cartel Office in the same case, such proceedings having been pending for more than three years to date and having reached the decision stage.

2. Infringement of the principle of proportionality

   In the second plea in law the applicants allege that the contested decision was neither necessary in order to allow the Commission to carry out the general check that it wished to undertake, nor appropriate, taking into account the interests of both sides, given its disadvantages for the applicants.

3. Insufficient justification

In the third plea in law the applicants argue that, contrary to Article 296 TFEU, in the contested decision the Commission listed no reasons as to why it considered that, in the light of the principles of subsidiarity and proportionality, it was necessary and justified to initiate proceedings.

4. Misuse of powers

In the fourth plea in law the applicants allege that the Commission initiated proceedings with the aim of making it possible to impose penalties on the applicants under the system of penalties established in Council Regulation (EC) No 1/2003. ([2])

([1]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

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