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

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NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2019/C 139/01)

Last publication

OJ C 131, 8.4.2019

Past publications

OJ C 122, 1.4.2019

OJ C 112, 25.3.2019

OJ C 103, 18.3.2019

OJ C 93, 11.3.2019

OJ C 82, 4.3.2019

OJ C 72, 25.2.2019

These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2019/C 139/02)

On 20 March 2019, the plenary meeting of the General Court decided, following the entry into office of Judge Frendo, on a proposal from the President presented in accordance with Article 13(2) of the Rules of Procedure, to amend the decision assigning judges to Chambers of 21 September 2016, ([1]) as amended on 8 June 2017, ([2])4 October 2017 ([3]) and on 11 October 2018, ([4]) for the period from 20 March 2019 to 31 August 2019 and to assign the judges to Chambers as follows:

First Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Valančius, Mr Nihoul, Mr Svenningsen and Mr Öberg, Judges.

First Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

(a) Mr Nihoul and Mr Svenningsen, Judges;

(b) Mr Valančius and Mr Öberg, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Prek, President of the Chamber, Mr Buttigieg, Mr Schalin, Mr Berke and Ms Costeira, Judges.

Second Chamber, sitting with three Judges:

Mr Prek, President of the Chamber;

(a) Mr Schalin and Ms Costeira, Judges;

(b) Mr Buttigieg and Mr Berke, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Frimodt Nielsen, President of the Chamber, Mr Kreuschitz, Mr Forrester, Ms Półtorak and Mr Perillo, Judges.

Third Chamber, sitting with three Judges:

Mr Frimodt Nielsen, President of the Chamber;

(a) Mr Forrester and Mr Perillo, Judges;

(b) Mr Kreuschitz and Ms Półtorak, Judges.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Schwarcz, Mr Iliopoulos, Mr Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

([1]) OJ 2016 C 392, p. 2.
([2]) OJ 2017 C 213, p. 2.
([3]) OJ 2017 C 382, p. 2.
([4]) OJ 2018 C 408, p. 2.

Fourth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

(a) Mr Schwarcz and Mr Iliopoulos, Judges;

(b) Mr Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Gratsias, President of the Chamber, Ms Labucka, Mr Dittrich, Mr Ulloa Rubio and Ms Frendo, Judges.

Fifth Chamber, sitting with three Judges:

Mr Gratsias, President of the Chamber;

(a) Mr Dittrich and Ms Frendo, Judges;

(b) Ms Labucka and Mr Ulloa Rubio, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Berardis, President of the Chamber, Mr Papasavvas, Mr Spielmann, Mr Csehi and Ms Spineanu-Matei, Judges.

Sixth Chamber, sitting with three Judges:

Mr Berardis, President of the Chamber;

(a) Mr Papasavvas and Ms Spineanu-Matei, Judges;

(b) Mr Spielmann and Mr Csehi, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Mr Bieliūnas, Ms Marcoulli, Mr Passer and Mr Kornezov, Judges.

Seventh Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber;

(a) Mr Bieliūnas and Mr Kornezov, Judges;

(b) Mr Bieliūnas and Mr Marcoulli, Judges;

(c) Ms Marcoulli and Mr Kornezov, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Collins, President of the Chamber, Ms Kancheva, Mr Barents, Mr Passer and Mr De Baere, Judges.

Eighth Chamber, sitting with three Judges:

Mr Collins, President of the Chamber;

(a) Mr Barents and Mr Passer, Judges;

(b) Ms Kancheva and Mr De Baere, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr da Silva Passos, Ms Kowalik-Bańczyk and Mr Mac Eochaidh, Judges.

Ninth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber;

(a) Mr Madise and Mr da Silva Passos, Judges;

(b) Ms Kowalik-Bańczyk et Mr Mac Eochaidh, Judges.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 26 February 2019 (requests for a preliminary ruling from the Østre Landsret, Vestre Landsret — Denmark) — N Luxembourg 1 (C-115/16), X Denmark A/S (C-118/16), C Danmark I (C-119/16), Z Denmark ApS (C-299/16) v Skatteministeriet

(Joined Cases C-115/16, C-118/16, C-119/16 and C-299/16) ([1])

(Reference for a preliminary ruling — Approximation of laws — Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States — Directive 2003/49/EC — Beneficial owner of the interest and royalties — Article 5 — Abuse of rights — Company established in a Member State and paying to an associated company established in another Member State interest all or almost all of which is then transferred outside the European Union — Subsidiary subject to an obligation to withhold tax on the interest at source)

(2019/C 139/03)

Language of the case: Danish

Referring courts

Østre Landsret, Vestre Landsret

Parties to the main proceedings

Applicants: N Luxembourg 1 (C-115/16), X Denmark A/S (C-118/16), C Danmark I (C-119/16), Z Denmark ApS (C-299/16)

Defendant: Skatteministeriet

Operative part of the judgment

1. Cases C-115/16, C-118/16, C-119/16 and C-299/16 are joined for the purposes of the judgment.

2. Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, read in conjunction with Article 1(4) thereof, must be interpreted as meaning that the exemption of interest payments from any taxes that is provided for by it is restricted solely to the beneficial owners of such interest, that is to say, the entities which actually benefit from that interest economically and accordingly have the power freely to determine the use to which it is put.

   The general principle of EU law that EU law cannot be relied on for abusive or fraudulent ends must be interpreted as meaning that, where there is a fraudulent or abusive practice, the national authorities and courts are to refuse a taxpayer the exemption of interest payments from any taxes that is provided for in Article 1(1) of Directive 2003/49, even if there are no domestic or agreement-based provisions providing for such a refusal.

3. Proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it. The presence of a certain number of indications may demonstrate that there is an abuse of rights, in so far as those indications are objective and consistent. Such indications can include, in particular, the existence of conduit companies which are without economic justification and the purely formal nature of the structure of the group of companies, the financial arrangements and the loans. The fact that the Member State where the interest arises has concluded a convention with the third State in which the company that is the beneficial owner of the interest is resident has no bearing on any finding of an abuse of rights.

4. In order to refuse to accord a company the status of beneficial owner of interest, or to establish the existence of an abuse of rights, a national authority is not required to identify the entity or entities which it regards as being the beneficial owner(s) of that interest.

5. Article 3(a) of Directive 2003/49 must be interpreted as meaning that a société en commandite par actions (SCA) (limited partnership with share capital) authorised as a société d'investissement en capital à risque (SICAR) (risk capital investment company) governed by Luxembourg law cannot be classified as a company of a Member State, within the meaning of that directive, capable of being entitled to the exemption provided for in Article 1(1) of the directive if, a matter which is for the referring court to ascertain, the interest received by that SICAR, in a situation such as that at issue in the main proceedings, is exempt from impôt sur les revenus des collectivités (corporate income tax) in Luxembourg.

6. In a situation where the system, laid down by Directive 2003/49, of exemption from withholding tax on interest paid by a company resident in a Member State to a company resident in another Member State is not applicable because there is found to be fraud or abuse, within the meaning of Article 5 of that directive, application of the freedoms enshrined in the FEU Treaty cannot be relied on in order to call into question the legislation of the first Member State governing the taxation of that interest.

   Outside such a situation, Article 63 TFEU must be interpreted as:

   — not precluding, in principle, national legislation under which a resident company which pays interest to a non-resident company is required to withhold tax on that interest at source whilst such an obligation is not owed by that resident company when the company which receives the interest is also a resident company, but as precluding national legislation that prescribes such withholding of tax at source if interest is paid by a resident company to a non-resident company whilst a resident company that receives interest from another resident company is not subject to the obligation to make an advance payment of corporation tax during the first two tax years and is therefore not required to pay corporation tax relating to that interest until a date appreciably later than the date for payment of the tax withheld at source;

   — precluding national legislation under which the resident company that owes the obligation to withhold tax at source on interest paid by it to a non-resident company is obliged, if the tax withheld is paid late, to pay default interest at a higher rate than the rate which is applicable in the event of late payment of corporation tax that is charged, inter alia, on interest received by a resident company from another resident company;

   — precluding national legislation providing that, where a resident company is subject to an obligation to withhold tax at source on the interest which it pays to a non-resident company, account is not taken of the expenditure in the form of interest, directly related to the lending at issue, which the latter company has incurred whereas, under that national legislation, such expenditure may be deducted by a resident company which receives interest from another resident company for the purpose of establishing its taxable income.

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(1) OJ C 270, 25.7.2016.

OJ C 279, 1.8.2016.

Judgment of the Court (Grand Chamber) of 26 February 2019 (requests for a preliminary ruling from the Østre Landsret — Denmark) — Skatteministeriet v T Danmark (C-116/16), Y Denmark Aps (C-117/16)

(Joined Cases C-116/16 and C-117/16) ([1])

(Reference for a preliminary ruling — Approximation of laws — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 90/435/EEC — Exemption of the profits distributed by companies of a Member State to companies of other Member States — Beneficial owner of the distributed profits — Abuse of rights — Company established in a Member State and paying to an associated company established in another Member State dividends all or almost all of which are then transferred outside the European Union — Subsidiary subject to an obligation to withhold tax on the profits at source)

(2019/C 139/04)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Skatteministeriet

Defendants: T Danmark (C-116/16), Y Denmark Aps (C-117/16)

Operative part of the judgment

1. Cases C-116/16 and C-117/16 are joined for the purposes of the judgment.

2. The general principle of EU law that EU law cannot be relied on for abusive or fraudulent ends must be interpreted as meaning that, where there is a fraudulent or abusive practice, the national authorities and courts are to refuse a taxpayer the exemption from withholding tax on profits distributed by a subsidiary to its parent company, provided for in Article 5 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003, even if there are no domestic or agreement-based provisions providing for such a refusal.

3. Proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it. The presence of a certain number of indications may demonstrate that there is an abuse of rights, in so far as those indications are objective and consistent. Such indications can include, in particular, the existence of conduit companies which are without economic justification and the purely formal nature of the structure of the group of companies, the financial arrangements and the loans.

4. In order to refuse to accord a company the status of beneficial owner of dividends, or to establish the existence of an abuse of rights, a national authority is not required to identify the entity or entities which it regards as being the beneficial owner(s) of those dividends.

5. In a situation where the system, laid down by Directive 90/435, as amended by Directive 2003/123, of exemption from withholding tax on dividends paid by a company resident in a Member State to a company resident in another Member State is not applicable because there is found to be fraud or abuse, within the meaning of Article 1(2) of that directive, application of the freedoms enshrined in the FEU Treaty cannot be relied on in order to call into question the legislation of the first Member State governing the taxation of those dividends.

([1]) OJ C 270, 25.7.2016.

Judgment of the Court (Third Chamber) of 28 February 2019 — Council of the European Union v Growth Energy, Renewable Fuels Association, European Commission, ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol

(Case C-465/16 P) ([1])

(Appeal — Dumping — Implementing Regulation (EU) No 157/2013 — Imports of bioethanol originating in the United States of America — Definitive anti-dumping duty — Country-wide dumping margin — Actions for annulment — Associations representing non-exporting producers and traders/blenders — Locus standi — Direct concern — Individual concern)

(2019/C 139/05)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: S. Boelaert, Agent, and N. Tuominen, avocată)

Other parties to the proceedings: Growth Energy, Renewable Fuels Association (represented by: P. Vander Schueren, advocaat, and N. Mizulin and M. Peristeraki, avocats), European Commission (represented by: T. Maxian Rusche and M. França, Agents), ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol (represented by: O. Prost and A. Massot, avocats)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 9 June 2016, Growth Energy and Renewable Fuels Association v Council (T-276/13, EU:T:2016:340), except inasmuch as it dismissed the action brought by Growth Energy and Renewable Fuels Association in their own right as interested parties in the proceedings;

2. Dismisses the action for annulment of Growth Energy and Renewable Fuels Association as inadmissible in so far as they brought that action in their capacity as representatives of the interests of the sampled US bioethanol producers;

3. Refers the case back to the General Court of the European Union for it to rule on the action for annulment of Growth Energy and Renewable Fuels Association in so far as they brought that action in their capacity as representatives of the interests of the traders/blenders Murex and CHS;

4. Reserves the costs.

(1) OJ C 402, 31.10.2016.

Judgment of the Court (Third Chamber) of 28 February 2019 — Council of the European Union v Marquis Energy LLC, European Commission, ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol

(Case C-466/16 P) (1)

(Appeal — Dumping — Implementing Regulation (EU) No 157/2013 — Imports of bioethanol originating in the United States of America — Definitive anti-dumping duty — Country-wide dumping margin — Actions for annulment — Non-exporting producer — Locus standi — Direct concern)

(2019/C 139/06)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: S. Boelaert, Agent, and N. Tuominen, avocată)

Other parties to the proceedings: Marquis Energy LLC (represented by: P. Vander Schueren, advocaat, and N. Mizulin and M. Peristeraki, avocats), European Commission (represented by: T. Maxian Rusche and M. França, Agents), ePURE, de Europese Producenten Unie van Hernieuwbare Ethanol (represented by: O. Prost and A. Massot, avocats)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 9 June 2016, Marquis Energy v Council (T-277/13, not published, EU:T:2016:343);

2. Dismisses the action for annulment brought by Marquis Energy LLC as inadmissible;

3. Orders Marquis Energy LLC to bear its own costs and to pay those incurred by the Council of the European Union both in relation to the proceedings at first instance and the appeal;

4. Orders the European Commission to bear its own costs both in the proceedings at first instance and on appeal.

(1) OJ C 402, 31.10.2016.

Judgment of the Court (Grand Chamber) of 26 February 2019 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — X GmbH v Finanzamt Stuttgart — Körperschaften

(Case C-135/17) ([1])

(Reference for a preliminary ruling — Free movement of capital — Movement of capital between Member States and third countries — Standstill clause — National legislation of a Member State regarding controlled companies established in third countries — Amendment of that legislation, followed by the reintroduction of the earlier legislation — Income of a company established in a third country derived from the holding of debts owed by a company established in a Member State — Incorporation of that income into the tax base of a taxable person resident for tax purposes in a Member State — Restriction on the free movement of capital — Justification)

(2019/C 139/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: X GmbH

Defendant: Finanzamt Stuttgart — Körperschaften

Operative part of the judgment

1. The standstill clause in Article 64(1) TFEU must be interpreted as meaning that Article 63(1) TFEU does not prejudice the application of a restriction on movements of capital to or from third countries involving direct investment which existed, in its essence, on 31 December 1993 in the legislation of a Member State, although the scope of the restriction was extended, after that date, to include shareholdings which do not involve direct investment.

2. The standstill clause in Article 64(1) TFEU must be interpreted as meaning that the prohibition in Article 63(1) TFEU is applicable to a restriction on movements of capital to or from third countries involving direct investment where the national tax legislation laying down that restriction was substantially amended, after 31 December 1993, by means of the adoption of a law which entered into force, but which was replaced, before ever being applied in practice, by legislation essentially identical to that applicable on 31 December 1993, unless the applicability of that law was deferred in accordance with national law, so that, despite its entry into force, it was not applicable to cross-border movements of capital that are covered by Article 64(1) TFEU, which it is for the referring court to determine.

3. Article 63(1) TFEU must be interpreted as not precluding legislation of a Member State under which income obtained by a company established in a third country that does not come from an activity of that company pursued on its own account, such as income classified as 'controlled-company income from invested capital' within the meaning of that legislation, is incorporated, pro rata to the amount of the shareholding, into the tax base of a taxable person residing in that Member State where that taxable

person holds at least 1 % of the shares in that company and that income is taxed, in that third country, at a lower rate than the rate prevailing in the Member State concerned, unless there is a legal framework providing, in particular, treaty obligations that empower the national tax authorities of that Member State to verify, if necessary, the accuracy of information provided in respect of that company with a view to demonstrating that that taxable person's shareholding in that company is not the result of an artificial scheme.

(1) OJ C 221, 10.7.2017.

Judgment of the Court (Ninth Chamber) of 28 February 2019 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Konkurrensverket v SJ AB

(Case C-388/17) (1)

(Reference for a preliminary ruling — Public procurement procedures in the transport sector — Directive 2004/17/EC — Scope — Article 5 — Activities relating to the provision or operation of networks to provide a service to the public in the field of transport by railways — Award, by a public national railway undertaking providing transport services, of cleaning service contracts for trains belonging to that undertaking — No prior publication)

(2019/C 139/08)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Konkurrensverket

Defendant: SJ AB

Operative part of the judgment

1. The second subparagraph of Article 5(1) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors must be interpreted as meaning that there is a network of rail transport services, within the meaning of that provision, where transport services are provided, in application of national legislation transposing Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, on a railway infrastructure managed by a national authority which allocates infrastructure capacity even if that authority is required to meet the requests of railway undertakings provided that the limits of that capacity are not reached;

2. The first subparagraph of Article 5(1) of Directive 2004/17 must be interpreted as meaning that the activity pursued by a railway undertaking, which consists of providing transport services to the public in exercising a right of use of the railway network, is an 'operation of networks' for the purposes of that directive.

(1) OJ C 293, 4.9.2017.

Judgment of the Court (Grand Chamber) of 26 February 2019 (request for a preliminary ruling from the Cour administrative d'appel de Versailles — France) — Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)

(Case C-497/17) (1)

(Reference for a preliminary ruling — Article 13 TFEU — Animal welfare — Regulation (EC) No 1099/2009 — Protection of animals at the time of killing — Particular methods of slaughter prescribed by religious rites — Regulation (EC) No 834/2007 — Articles 3 and 14(1)(b)(viii) — Compatibility with organic production — Regulation (EC) No 889/2008 — First paragraph of Article 57 — Organic production logo of the European Union)

(2019/C 139/09)

Language of the case: French

Referring court

Cour administrative d'appel de Versailles

Parties to the main proceedings

Applicant: Oeuvre d'assistance aux bêtes d'abattoirs (OABA)

Defendants: Ministre de l'Agriculture et de l'Alimentation, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)

Operative part of the judgment

Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, in particular Article 3 and Article 14(1)(b)(viii) thereof, read in the light of Article 13 TFEU, must be interpreted as not authorising the placing of the organic production logo of the European Union, referred to in the first paragraph of Article 57 of Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Regulation No 834/2007, as amended by Regulation (EU) No 271/2010 of 24 March 2010, on products derived from animals which have been slaughtered in accordance with religious rites without first being stunned, where such slaughter is conducted in accordance with the requirements laid down by Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, in particular Article 4(4) thereof.

(1) OJ C 347, 16.10.2017.

Judgment of the Court (Ninth Chamber) of 28 February 2019 — Groupe Léa Nature v European Union Intellectual Property Office (EUIPO), Debonair Trading Internacional Lda

(Case C-505/17 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) and Article 8(5) — Figurative mark containing the word elements 'SO'BiO ētic' — EU and national word and figurative marks containing the word element 'SO…?' — Opposition by the proprietor — Refusal of registration)

(2019/C 139/10)

Language of the case: English

Parties

Appellant: Groupe Léa Nature SA (represented by: E. Baud, Avocat)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: E. Markakis and D. Botis, Agents), Debonair Trading Internacional Lda (represented by T. Alkin, Barrister)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Groupe Léa Nature SA to pay, in addition to its own costs, those incurred by Debonair Trading Internacional Lda and by The Office of the European Union for Intellectual Property (EUIPO).

([1]) OJ C 437, 18.12.2017.

Judgment of the Court of Justice (Second Chamber) of 27 February 2019 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Associação Peço a Palavra and Others v Conselho de Ministros

(Case C-563/17) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Regulation (EC) No 1008/2008 — Air carrier company — Reprivatisation process — Sale of shares representing up to 61 % of the share capital — Conditions — Requirement to keep the headquarters and effective management in a Member State — Public service obligations — Requirement to maintain and develop the existing national hub)

(2019/C 139/11)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Associação Peço a Palavra, João Carlos Constantino Pereira Osório, Maria Clara Marques Pires Sarmento Franco, Sofia da Silva Santos Arauz, Maria João Galhardas Fitas

Defendants: Conselho de Ministros

Interveners: Parpública — Participações Públicas SGPS SA, TAP — Transportes Aéreos Portugueses SGPS SA

Operative part of the judgment

1. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as irrelevant for the purposes of assessing the compatibility with EU law of certain requirements relating to the activities carried out by an air carrier company, imposed on the purchaser of a qualified holding in the share capital of that company, in particular of the requirement that that purchaser be required to perform public service obligations and to maintain and develop that company's national hub.

2. Article 49 TFEU must be interpreted as not precluding tender specifications governing the conditions to which a reprivatisation process of an air carrier company is subject from including:

   — a requirement that the purchaser of the shares subject to the reprivatisation process has the capacity to fulfil the performance of the public service obligations on that air carrier company, and

   — a requirement that the purchaser maintain that air carrier company's headquarters and effective management in the Member State concerned, in so far as the transfer of that company's principal place of business outside of that Member State would mean that company losing the air traffic rights conferred on it under bilateral agreements between that Member State and third countries with which that Member State has particular historical, cultural and social ties, which is for the referring court to ascertain.

   — Article 49 TFEU must be interpreted as precluding those tender specifications from including a requirement that the purchaser of those shares ensure that the existing national hub is maintained and developed.

([1]) OJ C 424, 11.12.2017.

Judgment of the Court (Third Chamber) of 28 February 2019 (Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — 'Bene Factum'UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-567/17) ([1])

(Reference for a preliminary ruling — Tax provisions — Excise duty — Directive 92/83/EEC — Article 27(1)(b) — Exemptions — Definition of 'products not for human consumption' — Assessment criteria)

(2019/C 139/12)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: 'Bene Factum' UAB

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Operative part of the judgment

1. Article 27(1)(b) of Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as applying to ethyl alcohol that has been denatured in accordance with the requirements of a Member State and is contained in cosmetics or mouthwashes which, although not intended, as such, for human consumption, are nevertheless consumed as alcoholic beverages by certain individuals.

2. Article 27(1)(b) of Directive 92/83 must be interpreted as applying to ethyl alcohol that has been denatured in accordance with the requirements of a Member State and is contained in cosmetics or mouthwashes which, although not intended, as such, for human consumption, are nevertheless consumed as alcoholic beverages by certain individuals, when the person who imports those products from a Member State in order for them to be supplied to the end consumers in the Member State of destination by other persons, knowing that they are also consumed as alcoholic beverages, has them manufactured and labelled with that in mind in order to increase the sale of those products.

([1]) OJ C 402, 27.11.2017.

Judgment of the Court (Second Chamber) of 28 February 2019 (request for a preliminary ruling from the Arbeits- und Sozialgericht Wien — Austria) — BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse v Gradbeništvo Korana d.o.o.

(Case C-579/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(1) — Scope — Civil and commercial matters — Article 1(2) — Matters excluded — Social security — Article 53 — Application for the issue of the certificate certifying that the judgment delivered by the court of origin is enforceable — Judgment relating to a claim for wage supplements regarding annual leave pay that a social security body has against an employer with respect to the posting of workers — Exercise of a judicial function by the court ruling in the case)

(2019/C 139/13)

Language of the case: German

Referring court

Arbeits- und Sozialgericht Wien

Parties to the main proceedings

Applicant: BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse

Defendant: Gradbeništvo Korana d.o.o.

Operative part of the judgment

Article 1 of 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 must be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of application of that regulation, in so far as the modalities for bringing such an action do not infringe the rules of general law and, in particular, do not exclude the possibility for the court ruling on the case to verify the merits of the information on which the establishment of that claim is based, which is a matter to be determined by the referring court.

([1]) OJ C 424, 11.12.2017.

Judgment of the Court (Grand Chamber) of 26 February 2019 (request for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — Martin Wächtler v Finanzamt Konstanz

(Case C-581/17) ([1])

(Reference for a preliminary ruling — Agreement between the European Community and the Swiss Confederation on the free movement of persons — Transfer by a natural person of his domicile from a Member State to Switzerland — Taxation of unrealised capital gains with respect to shares in a company — Direct taxation — Freedom of movement of self-employed persons — Equal treatment)

(2019/C 139/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Martin Wächtler

Defendant: Finanzamt Konstanz

Operative part of the judgment

The provisions of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, must be interpreted as precluding a tax regime of a Member State which, in a situation where a natural person who is a national of a Member State and who pursues an economic activity in the territory of the Swiss Confederation transfers his domicile from the Member State whose tax regime is at issue to Switzerland, provides for the collection, at the time of that transfer, of the tax payable on unrealised capital gains with respect to shares owned by that national, whereas, if domicile is retained in that Member State, the collection of the tax takes place only at the time when the capital gains are realised, that is on a disposal of the shares concerned.

([1]) OJ C 13, 15.1.2018.

Judgment of the Court (First Chamber) of 27 February 2019 — Hellenic Republic v European Commission

(Case C-670/17 P) ([1])

(Appeal — European Agricultural Guidance and Guarantee Fund (EAGGF) — Guidance Section — Reduction of financial assistance — Regulation (EC) No 1260/1999 — Operational programme — Financial corrections — Article 39 — Legal basis — Transitional provisions)

(2019/C 139/15)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: G. Kanellopoulos, A. Vasilopoulou and I. Pachi, acting as Agents)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and J. Aquilina, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 19 September 2017, Greece v Commission (T-327/15, not published, EU:T:2017:631);

2. Annuls Commission Implementing Decision C(2015) 1936 final of 25 March 2015 on applying financial correction on the EAGGF Guidance Section of the operational programme CCI No 2000GR061PO021 (Greece — Objective 1 — Rural Reconstruction);

3. Orders the European Commission to bear its own costs and to pay those incurred by the Hellenic Republic both in the proceedings at first instance and on appeal.

([1]) OJ C 42, 5.2.2018.

Judgment of the Court (Seventh Chamber) of 28 February 2019 (request for a preliminary ruling from the Oberlandesgericht Karlsruhe — Germany) — Criminal proceedings against Detlef Meyn

(Case C-9/18) ([1])

(Reference for a preliminary ruling — Transport — Directive 2006/126/EC — Mutual recognition of driving licences — Refusal to recognise a driving licence issued in another Member State — Right to drive established on the basis of a driving licence)

(2019/C 139/16)

Language of the case: German

Referring court

Oberlandesgericht Karlsruhe

Party in the main proceedings

Detlef Meyn

Operative part of the judgment

The provisions of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as meaning that they do not preclude a Member State from refusing to recognise a driving licence — the holder of which has his normal residence in its territory — which has been issued by another Member State, without a test of fitness to drive, on the basis of a driving licence issued by another Member State, for its part based on the exchange of a driving licence issued by a third country.

([1]) OJ C 134, 16.4.2018.

Judgment of the Court (Sixth Chamber) of 28 February 2019 — Alfamicro — Sistemas de computadores, Sociedade Unipessoal, Lda. v European Commission

(Case C-14/18 P) ([1])

(Appeal — Arbitration clause — Article 272 TFEU — Concept of a 'declaratory action' — Article 263 TFEU — Concept of an 'administrative decision' — Grant agreement concluded under the Competitiveness and Innovation Framework Programme (CIP) (2007-2013) — Audit reports finding certain declared costs to be ineligible)

(2019/C 139/17)

Language of the case: Portuguese

Parties

Appellants: Alfamicro — Sistemas de computadores, Sociedade Unipessoal, Lda. (represented by: G. Gentil Anastácio and D. Pirra Xarepe, advogados)

Other party to the proceedings: European Commission (represented by: J. Estrada de Solà and M.M. Farrajota, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Alfamicro — Sistemas de computadores, Sociedade Unipessoal, Lda to pay the costs.

([1]) OJ C 72, 26.2.2018.

Judgment of the Court (Grand Chamber) of 26 February 2019 — Ilmārs Rimšēvičs (C-202/18), European Central Bank (ECB) (C-238/18) v Republic of Latvia

(Joined Cases C-202/18 and C-238/18) ([1])

(European System of Central Banks — Action based on infringement of the second subparagraph of Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank — Decision of a national authority suspending the governor of the national central bank from office)

(2019/C 139/18)

Language of the case: Latvian

Parties

Applicants: Ilmārs Rimšēvičs (represented by: S. Vārpiņš, M. Kvēps and I. Pazare, advokāti) (C-202/18), European Central Bank (ECB) (represented by: C. Zilioli, K. Kaiser and C. Kroppenstedt, acting as Agents, and by D. Sarmiento Ramírez-Escudero, abogado, and by V. Ćuske-Jurjeva, advokāte) (C–238/18)

Defendant: Republic of Latvia (represented by: I. Kucina and J. Davidoviča, acting as Agents)

Operative part of the judgment

The Court:

1. Joins Cases C-202/18 and C-238/18 for the purposes of the judgment;

2. Annuls the decision of the Korupcijas novēršanas un apkarošanas birojs (Anti-Corruption Office, Latvia) of 19 February 2018 in so far as it prohibits Mr Ilmārs Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia;

3. Orders the Republic of Latvia to bear its own costs and to pay those incurred by the European Central Bank (ECB).

([1]) OJ C 161, 7.5.2018.

Judgment of the Court (Eighth Chamber) of 28 February 2019 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Manuel Jorge Sequeira Mesquita v Fazenda Pública

(Case C-278/18) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Exemption — Article 13B(b) — Leasing or letting of immovable property — Meaning — Contract for the transfer of the use of land comprising vineyards for agricultural purposes)

(2019/C 139/19)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Manuel Jorge Sequeira Mesquita

Defendant: Fazenda Pública

Operative part of the judgment

Article 13B(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the exemption from value added tax on the leasing or letting of immovable property provided for in that provision is applicable to a contract for transfer of the use of land comprising vineyards for agricultural purposes to a company engaged in viticulture, entered into for a period of one year, automatically renewable and under which rent is paid at the end of each year

([1]) OJ C 259, 23.7.2018.

Action brought on 7 December 2018 — European Commission v Hungary

(Case C-771/18)

(2019/C 139/20)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: O. Beynet and K. Talabér-Ritz, acting as Agents)

Defendant: Hungary

Form of order sought

The applicant claims that the Court should:

— declare that Hungary has failed to fulfil its obligations under Article 14(1) of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, ([1]) and Article 13(1) of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, ([2]) by failing to take account of the costs actually incurred by network operators;

— declare that Hungary has failed to fulfil its obligations under Article 37(17) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, ([3]) and Article 41(17) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, ([4]) by failing to establish a suitable mechanism guaranteeing the right to appeal against the decisions of the national regulatory authority, as provided for under the abovementioned provisions of Directives 2009/72/EC and 2009/73/EC;

— order Hungary to pay the costs.

Pleas in law and main arguments

Article 14(1) of Regulation (EC) No 714/2009 and Article 13(1) of Regulation (EC) No 715/2009 establish the principle that tariffs for the use of networks must be cost-oriented.

However, the Law on electricity and the Law on natural gas currently in force in Hungary do not allow the national regulatory authority, when setting tariffs for the use of networks, to take into account all the costs actually incurred by system operators, such as excise duty on energy networks and commission costs related to banking operations.

The Commission claims that there is no objective reason for preventing the national regulatory authority from taking into account the abovementioned costs when setting tariffs for the use of the networks.

In addition, under Article 37(17) of Directive 2009/72/EC and Article 41(17) of Directive 2009/73/EC, Member States must ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

According to the Commission, Hungary has failed to establish a suitable mechanism guaranteeing the right to appeal against the decisions of the national regulatory authority.

([1]) OJ 2009 L 211, p. 15.

([2]) OJ 2009 L 211, p. 36.

([3]) OJ 2009 L 211, p. 55.

([4]) OJ 2009 L 211, p. 94.

Request for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 11 December 2018 — WO v Vas Megyei Kormányhivatal

(Case C-777/18)

(2019/C 139/21)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: WO

Defendant: Vas Megyei Kormányhivatal

Questions referred

1. Does national legislation, such as that at issue in the main proceedings, which, as regards the reimbursement of the costs of cross-border healthcare, precludes the healthcare provided in another Member State without prior authorisation from being subsequently authorised, even when there is a genuine risk that the patient's state of health may irreversibly deteriorate while waiting for that prior authorisation, amount to a restriction contrary to Article 56 of the Treaty on the Functioning of the European Union (TFEU)?

2. Does a Member State's authorisation system which, as regards the reimbursement of the costs of cross-border healthcare, precludes subsequent authorisation, even when there is a genuine risk that the patient's state of health will irreversibly deteriorate while waiting for prior authorisation, comply with the principles of necessity and proportionality set out in Article 8(1) of Directive 2011/24/EU ([1]) of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare and with the principle of the free movement of patients?

3. Does national legislation which, regardless of the state of health of the patient submitting the request, establishes a procedural time limit of 31 days within which the competent authority may grant prior authorisation and of 23 days within which it may refuse authorisation, comply with the requirement to set a reasonable procedural period taking into account specific medical conditions, urgency and individual circumstances, laid down in Article 9(3) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare? The authority may assess, in respect of the request, whether the provision of healthcare is covered by social security and, if so, whether it may be delivered, within a time limit that is medically justifiable, by a publicly-funded healthcare provider, whereas if it is not covered by social security, the authority assesses the quality, safety and cost effectiveness of the healthcare delivered by the provider indicated by the patient.

4. Must Article 20(1) of Regulation (EC) No 883/2004 ([2]) of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems be interpreted as meaning that the reimbursement of cross-border healthcare costs may only be requested if the patient has applied for prior authorisation to the competent authority? Or does Article 20(1) not in itself in such a case preclude applying for subsequent authorisation for reimbursement of the costs?

5. Does the situation where a patient travels to another Member State having obtained a specific appointment for a medical examination and a provisional appointment for possible surgery or medical intervention on the day following the examination and, given the state of the patient's health, the surgery or intervention is actually performed, come within the scope of Article 20(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems? Is it possible, in that case, to apply for subsequent authorisation for reimbursement of the costs under Article 20(1)?

6. Is the situation where a patient travels to another Member State having obtained a specific appointment for a medical examination and a provisional appointment for possible surgery or medical intervention on the day following the examination and, given the state of the patient's health, the surgery or intervention is actually performed, covered by the concept of scheduled treatment within the meaning of Article 26 of Regulation (EC) No 987/2009 ([3]) of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems? If so, is it possible, under Article 26, to apply for subsequent authorisation for reimbursement of the costs? In the case of an urgent vitally necessary treatment, referred to in Article 26(3), does the regulation also require prior authorisation in terms of Article 26(1)?

([1]) OJ 2011 L 88, p. 45.

([2]) OJ 2004 L 166, p. 1.

([3]) OJ 2009 L 284, p. 1.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 20 December 2018 — Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke

(Case C-807/18)

(2019/C 139/22)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Telenor Magyarország Zrt.

Defendant: Nemzeti Média- és Hírközlési Hatóság Elnöke

Questions referred

1. Must a commercial agreement between a provider of internet access services and an end user under which the service provider charges the end user a zero-cost tariff for certain applications (that is to say, the traffic generated by a given application is not taken into account for the purposes of data usage and does not slow down once the contracted data volume has been used), and under which that provider engages in discrimination which is confined to the terms of the commercial agreement concluded with the end consumer and is directed only against the end user party to that agreement and not against any end user not a party to it, be interpreted in the light of Article 3(2) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 ([1]) laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (?the Regulation')?

2. If the first question referred is answered in the negative, must Article 3(3) of the Regulation be interpreted as meaning that — having regard also to recital 7 of the Regulation — an assessment of whether there is an infringement requires an impact- and market-based evaluation which determines whether and to what extent the measures adopted by the internet access services provider do actually limit the rights which Article 3(1) of the Regulation confers on the end user?

3. Notwithstanding the first and second questions referred for a preliminary ruling, must Article 3(3) of the Regulation be interpreted as meaning that the prohibition laid down therein is a general and objective one, so that it prohibits any traffic management measure which distinguishes between certain forms of internet content, regardless of whether the internet access services provider draws those distinctions by means of an agreement, a commercial practice or some other form of conduct?

4. If the third question is answered in the affirmative, can an infringement of Article 3(3) of the Regulation also be found to exist solely on the basis that there is discrimination, without the further need for a market and impact evaluation, so that an evaluation under Article 3(1) and (2) of the Regulation is unnecessary in such circumstances?

([1]) OJ 2015 L 310, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Canarias (Spain) lodged on 21 December 2018 — KA v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

(Case C-811/18)

(2019/C 139/23)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Canarias

Parties to the main proceedings

Appellant: KA

Respondents: Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Must Article 157 TFEU be interpreted as meaning that a 'maternity supplement' applicable to contributory retirement, survivor's and permanent incapacity pensions, such as that at issue in the main proceedings, entitlement to which in the case of fathers in receipt of a pension who are able to prove that they have assumed the task of bringing up their children is absolutely and unconditionally excluded, is a cause of discrimination as regards remuneration between working mothers and working fathers?

2. Is the prohibition of discrimination on grounds of sex laid down in Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ([1]) to be interpreted as precluding a national provision such as Article 60 of Royal Legislative Decree 8/2015 approving the consolidated text of the General Law on Social Security (Real Decreto legislativo 8/2015 por el que se aprueba el texto refundido de la Ley General de la Seguridad Social) of 30 October 2015, which absolutely and unconditionally excludes fathers in receipt of a pension, who are able to prove that they have assumed the task of bringing up their children, from entitlement to the credit it establishes for the purposes of calculating retirement, survivor's and permanent incapacity pensions?

3. Must Article 2(2), (3) and (4) and Article 5 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, [2] vocational training and promotion, and working conditions be interpreted as precluding a measure like that at issue in the main proceedings which absolutely and unconditionally excludes fathers in receipt of a pension, who are able to prove that they have assumed the task of bringing up their children, from entitlement to the credit it establishes for the purposes of calculating retirement, survivor's and permanent incapacity pensions?

4. Is the exclusion of the applicant from entitlement to the credit derived from the Spanish 'maternity supplement' contrary to the requirement of non-discrimination laid down in Article 21(1) of the Charter of Fundamental Rights of the European Union (2000/C 364/01)?

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[1] OJ 1979 L 6, P. 24.

[2] OJ 1976 L 39, p. 40.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 28 December 2018 — Subdelegación del Gobierno en Ciudad Real v RH

(Case C-836/18)

(2019/C 139/24)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: Subdelegación del Gobierno en Ciudad Real

Defendant: RH

Questions referred

1. Is the requirement that a Spanish citizen who has not exercised his right of free movement must satisfy the conditions laid down in Article 7(1) of Royal Decree 240/2007, as a necessary condition for the grant of a right of residence to his third-country spouse under Article 7(2) of that Royal Decree, liable, in the event that those conditions are not satisfied, to constitute an infringement of Article 20 TFEU if, as a result of the refusal to grant that right, the Spanish citizen is compelled to leave the territory of the European Union as a whole?

   All of the above presupposes the requirement laid down in Article 68 of the Spanish Civil Code (Código Civil) for spouses to live together.

2. In any event, notwithstanding the foregoing, does the practice of the Spanish State of automatically applying the rule laid down in Article 7 of Royal Decree 240/2007, and refusing to grant a residence permit to a family member of an EU citizen where that EU citizen has never exercised freedom of movement, solely and exclusively on the ground that the EU citizen does not satisfy the conditions laid down in that provision, without having examined specifically and individually whether there exists a relationship of dependency between that EU citizen and the third-country national of such a nature that, for any reason and in the light of the circumstances, it would mean that were the third-country national refused a right of residence, the EU citizen could not be separated from the family member on which he is dependent and would have to leave the territory of the European Union, infringe Article 20 TFEU in the terms set out above?

   All of this is in the light of the case-law of the Court of Justice of the European Union, including, inter alia, the judgment of 8 May 2018, C-82/16, *K.A. and Others* v *Belgische Staat*. [1]

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[1] Judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308).

Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 15 January 2019 — Criminal proceedings against XN

(Case C-21/19)

(2019/C 139/25)

Language of the case: Dutch

Referring court

Gerechtshof Arnhem-Leeuwarden, sitting in Arnhem

Party to the main proceedings

XN

Questions referred

1. Is a substance which is not a by-product within the meaning of the Waste Framework Directive [1] by definition also not an animal by-product within the meaning of the Animal By-Products Regulation 2009, such that that substance is not excluded from the operation EWSR [2] pursuant to Article 1(3) EWSR? Or can it not be ruled out that a substance falls within the definition of animal by-products within the meaning of the Animal By-Products Regulation 2009 if that substance does not meet the requirements of Article 5(1) of the Waste Framework Directive, such that that substance does not necessarily fall under the EWSR?

2. How should a shipment covered by the approval requirements of Regulation (EC) No 1774/2002 [3] (now Regulation (EC) No 1069/2009 [4]) be understood within the meaning of Article 1(3) EWSR: does it refer to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs? Or does it refer to the transport of material referred to in Article 48 of the Animal By-Products Regulation 2009 (formerly Article 8 of Regulation 1774/2002), which is limited to animal by-products or derived products within the meaning of that provision, thus Category 1 material and Category 2 material, and certain products derived therefrom, including processed animal proteins derived from Category 3 material?

3. If a shipment subject to the approval requirements of Regulation (EC) No 1774/2002 (now Regulation (EC) No 1069/2009) should be understood to refer, within the meaning of Article 1(3)(d) EWSR, to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs, should Article 1(3)(d) EWSR then be read as referring also to shipments of mixtures of animal by-products and other substances and — if so — is the mixing ratio between the animal by-products and the other substances relevant in that regard? Or does an animal by-product lose the status of animal by-product within the meaning of the Animal By-Products Regulation 2009 and does that animal by-product become waste within the meaning of the EWSR as a result of being mixed with another substance?

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

([2]) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

([3]) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1).

([4]) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1).

Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 15 January 2019 — Criminal proceedings against YO

(Case C-22/19)

(2019/C 139/26)

Language of the case: Dutch

Referring court

Gerechtshof Arnhem-Leeuwarden, sitting in Arnhem

Party to the main proceedings

YO

Questions referred

1. Is a substance which is not a by-product within the meaning of the Waste Framework Directive ([1]) by definition also not an animal by-product within the meaning of the Animal By-Products Regulation 2009, such that that substance is not excluded from the operation EWSR ([2]) pursuant to Article 1(3) EWSR? Or can it not be ruled out that a substance falls within the definition of animal by-products within the meaning of the Animal By-Products Regulation 2009 if that substance does not meet the requirements of Article 5(1) of the Waste Framework Directive, such that that substance does not necessarily fall under the EWSR?

2. How should a shipment covered by the approval requirements of Regulation (EC) No 1774/2002 ([3]) (now Regulation (EC) No 1069/2009 ([4])) be understood within the meaning of Article 1(3) EWSR: does it refer to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs? Or does it refer to the transport of material referred to in Article 48 of the Animal By-Products Regulation 2009 (formerly Article 8 of Regulation 1774/2002), which is limited to animal by-products or derived products within the meaning of that provision, thus Category 1 material and Category 2 material, and certain products derived therefrom, including processed animal proteins derived from Category 3 material?

3. If a shipment subject to the approval requirements of Regulation (EC) No 1774/2002 (now Regulation (EC) No 1069/2009) should be understood to refer, within the meaning of Article 1(3)(d) EWSR, to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs, should Article 1(3)(d) EWSR then be read as referring also to shipments of mixtures of animal by-products and other substances and — if so — is the mixing ratio between the animal by-products and the other substances relevant in that regard? Or does an animal by-product lose the status of animal by-product within the meaning of the Animal By-Products Regulation 2009 and does that animal by-product become waste within the meaning of the EWSR as a result of being mixed with another substance?

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

(2) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

(3) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1).

(4) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1).

Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 15 January 2019 — Criminal proceedings against P.F. Kamstra Recycling BV

(Case C-23/19)

(2019/C 139/27)

Language of the case: Dutch

Referring court

Gerechtshof Arnhem-Leeuwarden, sitting in Arnhem

Party to the main proceedings

P.F. Kamstra Recycling BV

Questions referred

1. Is a substance which is not a by-product within the meaning of the Waste Framework Directive (1) by definition also not an animal by-product within the meaning of the Animal By-Products Regulation 2009, such that that substance is not excluded from the operation EWSR (2) pursuant to Article 1(3) EWSR? Or can it not be ruled out that a substance falls within the definition of animal by-products within the meaning of the Animal By-Products Regulation 2009 if that substance does not meet the requirements of Article 5(1) of the Waste Framework Directive, such that that substance does not necessarily fall under the EWSR?

2. How should a shipment covered by the approval requirements of Regulation (EC) No 1774/2002 (3) (now Regulation (EC) No 1069/2009 (4)) be understood within the meaning of Article 1(3) EWSR: does it refer to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs? Or does it refer to the transport of material referred to in Article 48 of the Animal By-Products Regulation 2009 (formerly Article 8 of Regulation 1774/2002), which is limited to animal by-products or derived products within the meaning of that provision, thus Category 1 material and Category 2 material, and certain products derived therefrom, including processed animal proteins derived from Category 3 material?

3. If a shipment subject to the approval requirements of Regulation (EC) No 1774/2002 (now Regulation (EC) No 1069/2009) should be understood to refer, within the meaning of Article 1(3)(d) EWSR, to the transport (between one country and another country) of animal by-products, irrespective of the category to which that material belongs, should Article 1(3)(d) EWSR then be read as referring also to shipments of mixtures of animal by-products and other substances and — if so — is the mixing ratio between the animal by-products and the other substances relevant in that regard? Or does an animal by-product lose the status of animal by-product within the meaning of the Animal By-Products Regulation 2009 and does that animal by-product become waste within the meaning of the EWSR as a result of being mixed with another substance?

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

([2]) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

([3]) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1).

([4]) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1).

Request for a preliminary ruling from the Raad voor Vergunningsbetwistingen (Belgium) lodged on 15 January 2019 — A, B, C, D, E v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen

(Case C-24/19)

(2019/C 139/28)

Language of the case: Dutch

Referring court

Raad voor Vergunningsbetwistingen

Parties to the main proceedings

Applicants: A, B, C, D, E

Defendant: Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen

Questions referred

Do Article 2(a) and Article 3(2)(a) of Directive 2001/42/EC ([1]) ('the SEA Directive) mean that Article 99 of the besluit van de Vlaamse regering van 23 december 2011 tot wijziging van het besluit van de Vlaamse regering van 6 februari 1991 houdende de vaststelling van het Vlaams reglement betreffende de milieuvergunning en van het besluit van de Vlaamse regering van 1 juni 1995 houdende algemene en sectorale bepalingen inzake milieuhygiëne (Order of the Flemish Government of 23 December 2011 amending the Order of the Flemish Government of 6 February 1991 on the adoption of Flemish regulations concerning environmental consent and

of the Order of the Flemish Government of 1 June 1995 on general and sectoral provisions relating to environmental health), as regards the updating of the aforementioned Orders in keeping with the evolution of technology, which introduces into VLAREM II Section 5.20.6 on installations for the generation of electricity by means of wind energy, and the Omzendbrief 'Afwegingskader en randvoorwaarden voor de inplanting van windturbines' (Circular "Assessment framework and preconditions for the installation of wind turbines) of 2006 [together referred to as 'the instruments in question'], which both contain various provisions regarding the installation of wind turbines, including measures on safety, and standards relating to shadow flicker and noise levels, having regard to town and country planning zones, must be classified as a 'plan or programme' within the meaning of the provisions of the Directive? If it appears that an environmental assessment should have been carried out before the adoption of the instruments in question, can the Raad (Council) modulate the legal effects of the illegal nature of those instruments in time? To that end, a number of sub-questions must be asked:

1. Can a policy instrument such as the present Circular, which the public authority concerned is competent to draw up on the basis of its discretionary and policy-making powers, so that the competent authority was not actually designated to draw up the 'plan or programme', and in respect of which there is also no provision for a formal drafting procedure, be regarded as a plan or programme within the meaning of Article 2(a) of the SEA Directive?

2. Is it sufficient that a policy instrument or general rule, such as the instruments in question, partially curtails the margin of appreciation of a public authority responsible for granting development consent, in order to be considered a 'plan or programme' within the meaning of Article 2(a) of the SEA Directive, even if they do not represent a requirement, or a necessary condition, for the granting of consent or are not intended to constitute a framework for future development consent, notwithstanding the fact that the European legislature has indicated that that purpose is an element of the definition of 'plans and programmes'?

3. Can a policy instrument such as the Circular in question, the format of which is drawn up on grounds of legal certainty and thus constitutes a completely voluntary decision, be regarded as a 'plan or programme' within the meaning of Article 2(a) of the SEA Directive, and does such an interpretation not run counter to the case-law of the Court of Justice that a purposive interpretation of a directive may not deviate fundamentally from the clearly expressed will of the EU legislature?

4. Can Section 5.20.6 VLAREM II, where there was no mandatory requirement to draw up the rules contained therein, be defined as a 'plan or programme' within the meaning of Article 2(a) of the SEA Directive, and does such an interpretation not run counter to the case-law of the Court of Justice that a purposive interpretation of a directive may not deviate fundamentally from the clearly expressed will of the EU legislature?

5. Can a policy instrument and a normative government Order, such as the instruments in question, which have a limited indicative value, or at least do not constitute a framework from which any right to execute a project may be derived and from which no right to any framework, as a measure by which projects may be approved, may be derived, be regarded as a 'plan or programme' that constitute the 'framework for future development consent' within the meaning of Article 2(a) and 3(2) of the SEA Directive, and does such an interpretation not run counter to the case-law of the Court of Justice that a purposive interpretation of a directive may not deviate fundamentally from the clearly expressed will of the EU legislature?

6. Can a policy instrument such as Circular: EME/2006/01- RO/2006/02 which has a purely indicative value and/or a normative government Order such as Section 5.20.6 VLAREM II that only sets a minimum threshold for development consent and in addition operates fully autonomously as a general rule, both of which only contain a limited number of criteria and modalities, and neither of which is the only determinant for even a single criterion or modality, and in relation to which it could be argued that, on the basis of objective information, it can be excluded that they are likely to have significant effects on the environment, be regarded as a"plan or programme' on a joint reading of Article 2(a) and Article 3(1) and (2) of the SEA Directive, and can they thus be regarded as acts which, by the adoption of rules and control procedures applicable to the sector concerned, establish a whole package of criteria and modalities for the approval and execution of one or more projects that are likely to have significant effects on the environment?

7. If the answer to the previous question is in the negative, can a court or tribunal determine this itself, after the Order or the pseudo-legislation (such as the VLAREM standards and the Circular in question) has been adopted?

8. Can a court or tribunal, if it has only indirect jurisdiction through an exception being raised, the result of which applies *inter partes*, and if the answer to the questions referred for a preliminary ruling shows that the instruments in question are illegal, order that the effects of the unlawful Order and/or the unlawful Circular be maintained if the unlawful instruments contribute to an objective of environmental protection, as also pursued by a directive within the meaning of Article 288 TFEU, and if the requirements laid down in EU law for such maintenance (as laid down in the judgment in *Association France Nature Environnement*, [Case C-379/15]) have been met?

9. If the answer to Question 8 is in the negative, can a court or tribunal order that the effects of the contested project be maintained in order to comply indirectly with the requirements imposed by EU law (as laid down in the judgment in *Association France Nature Environnement*) for the continued maintenance of the legal effects of plans or programmes that do not conform to the SEA Directive?

([1]) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 23 January 2019 — Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke

(Case C-39/19)

(2019/C 139/29)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Telenor Magyarország Zrt.

Defendant: Nemzeti Média- és Hírközlési Hatóság Elnöke

Questions referred

1. Must a commercial agreement between a provider of internet access services and an end user under which the service provider charges the end user a zero-cost tariff for certain applications (that is to say, the traffic generated by a given application is not taken into account for the purposes of data usage and does not slow down once the contracted data volume has been used), and under which that provider engages in discrimination which is confined to the terms of the commercial agreement concluded with the end consumer and is directed only against the end user party to that agreement and not against any end user not a party to it, be interpreted in the light of Article 3(2) of Regulation (EU) 2015/2120 ([1]) of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union ('the Regulation')?

2. If the first question referred is answered in the negative, must Article 3(3) of the Regulation be interpreted as meaning that — having regard also to recital 7 of the Regulation — an assessment of whether there is an infringement requires an impact- and market-based evaluation which determines whether and to what extent the measures adopted by the internet access services provider do actually limit the rights which Article 3(1) of the Regulation confers on the end user?

3. 3. Notwithstanding the first and second questions referred for a preliminary ruling, must Article 3(3) of the Regulation be interpreted as meaning that the prohibition laid down therein is an unconditional, general and objective one, so that it prohibits any traffic management measure which distinguishes between certain forms of internet content, regardless of whether the internet access services provider draws those distinctions by means of an agreement, a commercial practice or some other form of conduct?

4. If the third question is answered in the affirmative, can an infringement of Article 3(3) of the Regulation also be found to exist solely on the basis that there is discrimination, without the further need for a market and impact evaluation, so that an evaluation under Article 3(1) and (2) of the Regulation is unnecessary in such circumstances?

([1]) OJ 2015 L 310, p. 1.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 23 January 2019 — EY v Bevándorlási és Menekültügyi Hivatal

(Case C-40/19)

(2019/C 139/30)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: EY

Defendant: Bevándorlási és Menekültügyi Hivatal

Questions referred

1. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/32/EU ([1]) of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that it is possible for effective judicial protection to be guaranteed in a Member State even if its courts cannot amend decisions given in asylum procedures but may only annul them and order that a new procedure be conducted?

2. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/3[2]/EU of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, again in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that legislation of a Member State which lays down a single mandatory time limit of 60 days in total for judicial proceedings in asylum matters, irrespective of any individual circumstances and without regard to the particular features of the case or any potential difficulties in relation to evidence, is compatible with those provisions?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 24 January 2019 — SONAECOM, SGPS S.A. v Autoridade Tributária e Aduaneira

(Case C-42/19)

(2019/C 139/31)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: SONAECOM, SGPS S.A.

Respondent: Autoridade Tributária e Aduaneira

Questions referred

1. Is it compatible with the deductibility rules laid down in the Sixth VAT Directive, ([1]) specifically Articles 4(1) and (2) and 17(1), (2) and (5), to deduct tax borne by the appellant, Sonaecom SGPS, in respect of consultancy services connected with a market study commissioned with a view to acquiring shares, where that acquisition did not materialise?

2. Is it compatible with the deductibility rules laid down in the Sixth VAT Directive, specifically Articles 4(1) and (2) and 17(1), (2) and (5), to deduct tax borne by the appellant, Sonaecom SGPS, in respect of the payment to BCP of a commission for organising and putting together a bond loan, allegedly taken out with a view to integrating the financial structure of its affiliated companies, and which, since those investments failed to materialise, was ultimately transferred to Sonae, SGPS, the parent company of the group?

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

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 24 January 2019 — Vodafone Portugal — Comunicações Pessoais, SA v Autoridade Tributária e Aduaneira

(Case C-43/19)

(2019/C 139/32)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Vodafone Portugal — Comunicações Pessoais, SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Must Articles 2(1)(c), 9, 24, 72 and 73 of Council Directive 2006/112/EC of 28 November 2006 be construed as meaning that the levying by an electronic communications operator on its former customers (to whom it granted promotional benefits in the form of free-of-charge installation, service activation, portability or equipment, or the application of special rates, in exchange for a commitment by customers to observe a tie-in period, which those customers have not fulfilled for reasons attributable to themselves) of an amount which, as required by law, must not exceed the costs incurred by the supplier undertaking for the installation of the service and must be proportionate to the benefit granted to the customer, that benefit being identified and quantified as such in the contract concluded, and therefore may not automatically reflect the total value of the instalments outstanding on the date of termination, constitutes a supply of services liable to VAT?

2. In the light of the provisions cited above, does the fact that the amounts concerned are payable following termination of the contract, when the operator no longer supplies services to the customer, and the fact that no specific act of consumption has occurred since the contract was terminated, preclude the classification of such amounts as consideration for the supply of services?

3. In the light of the provisions cited above, is it impossible for the amount concerned to be treated as consideration for the supply of services because the operator and its former customers specified in advance, as required by law, in a standard-form contract, the formula for calculating the amount which former customers must pay if they fail to comply with the tie-in period provided for in the service contract?

4. In the light of the provisions cited above, is it impossible for the amount concerned to be treated as consideration for the supply of services when the amount at issue does not reflect the amount which the operator would have received during the remainder of the tie-in period if the contract had not been terminated?

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 29 January 2019 — JC v Kreissparkasse Saarlouis

(Case C-66/19)

(2019/C 139/33)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: JC

Defendant: Kreissparkasse Saarlouis

Questions referred

1. Is Article 10(2)(p) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ([1]) to be interpreted as meaning that the required information in relation to the 'period during which the right of withdrawal may be exercised' or 'other conditions governing the exercise thereof' must also include the requirements governing the start of the withdrawal period?

2. If the answer to Question 1 is in the affirmative:

   Does Article 10(2)(p) of Directive 2008/48/EC preclude an interpretation to the effect that withdrawal information is 'clear' and 'concise' if it does not itself cite in full the mandatory information to be provided with regard to the start of the withdrawal period, but in this respect refers to a provision of national law — in the present case, Paragraph 492(2) of the Bürgerliches Gesetzbuch (German Civil Code; 'the BGB') in the version valid up to 12 June 2014 — which in turn refers to further national provisions — in the present case, Article 247, Paragraphs 3 to 13, of the Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Law to the Civil Code; 'the EGBGB') in the version valid up to 12 June 2014 — and the consumer is therefore obliged to read numerous legislative provisions in a variety of legislative texts so as to gain clarity as to what mandatory information must be provided in order for the withdrawal period to start to run in the case of his loan agreement?

3. If Question 2 is answered in the negative (and there are no concerns in principle against a reference to provisions of national law):

   Does Article 10(2)(p) of Directive 2008/48/EC preclude an interpretation to the effect that withdrawal information is 'clear' and 'concise' if the reference to a provision of national law — in the present case, Paragraph 492(2) of the BGB in the version valid from 30 July 2010 up to 12 June 2014 — and the further reference — in the present case, to Article 247, Paragraphs 3 to 13, of the EGBGB in the version valid from 4 August 2011 up to 12 June 2014 — necessarily means that the consumer has to carry out a process of legal inference beyond simply reading the provisions — for instance, as to whether the loan was granted to him under conditions customary for contracts secured by mortgage and the interim financing thereof or whether linked agreements exist, so that he can gain clarity as to what mandatory information must be provided in order for the period of withdrawal to start to run in the case of his loan agreement?

([1]) OJ 2008 L 133, p. 66.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 30 January 2019 — KD v Bevándorlási és Menekültügyi Hivatal

(Case C-67/19)

(2019/C 139/34)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: KD

Defendant: Bevándorlási és Menekültügyi Hivatal

Questions referred

1. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/32/EU ([1]) of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that it is possible for effective judicial protection to be guaranteed in a Member State even if its courts cannot amend decisions given in asylum procedures but may only annul them and order that a new procedure be conducted?

2. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/32/EU of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, again in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that legislation of a Member State which lays down a single mandatory time limit of 60 days in total for judicial proceedings in asylum matters, irrespective of any individual circumstances and without regard to the particular features of the case or any potential difficulties in relation to evidence, is compatible with those provisions?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 31 January 2019 — Belgische Staat, vertegenwoordigd door de Minister van Werk, Economie en Consumenten, belast met Buitenlandse handel, Belgische Staat, vertegenwoordigd door de Directeur-Generaal van de Algemene Directie Economische Inspectie, Directeur-Generaal van de Algemene Directie Economische Inspectie v Movic BV, Events Belgium BV, Leisure Tickets & Activities International BV

(Case C-73/19)

(2019/C 139/35)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellants: Belgische Staat, vertegenwoordigd door de Minister van Werk, Economie en Consumenten, belast met Buitenlandse handel, Belgische Staat, vertegenwoordigd door de Directeur-Generaal van de Algemene Directie Economische Inspectie, Directeur-Generaal van de Algemene Directie Economische Inspectie

Respondents: Movic BV, Events Belgium BV, Leisure Tickets & Activities International BV

Question referred

Is an action concerning a claim aimed at determining and stopping infringing market practices and/or commercial practices towards consumers, instituted by the Belgian Government in respect of Dutch companies which from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium, pursuant to Article 14 of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen (Law of 30 July 2013 regarding the sale of admission tickets to events) and pursuant to Article XVII.7 WER, a civil or commercial matter within the meaning of Article 1(1) of the European Regulation 1215/2012 ([1]) of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and can a judicial decision in such a case, for that reason, fall within the scope of that 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).

Appeal brought on 22 February 2019 by the European Commission against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 12 December 2018 in Case T-691/14, Servier and Others v Commission

(Case C-176/19 P)

(2019/C 139/36)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Mongin, F. Castilla Contreras, J. Norris, C. Vollrath, acting as Agents)

Other parties to the proceedings: Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA, European Federation of Pharmaceutical Industries and Associations (EFPIA)

Form of order sought

The appellant claims that the Court should:

— set aside points 1, 2, and 3 of the operative part of the judgment, which annul (i) Article 4 of Commission Decision C(2014) 4955 final of 9 July 2014 relating to a proceeding under Article 101 and Article 102 TFEU (Case AT.39612 — Perindopril (Servier)) in so far as it finds that Servier participated in the agreements concluded between Servier and the company Krka, (ii) Article 7(4)(b) of the decision which sets the fine imposed on Servier for concluding those agreements, (iii) Article 6 of the decision which finds that Servier infringed Article 102 TFEU and (iv) Article 7(6) of the decision which sets the amount of the fine imposed on Servier in relation to that infringement;

— set aside the judgment in so far as it declares Annexes A 286 and A 287 to the application and Annex C 29 to the reply admissible (paragraphs 1461, 1462 and 1463 of the judgment);

— give final judgment on Servier's action for annulment of the decision and reject Servier's request for annulment of Articles 4, 7(4)(b), 6 and 7(6) of the decision and uphold the Commission's claim that Annexes A 286 and A 287 to the application before the General Court and Annex C 29 to the reply before the General Court should be declared inadmissible (paragraphs 1461 to 1463 of the judgment);

— order Servier to bear all the costs of the present appeal.

Pleas in law and main arguments

In support of the appeal, the Commission relies on a *first group of grounds* concerning the infringement of Article 101 TFUE (setting aside of points 1 and 3 of the operative part of the judgment in so far as they annul Articles 4 and 7(4)(b) of the decision finding that the three agreements concluded between Servier and Others and the company Krka constituted a single infringement of Article 101 TFEU and ordering Servier to pay a fine).

The first ground alleges that the General Court erred in law in finding that Krka was not a source of competitive pressure on Servier when the agreements in question were concluded.

The second ground alleges that the General Court erred in law in assessing the content and the objectives of the licence agreement as an inducement for Krka to accept the restrictions set out in the settlement.

The third ground alleges that the General Court erred in law in the application of the concept of a restriction by object within the meaning of Article 101(1) TFEU.

The fourth ground alleges that the General Court erred in law in the analysis of the parties' intentions for the application of Article 101 TFUE.

The fifth ground alleges that the General Court erred in law in taking into account the pro-competitive effects of the licence on markets which do not fall within the scope of the infringement of Article 101(1) TFEU identified in the decision.

The sixth ground alleges that the General Court erred in law in analysing the object of the transfer agreement.

The seventh ground alleges an error of law in the application of the concept of a restriction of competition by effect for the purpose of Article 101(1) TFEU.

In addition, the Commission relies on a *second group of grounds* concerning the infringement of Article 102 TFEU (setting aside of points 2 and 3 of the operative part of the judgment in so far as they annul Articles 6 and 7(6) of the decision finding that Servier infringed Article 102 TFEU and ordering Servier to pay a fine).

The eighth ground alleges that the General Court erred in law in its analysis of the consideration of the price criterion in the determination of the market for the finished products.

The ninth ground alleges that the General Court erred in law in its analysis of the consideration of therapeutic substitutability in the determination of the market for the finished products.

The tenth ground alleges that certain annexes are inadmissible.

The eleventh ground alleges that the General Court erred in law in its analysis of the technology market.

Appeal brought on 28 February 2019 by Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 12 December 2018 in Case T-691/14, Servier and Others v Commission

(Case C-201/19 P)

(2019/C 139/37)

Language of the case: French

Parties

Appellants: Servier SAS, Servier Laboratories Ltd, Les Laboratoires Servier SA (represented by: M. Utges Manley, Solicitor, A. Robert, advocate, J. Killick, J. Jourdan, T. Reymond, O. de Juvigny, avocats)

Other parties to the proceedings: European Commission, European Federation of Pharmaceutical Industries and Associations (EFPIA)

Form of order sought

The appellants claim that the Court should:

Primarily, in the light of grounds 1 to 5 challenging the finding of an infringement of Article 101 TFEU:

— set aside points 4, 5 and 6 of the operative part of the judgment delivered by the General Court on 12 December 2018 in Case T-691/14, *Servier* v *Commission*;

— annul Articles 1(b), 2(b), 3(b) and 5(b) and, consequently, Articles 7(1)(b), 7(2)(b), 7(3)(b) and 7(5)(b) of Commission Decision C(2014) 4955 final of 9 July 2014 (Case AT.39612 — Perindopril (Servier)), or, in the alternative, refer the case back to the General Court for adjudication on the effects of the agreements concerned;

In the alternative, in the light of ground 6:

— set aside points 4 and 5 of the operative part of the judgment in so far as they confirm the conclusions in the contested decision concerning the existence of separate infringements and cumulative fines in respect of the Niche and Matrix agreements and, consequently, annul Articles 1(b), 2(b), 7(1)(b) and 7(2)(b) of the decision;

And in the alternative:

— set aside points 4 and 5 of the operative part of the judgment and annul Articles 7(1)(b), 7(2)(b), 7(3)(b) and 7(5)(b) of the decision in the light of grounds 7.1 and 7.2 challenging the principle and the amount of all the fines;

— annul point 5 of the operative part of the judgment and Articles 5(b) and 7(5)(b) of the decision in the light of ground 5.4 concerning the duration of the alleged infringement and the calculation of the fine in relation to the agreement between Servier and Lupin and, consequently, set the fine, in the exercise of the Court's unlimited jurisdiction.

And in any event:

— order the European Commission to pay the costs.

Grounds of appeal and main arguments

By the first ground, which concerns all the agreements penalised, Servier submits that the judgment is vitiated by an error of law in that it is based on a broad interpretation of the concept of a restriction by object, which is not in accordance with the case-law. The judgment disregards the absence of experience and of an obvious restriction and is based on a mechanical test which ignores the context and the ambivalent effects of the settlement agreements at issue.

By the second ground, which also concerns all the agreements in question, Servier submits that, in the judgment, the General Court incorrectly applied the case-law concerning the concept of potential competition and that it is based on an unjustified reversal of the burden of proof.

The third ground alleges that the agreements concluded on the same day with Matrix and its distributor Niche are not anti-competitive by object. According to Servier, the General Court erred in law by classifying those companies as potential competitors and by regarding the payments as harmful and not inherent in the settlement agreement.

By its fourth ground, Servier alleges errors of law in relation to the agreement with Teva, which is also not anti-competitive by object in view of the legal and economic context of which it forms part, its ambivalent effects and the complementarity of the parties, since Teva is, unlike Servier, a generics distributor in the United Kingdom.

The fifth ground alleges errors of law concerning the agreement with Lupin. The General Court should have examined the effects of the agreement because of its scope, which is at the least ambivalent, if not pro-competitive. In the alternative, the appellants argue that duration of the infringement, and therefore the calculation of the fine, is vitiated by an error.

In the alternative, Servier submits, in the sixth ground, that the General Court should have annulled the decision in so far as it penalises the agreement concluded with Matrix in addition to that concluded with Niche even though they are not separate infringements.

In the further alternative, the seventh ground concerns the claim that the judgment should be set aside in so far as it validates the method of determining the fine.

Appeal brought on 28 February 2019 by Biogaran against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-677/14, Biogaran v Commission

(Case C-207/19 P)

(2019/C 139/38)

Language of the case: French

Parties

Appellant: Biogaran (represented by: M. Utges Manley, Solicitor, A. Robert, advocate, O. de Juvigny, T. Reymond, J. Killick, J. Jourdan, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court delivered on 12 December 2018 in Case T-677/14 in its entirety;

— annul Articles 1(b)(iv), 7(1)(b) and 8 of Commission Decision C(2014) 4955 final (Case AT.39612 — Perindopril (Servier)), in so far as they concern Biogaran;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

By its first ground of appeal, Biogaran submits that the judgment is vitiated by errors of law in that it finds the licence to be infringing on the ground that the settlement agreement has an anti-competitive object. According to the applicant, the judgment is based on a broad interpretation of the concept of a 'by object' infringement and disregards the absence of experience and of an obvious restriction. Moreover, the judgment is based on an incorrect legal test which ignores both the context of the settlement agreement between Servier and Niche and the fact that those undertakings were not potential competitors.

By its second ground of appeal, Biogaran submits that the General Court erred in law by substituting its own reasoning for that of the Commission. The General Court considered that Biogaran's alleged inducement was 'decisive' in that it determined Niche's decision not to enter the market. However, neither the statement of reasons, nor the decision state or establish that that inducement, characterised only as 'additional', was 'decisive' in Niche's acceptance of the terms of the settlement.

Biogaran argues, in the third ground of appeal, that the General Court disregarded the principle of proportionality and the objectives of Article 101 TFEU by finding it liable, in addition to its parent company. Since the General Court held that the parent company had directly participated in the infringement and used its power to influence its subsidiary to take part in its own infringing conduct, with the result that the subsidiary had no autonomy whatsoever, it could not find the subsidiary liable in addition to its parent company without going beyond what is strictly necessary for the proper application of the competition rules.

By its fourth ground of appeal, Biogaran submits that the judgment must be set aside in that it validates the principle and the method of calculating the fine, despite the complex and unprecedented nature of the present case and the fact that Biogaran did not play a decisive role.

GENERAL COURT

Judgment of the General Court of 6 March 2019 — Hamas v Council

(Case T-289/15) [1]

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Whether an authority of a third State can be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Obligation to state reasons — Error of assessment — Right to property)

(2019/C 139/39)

Language of the case: French

Parties

Applicant: Hamas (Doha, Qatar) (represented by: L. Glock, lawyer)

Defendant: Council of the European Union (represented by: initially B. Driessen and N. Rouam, and subsequently B. Driessen, F. Naert and A. Sikora-Kalėda, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: initially F. Castillo de la Torre and R. Tricot, and subsequently F. Castillo de la Torre, L. Baumgart and C. Zadra, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of (i) Council Decision (CFSP) 2015/521 of 26 March 2015 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/483/CFSP (OJ 2015 L 82, p. 107), and (ii) Council Implementing Regulation (EU) 2015/513 of 26 March 2015 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 790/2014 (OJ 2015 L 82, p. 1), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hamas to bear its own costs and to pay those incurred by the Council of the European Union;*

3. *Orders the European Commission to bear its own costs.*

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[1] OJ C 245, 27.7.2015.

Judgment of the General Court of 28 February 2019 — Ateknea Solutions Catalonia v Commission

(Case T-69/16) ([1])

(Arbitration clause — Contracts concluded within the sixth framework programme for Research and Technological Development (2002-2006) — Reimbursement of costs incurred by the applicant plus default interest — Eligible costs — Contractual liability)

(2019/C 139/40)

Language of the case: English

Parties

Applicant: Ateknea Solutions Catalonia, SA (Barcelona, Spain) (represented by M. Troncoso Ferrer, C. Ruxió Claramunt and S. Moya Izquierdo, lawyers)

Defendant: European Commission (represented initially by L. Grønfeldt and M. Siekierzyńska, and subsequently by M. Siekierzyńska and R. Lyal, acting as Agents)

Re:

Action based on Article 272 TFEU, seeking an order that the Commission pay the applicant an amount of EUR 1258 533.89 or, in the alternative, an amount of EUR 1025 845.29.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ateknea Solutions Catalonia, SA to pay the costs.*

([1]) OJ C 165, 10.5.2016.

Judgment of the General Court of 28 February 2019 — Drex Technologies v Council

(Case T-414/16) ([1])

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Duty to state reasons — Error of assessment — Right to respect for one's good name and reputation — Right to property — Presumption of innocence — Proportionality)

(2019/C 139/41)

Language of the case: French

Parties

Applicant: Drex Technologies SA (Tortola, British Virgin Islands) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union (represented initially by S. Kyriakopoulou, G. Étienne and A. Vitro, and subsequently by S. Kyriakopoulou, A. Vitro and V. Piessevaux, acting as Agents)

Re:

Application brought pursuant to Article 263 TFEU and seeking annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016, L 141, p. 125) and its subsequent implementing acts, Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255 CFSP concerning restrictive measures against Syria (OJ 2017, L 139, p. 62) and Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018, L 131, p. 16), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Drex Technologies SA to bear its own costs and to pay those of the Council of the European Union*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 28 February 2019 — Almashreq Investment Fund v Council

(Case T-415/16) ([1])

(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Duty to state reasons — Error of assessment — Right to respect for one's good name and reputation — Right to property — Presumption of innocence — Proportionality)

(2019/C 139/42)

Language of the case: French

Parties

Applicant: Almashreq Investment Fund (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union (represented initially by S. Kyriakopoulou, G. Étienne and A. Vitro, subsequently by S. Kyriakopoulou and A. Vitro, and finally by S. Kyriakopoulou, A. Vitro and V. Piessevaux, acting as Agents)

Re:

Application brought pursuant to Article 263 TFEU and seeking annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016, L 141, p. 125) and its subsequent implementing acts, Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255 CFSP concerning restrictive measures against Syria (OJ 2017, L 139, p. 62) and Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018, L 131, p. 16), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Almashreq Investment Fund to bear its own costs and to pay those of the Council of the European Union.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court 28 February 2019 — Souruh v Council

(Case T-440/16) ([1])

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Rights of the defence — Right to effective judicial protection — Duty to state reasons — Error of assessment — Right to respect for one's good name and reputation — Right to property — Presumption of innocence — Proportionality)

(2019/C 139/43)

Language of the case: French

Parties

Applicant: Souruh SA (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union (represented initially by S. Kyriakopoulou, G. Étienne and A. Vitro, subsequently by S. Kyriakopoulou and A. Vitro, and finally by S. Kyriakopoulou, A. Vitro and V. Piessevaux, acting as Agents)

Re:

Application brought pursuant to Article 263 TFEU and seeking annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016, L 141, p. 125) and its subsequent implementing acts, Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255 CFSP concerning restrictive measures against Syria (OJ 2017, L 139, p. 62) and Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018, L 131, p. 16), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Souruh SA to bear its own costs and to pay those of the Council of the European Union.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 26 February 2019 — Fútbol Club Barcelona v Commission

(Case T-865/16) ([1])

(State aid — Aid granted by the Spanish authorities in favour of certain professional football clubs — Preferential income tax rate applied to clubs authorised to benefit from the status of non-profit entity — Decision declaring the aid to be incompatible with the internal market — Freedom of establishment — Advantage)

(2019/C 139/44)

Language of the case: Spanish

Parties

Applicant: Fútbol Club Barcelona (Barcelona, Spain) (represented by initially, J. Roca Sagarra, J. del Saz Cordero, R. Vallina Hoset, A. Sellés Marco and C. Iglesias Megías, then J. Roca Sagarra, J. del Saz Cordero, R. Vallina Hoset and A. Sellés Marco, lawyers)

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

Intervener in support of the applicant: Kingdom of Spain (represented by: initially, A. Gavela Llopis and J. García-Valdecasas Dorrego, then A. Gavela Llopis, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs (OJ 2016 L 357, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs;*

2. *Orders the European Commission to bear its own costs as well as those incurred by the Fútbol Club Barcelona;*

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 30, 30.1.2017.

Judgment of the General Court of 5 March 2019 — Pethke v EUIPO

(Case T-169/17) ([1])

(Civil Service — Officials — Assignment — Reassignment of a Head of Service to a post of principal administrator — Article 7(1) of the Staff Regulations — Interests of the service — Equivalence of posts — Discrimination on grounds of sex — Proportionality — Action for damages — Inadmissibility — Failure to comply with the pre-litigation procedure)

(2019/C 139/45)

Language of the case: German

Parties

Applicant: Ralph Pethke (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

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

Re:

Action brought under Article 270 TFEU seeking, first, annulment of the decision of the Executive Director of EUIPO of 17 October 2016 changing the assignment of the applicant from the post of director of the 'Operations' department to a post in the EUIPO 'Observatory' department and, secondly, compensation for the damage allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Mr Ralph Pethke to bear his own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 151, 15.5.2017.

Judgment of the General Court of 5 March 2019 — Yellow Window v EIGE

(Case T-439/17) ([1])

(Public service contracts — Tender procedure — Provision of a service for the implementation of a study on female genital mutilation — Rejection of a tenderer's bid — Obligation to state reasons — Coherence between comments and the numerical score — Non-contractual liability)

(2019/C 139/46)

Language of the case: English

Parties

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

Defendant: European Institute for Gender Equality (represented by: V. Ost and M. Vanderstraeten, lawyers)

Re:

Application (i) under Article 263 TFEU for annulment of the decision of the EIGE of 8 May 2017 rejecting the tender submitted by the applicant in procurement procedure EIGE/2017/OPER/04 and the decisions selecting as successful the tender submitted by Company Y and awarding that contract to it, (ii) under Article 268 TFEU for an award of damages in respect of those decisions and (iii) in the alternative, for compensation for irregularities in the award of that contract.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Institute for Gender Equality (EIGE) of 8 May 2017 rejecting the tender submitted by Yellow Window NV in the context of the EIGE/2017/OPER/04 tender procedure and the decisions of 8 May 2017 adopting the tender submitted by Company Y in the context of that procedure and awarding it that contract;*

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

3. *Orders Yellow Window to bear 25 % of its own costs and the EIGE to bear its own costs and to pay 75 % of the costs incurred by Yellow Window.*

([1]) OJ C 338, 9.10.2017.

Judgment of the General Court of 5 March 2019 — Eurosupport — Fineurop support v EIGE

(Case T-450/17) ([1])

(Public service contracts — Tender procedure — Provision of a service for the implementation of a study on female genital mutilation — Rejection of a tenderer's bid — Obligation to state reasons — Coherence between comments and the numerical score — Non-contractual liability)

(2019/C 139/47)

Language of the case: English

Parties

Applicant: Eurosupport — Fineurop support Srl (Milan, Italy) (represented by: M. Velardo, lawyer)

Defendant: European Institute for Gender Equality (represented by: V. Ost and M. Vanderstraeten, lawyers)

Re:

Application (i) under Article 263 TFEU for annulment of the decision of the EIGE of 8 May 2017 rejecting the tender submitted by the applicant in procurement procedure EIGE/2017/OPER/04 and the decisions selecting as successful the tender submitted by Company Y and awarding that contract to it, (ii) under Article 268 TFEU for an award of damages in respect of those decisions and (iii) in the alternative, for compensation for irregularities in the award of that contract.

Operative part of the judgment

The Court:

1. *Declares that there is no longer any need to rule on the decisions of the European Institute for Gender Equality (EIGE) of 8 May 2017 adopting the tender submitted by Company Y in the context of the EIGE/2017/OPER/04 tender procedure and awarding it that contract;*

2. *Annuls the decision of the EIGE of 8 May 2017 rejecting the tender which Eurosupport — Fineurop support Srl had submitted in the context of that procedure;*

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

4. *Orders Eurosupport — Fineurop support to bear 25 % of its own costs and the EIGE to bear its own costs and to pay 75 % of the costs incurred by Eurosupport — Fineurop support.*

(1) OJ C 357, 23.10.2017.

Judgment of the General Court of 27 February 2019 –Aytekin v EUIPO — Dienne Salotti (Dienne)

(Case T-107/18) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Dienne — Earlier EU figurative mark ENNE — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2019/C 139/48)

Language of the case: English

Parties

Applicant: Erkan Aytekin (Ankara, Turkey) (represented by: V. Martín Santos, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral and G. Sakalaite-Orlovskiene, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Dienne Salotti Srl (Altamura, Italy) (represented by: D. Russo, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 December 2017 (Case R 1444/2017-2), relating to opposition proceedings between Mr Aytekin and Dienne Salotti.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Erkan Aytekin to bear his own costs and to pay those incurred, in connection with the present proceedings, by the European Union Intellectual Property Office (EUIPO) and by Dienne Salotti Srl.*

(1) OJ C 134, 16.4.2018.

Judgment of the General Court of 28 February 2019 — Pozza v Parliament

(Case T-216/18) ([1])

(Civil service — Officials — Remuneration — Expatriation allowance — Article 4(1)(a) of Annex VII to the Staff Regulations — Place where main activity is pursued — Inter-institutional transfer — Decision to no longer grant expatriation allowance — Competence — Legitimate expectations)

(2019/C 139/49)

Language of the case: French

Parties

Applicant: Geoffray Pozza (Waldbillig, Luxembourg) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Parliament (represented by: J. Van Pottelberge and M. Windisch, acting as Agents)

Re:

Application based on Article 270 TFEU seeking annulment of the decision of 8 June 2017 by which the Parliament no longer grants the applicant the expatriation allowance from the date on which he took up his duties.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Mr Geoffray Pozza to pay the costs.*

([1]) OJ C 211, 18.6.2018.

Judgment of the General Court of 5 March 2019 — Meblo Trade v EUIPO — Meblo Int (MEBLO)

(Case T-263/18) ([1])

(EU trade mark — Revocation proceedings — European Union figurative trade mark MEBLO — Genuine use of the trade mark — Article 58(1)(a) of Regulation (EU) 2017/1001 — Proof of genuine use)

(2019/C 139/50)

Language of the case: English

Parties

Applicant: Meblo Trade d.o.o. (Zagreb, Croatia) (represented by: A. Ivanova, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Markakis and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Meblo Int, proizvodnja izdelkov za spanje d.o.o. (Nova Gorica, Slovenia) (represented by: A. Plesničar, lawyer)

Re:

Action against the decision of the Fourth Board of Appeal of EUIPO of 27 February 2018 (Case R 883/2017-4), concerning revocation proceedings between Meblo Trade and Meblo Int, proizvodnja izdelkov za spanje.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Meblo Trade d.o.o. to pay the costs.*

([1]) OJ C 231, 2.7.2018.

Judgment of the General Court of 6 March 2019 — Serenity Pharmaceuticals v EUIPO — Gebro Holding (NOCUVANT)

(Case T-321/18) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark NOCUVANT — Earlier word marks NOCUTIL — Proof of genuine use — Article 47(2) of Regulation (EU) 2017/1001 — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation 2017/1001)

(2019/C 139/51)

Language of the case: English

Parties

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

Defendant: European Union Intellectual Property Office (represented by: A. Lukošiūtė and H. O'Neill, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Gebro Holding GmbH (Fieberbrunn, Austria) (represented by: M. Konzett, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 8 March 2018 (Case R 584/2017-2), relating to opposition proceedings between Gebro Holding and Allergan, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Serenity Pharmaceuticals LLC to pay the costs.*

([1]) OJ C 240, 9.7.2018.

Judgment of the General Court of 28 February 2019 — Lotte v EUIPO — Générale Biscuit-Glico France (PEPERO original)

(Case T-459/18) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark PEPERO original — Earlier national three-dimensional mark — Shape of an oblong biscuit partially covered with chocolate — Declaration of invalidity — Article 8(5) of Regulation (EU) 2017/1001 — Genuine use of the earlier mark — Earlier mark consisting of the shape of the product — Use as a trade mark — No alteration of distinctive character)

(2019/C 139/52)

Language of the case: French

Parties

Applicant: Lotte Corp. (Seoul, South Korea) (represented by: G. Ringeisen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Générale Biscuit-Glico France (Clamart, France) (represented by: A. Lecomte, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 May 2018 (Case R 913/2017-1) relating to invalidity proceedings between Générale Biscuit-Glico France and Lotte.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Lotte Corp. to pay the costs.*

([1]) OJ C 364, 8.10.2018.

Order of the General Court of 27 February 2019 –Miserini Johansson v EIB

(Case T-870/16) ([1])

(Civil service — Staff of the EIB — Prolonged or repeated absence on account of a non-occupational accident or disease — Remuneration reduced after 12 months of absence — Article 33 of the EIB Staff Regulations — Procedure for recognition of the occupational origin of the disease)

(2019/C 139/53)

Language of the case: English

Parties

Applicant: Virna Miserini Johansson (Luxembourg, Luxembourg) (represented by: A. Senes, lawyer)

Defendant: European Investment Bank (represented by: T. Gilliams, G. Faedo and K. Carr, acting as Agents, and by J. Currall and B. Wägenbaur, lawyers)

Re:

Application on the basis of Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union and seeking, primarily, annulment of a decision of the EIB dated 25 January 2016 and compensation in respect of the material and non-material harm associated with that decision and, in the alternative, solely compensation in respect of the material and non-material harm claimed in the main action and reimbursement of the costs incurred in connection with the health problems developed as a result of the severe stress suffered by the applicant and which are allegedly not reimbursed by the EIB's health insurance scheme.

Operative part of the order

1. *The action is dismissed.*

2. *Ms Virna Miserini Johansson shall pay the costs.*

([1]) OJ C 86, 20.3.2017.

Order of the General Court of 27 February 2019 — Sports Group Denmark v EUIPO — K&L (WHISTLER)

(Case T-836/17) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2019/C 139/54)

Language of the case: English

Parties

Applicant: Sports Group Denmark A/S (Ikast, Denmark) (represented by: E. Skovbo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: K&L GmbH & Co. Handels-KG (Weilheim, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 18 October 2017 (Case R 311/2017-1), relating to opposition proceedings between K&L and Sports Group Denmark.

Operative part of the order

1. *There is no need to adjudicate.*

2. *Sports Group Denmark A/S shall pay the costs.*

([1]) OJ C 63, 19.2.2018.

Order of the General Court of 27 February 2019 — PAN Europe v Commission

(Case T-25/18) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Regulation (EC) No 1367/2006 — Documents relating to endocrine-disrupting substances — Withdrawal of the decision refusing access — Disclosure after the action had been brought — Action which has become devoid of purpose — No need to adjudicate)

(2019/C 139/55)

Language of the case: English

Parties

Applicant: Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Commission (represented by: A. Buchet, I. Naglis and G. Gattinara, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2017) 7604 final of 9 November 2017, in so far as it refuses access to documents relating to endocrine-disrupting substances.

Operative part of the order

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

2. *The European Commission shall pay the costs.*

([1]) OJ C 104, 19.3.2018.

Order of the General Court of 28 February 2019 — Région de Bruxelles-Capitale v Commission

(Case T-178/18) ([1])

(Action for annulment — Plant-protection products — Active substance glyphosate — Renewal of inclusion in the Annex to Implementing Regulation (EU) No 540/2011 — Lack of direct concern — Inadmissibility)

(2019/C 139/56)

Language of the case: French

Parties

Applicant: Région de Bruxelles-Capitale (represented by: A. Bailleux and B. Magarinos Rey, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, A. Lewis, I. Naglis and G. Koleva, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011(OJ 2017 L 333, p.10).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no longer any need to adjudicate on the applications to intervene of Justice Pesticides, the Walloon Region, Pesticide Action Network Europe (PAN Europe), Health & Environment Alliance (HEAL), Nature & Progrès Belgique (Nature & Progrès), SomeOfUs, WeMove Europe (WeMove.EU), Monsanto Europe NV/SA, Monsanto Company, Helm AG, Barclay Chemicals Manufacturing Ltd, Albaugh Europe Sàrl, Albaugh TKI D.O.O. and Albaugh UK Ltd.*

3. *The Région de Bruxelles-Capitale shall bear its own costs and shall pay the costs incurred by the European Commission.*

4. *The Région de Bruxelles-Capitale, the Commission, Justice Pesticides, the Walloon Region, PAN Europe, HEAL, Nature & Progrès, SomeOfUs, WeMove.EU, Monsanto Europe, Monsanto Company, Helm, Barclay Chemicals Manufacturing, Albaugh Europe, Albaugh TKI D.O.O. and Albaugh UK shall each bear their own costs in relation to the applications to intervene.*

(1) OJ C 190, 4.6.2018.

Order of the General Court of 28 February 2019 — Gollnisch v Parliament

(Case T-375/18) (1)

(Action for annulment and for damages — Institutional law — European Parliament — Work of a delegation outside the European Union — Decision of the President of the Delegation for Relations with Japan — List of the persons authorised to participate in an interparliamentary meeting in Japan which did not include the name of the applicant — Period within which an action must be brought — Late submission — Measure not open to challenge — Disregard of formal requirements — Inadmissibility)

(2019/C 139/57)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Villiers-le-Mahieu, France) (represented by: B. Bonnefoy-Claudet, lawyer)

Defendant: European Parliament (represented by: C. Burgos and S. Alonso de León, acting as Agents)

Re:

Application, first, under Article 263 TFEU, for, primarily, the annulment of the decision of the President of the Delegation for Relations with Japan of 20 March 2018, listing the persons who were authorised to participate in an interparliamentary meeting in Japan and, in the alternative, the annulment of two decisions of implied refusal, and, secondly, under Article 268 TFEU, for repair of the damage allegedly suffered by the applicant as a result of that measure.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Bruno Gollnisch shall bear his own costs as well as those incurred by the European Parliament.*

(1) OJ C 364, 8.10.2018.

Order of the General Court of 27 February 2019 — SFIE-PE v Parliament

(Case T-401/18) ([1])

(Action for annulment — Institutional law — Interpreters' strike — Measures requisitioning interpreters adopted by the European Parliament — Measure not open to challenge — No individual concern — Inadmissibility)

(2019/C 139/58)

Language of the case: French

Parties

Applicant: Syndicat des fonctionnaires internationaux et européens — Section du Parlement européen (SFIE-PE) (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Parliament (represented by: O. Caisou-Rousseau and E. Taneva, acting as Agents)

Re:

Application under Articles 263 and 268 TFEU seeking, first, the annulment of the decision of 2 July 2018 of the Director General of Personnel of the Parliament requisitioning interpreters and conference interpreters for 3 July 2018 and the subsequent decisions of the Director General of Personnel of the Parliament requisitioning interpreters and conference interpreters for 4, 5,10 and 11 July 2018 and, second, an order that the Parliament make good the non-pecuniary harm caused by those decisions assessed *ex aequo et bono* at EUR 10 000.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the application for leave to intervene made by the Council of the European Union.*

3. *The Syndicat des fonctionnaires internationaux et européens — Section du Parlement européen (SFIE-PE) shall pay the costs, including the costs of the interim proceedings, with the exception of those related to the application for leave to intervene made by the Council.*

4. *The SFPI-PE, the European Parliament and the Council shall each bear their own costs of the application for leave to intervene made by the Council.*

([1]) OJ C 364, 8.10.2018.

Order of the General Court of 28 February 2019 — eSlovensko Bratislava v Commission

(Case T-460/18) ([1])

(Action for annulment — Public procurement — Set-off of claims — Action which has become devoid of purpose — No need to adjudicate)

(2019/C 139/59)

Language of the case: English

Parties

Applicant: eSlovensko Bratislava (Bratislava, Slovakia) (represented by: B. Fridrich, lawyer)

Defendant: European Commission (represented by: O. Verheecke, J. Estrada de Solà and F. van den Berghe, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of the decision contained in the Commission's letter of 22 June 2018 seeking to recover the sum of EUR 229 711.16 by way of set-off of the payment to be made by the Innovation and Networks Executive Agency (INEA) to the applicant against a claim of the Commission in respect of eSlovensko.

Operative part of the order

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

2. *Each party shall bear its own costs.*

([1]) OJ C 328, 17.9.2018.

Order of the General Court of 27 February 2019 — ND (*) and OE (*) v Commission

(Case T-581/18) ([1])

(Action for annulment — Discrimination alleged against European officials and other national residents concerning the method of calculating the net remuneration determining the tariff of certain social benefits — Coordination of social security systems — Decision to take no further action on a complaint — Failure to bring infringement proceedings — Inadmissibility)

(2019/C 139/60)

Language of the case: French

Parties

Applicants: ND (*) and OE (*) (represented by: A. Bove, lawyer)

Defendant: European Commission (represented by: D. Martin, acting as Agent)

Re:

Action under Article 263 TFEU for annulment of the decision contained in the Commission letter of 27 July 2018, notified to the applicants on 30 July 2018, by which the Commission decided to take no further action on their complaint against the City of Luxembourg, the State of Luxembourg and the Administrative Court of Luxembourg.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *ND (*) and OE (*) are ordered to pay the costs.*

([1]) OJ C 408, 12.11.2018.

Order of the President of the General Court of 5 February 2019 — Trifolio-M and Others v EFSA

(Case T-675/18 R)

(Application for interim measures — Plant protection products — Procedure for reviewing the approval of the active substance azadirachtin — Rejection of the request for confidential treatment — No prima facie case)

(2019/C 139/61)

Language of the case: English

Parties

Applicants: Trifolio-M GmbH (Lahnau, Germany), Oxon Italia SpA (Milan, Italy), Mitsui AgriScience International SA (Brussels, Belgium) (represented by: C. Mereu and S. Englebert, lawyers)

Defendant: European Food Safety Authority (represented by: D. Detken and S. Gabbi, acting as Agents, assisted by S. Raes, lawyer)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the Executive Director of the European Food Safety Authority on the requests for confidentiality made in relation to the conclusions on the Peer Review of the pesticide risk assessment of the active substance Azadirachtin of 11 September 2018 (EFSA/LA/DEC/19777743/2018).

Operative part of the order

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

2. *The order of 20 November 2018, Trifolio-M and Others v EFSA, (T-675/18 R) is cancelled.*

3. *Each party shall bear its own costs.*

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Action brought on 30 January 2019 — Cham Holding and Bena Properties v Council

(Case T-55/19)

(2019/C 139/62)

Language of the case: French

Parties

Applicants: Cham Holding Co. SA (Damascus, Syria) and Bena Properties Co. SA (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the General Court should:

— Declare the applicants' action admissible and well founded;

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicants, in the amount determined, in equity, by the General Court;

— In the alternative, order the appointment of an expert with a view to establishing the scale of the harm suffered by the applicants;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on one main plea in law and a plea in the alternative, alleging harm suffered by the applicants for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the Charter of Fundamental Freedoms of the European Union; and, second, that they infringe the applicants' right to property and their right to respect for their reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicants consisting, respectively, in (i) damage to their reputation and (ii) breach of contract, loss of equipment and loss of revenue, in respect of which they are entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 30 January 2019 — Syriatel Mobile Telecom v Council

(Case T-56/19)

(2019/C 139/63)

Language of the case: French

Parties

Applicant: Syriatel Mobile Telecom (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

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

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicant, in the amount determined, in equity, by the General Court;

— In the alternative, order the appointment of an expert with a view to establishing the scale of the harm suffered by the applicant;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law and a plea in the alternative, alleging harm suffered by the applicant for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the Charter of Fundamental Freedoms of the European Union; and, second, that they infringe the applicant's right to property and its right to respect for its reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicant consisting, respectively, in (i) damage to its reputation and (ii) breach of contract, loss of equipment and loss of revenue, in respect of which it is entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 31 January 2019 — Makhlouf v Council

(Case T-57/19)

(2019/C 139/64)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

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

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicant, in the amount determined, in equity, by the General Court;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law and a plea in the alternative, alleging harm suffered by the applicant for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the Charter of Fundamental Freedoms of the European Union; and, second, that they infringe the applicant's right to property and his right to respect for his reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicant consisting, respectively, in (i) damage to his reputation and (ii) breach of contract, loss of equipment and loss of revenue, in respect of which he is entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 31 January 2019 — Othman v Council

(Case T-58/19)

(2019/C 139/65)

Language of the case: French

Parties

Applicant: Razan Othman (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the applicant's application admissible and well-founded;

— as a consequence, order the European Union to pay compensation for all of the damage allegedly suffered by the applicant at an amount to be fixed equitably by the Court;

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea and one alternative plea, alleging the harm that she has allegedly suffered and for which the Council of the European Union is liable.

The main plea alleges that the restrictive measures at issue, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, they infringe the obligation to state reasons as laid down in Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union and, second, they infringe the applicant's right to property and the right to respect for her reputation. That infringement was the direct cause of significant material and non-material damage to her, consisting respectively of damage to her reputation, on the one hand, and breach of contracts, loss of material and loss of income, on the other, for which she claims to be entitled to compensation.

The alternative plea is based on the existence of a strict liability regime in the European Union.

Action brought on 31 January 2019 — Makhlouf v Council

(Case T-59/19)

(2019/C 139/66)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

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

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicant, in the amount determined, in equity, by the General Court;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law and a plea in the alternative, alleging harm suffered by the applicant for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the Charter of Fundamental Freedoms of the European Union; and, second, that they infringe the applicant's right to property and his right to respect for his reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicant consisting in damage to his reputation, suffered following his inclusion in the sanction list, in respect of which he is entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 3 February 2019 — Drex Technologies v Council

(Case T-61/19)

(2019/C 139/67)

Language of the case: French

Parties

Applicant: Drex Technologies (Tortola, British Virgin Islands) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

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

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicant, in the amount determined, in equity, by the General Court;

— In the alternative, order the appointment of an expert with a view to establishing the scale of the harm suffered by the applicant;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law and a plea in the alternative, alleging harm suffered by the applicant for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the

Charter of Fundamental Freedoms of the European Union; and, second, that they in fringe the applicant's right to property and its right to respect for its reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicant consisting, respectively, in (i) damage to its reputation and (ii) breach of contract, loss of equipment and loss of revenue, in respect of which it is entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 3 February 2019 — Almashreq Investment Fund v Council

(Case T-62/19)

(2019/C 139/68)

Language of the case: French

Parties

Applicant: Almashreq Investment Fund (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

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

— Accordingly, order the European Union to pay compensation in respect of all of the harm suffered by the applicant, in the amount determined, in equity, by the General Court;

— In the alternative, order the appointment of an expert with a view to establishing the scale of the harm suffered by the applicant;

— Order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law and a plea in the alternative, alleging harm suffered by the applicant for which liability rests with the Council of the European Union.

The main plea alleges that the disputed restrictive measures, namely Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria and its subsequent implementing acts, are unlawful. First, it is claimed that those measures infringe the obligation to state reasons as provided in Article 296 TFEU and Article 41 of the Charter of Fundamental Freedoms of the European Union; and, second, that they infringe the applicant's right to property and its right to respect for its reputation. It is claimed that that infringement has directly caused significant non-material and material harm to the applicant consisting, respectively, in (i) damage to its reputation and (ii) breach of contract, loss of equipment and loss of revenue, in respect of which it is entitled to compensation.

The plea in the alternative alleges the existence of a system of strict liability under EU law.

Action brought on 5 February 2019 — CRIA and CCCMC v Commission

(Case T-72/19)

(2019/C 139/69)

Language of the case: English

Parties

Applicants: China Rubber Industry Association (CRIA) (Beijing, China) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) (Beijing) (represented by: R. Antonini, E. Monard and B. Maniatis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163, in so far as it relates to the applicants and their relevant members; and

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that by making the injury analysis on the basis of the ?weighted? data of the sampled companies, the contested Regulation violates Articles 2(d), 8(1), (4) and (7) and 27 (juncto Article 10(6)) of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (?basic anti-subsidy Regulation?). ([1]) Even if assuming the weighting would be allowed, the way in which it was done results in violations of Articles 8(1), (2) and (4) and 15(1) of the basic anti-subsidy Regulation.

2. Second plea in law, alleging that the inclusion of retreaded tyres does not allow the Commission to obtain any basis to logically progress its inquiry, in violation of Articles 2(d), 8(1), (4) and (5) and 9(1) of the basic anti-subsidy Regulation. The injury and causation analysis ignoring the segmentation between new and retreaded tyres is not based on positive evidence and does not amount to an objective examination in violation of Article 8(1), (4) and (5) of the basic anti-subsidy Regulation.

3. Third plea in law, alleging that the assessment of the price effects (price undercutting and underselling) and determination the injury elimination level violates Articles 8(1) and (2) and 15(1) of the basic anti-subsidy Regulation, by failing to take into account the significantly higher cost per kilometre of a new tyre as compared to a retreaded tyre and by relying on constructed export prices.

4. Fourth plea in law, alleging that the incoherencies, inconsistencies and absence of a positive and/or objective evidentiary basis of the causation analysis violates Article 8(1) and (5) of the basic anti-subsidy Regulation. The contested Regulation also fails to appropriately examine other known factors to ensure that the injury caused by those other factors is not attributed to the dumped imports contrary to Article 8(1) and (6) of the basic anti-subsidy Regulation.

5. Fifth plea in law, alleging that the Commission violated the rights of defence of the applicants and Articles 11(7), 29(1), (2) and (3) and 30(2) and (4) of the basic anti-subsidy Regulation by failing to disclose and provide the applicants with access to information relevant to the injury and dumping determinations.

6. Sixth plea in law, alleging that the level of the anti-dumping duties imposed by the contested Regulation violates the corresponding provisions of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (?basic anti-dumping Regulation?) ([2]) and Articles 2(10)(b) and 2(7)(a) of the basic anti-dumping Regulation.

([1]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

([2]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

Action brought on 12 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (We IntelliGence the World)

(Case T-84/19)

(2019/C 139/70)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 (We IntelliGence the World) — Application for registration No 15 225 246

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1062/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 February 2019 — Broughton v Eurojust

(Case T-87/19)

(2019/C 139/71)

Language of the case: Dutch

Parties

Applicant: Jon Broughton (Amsterdam, Netherlands) (represented by: D.C. Coppens, lawyer)

Defendant: Eurojust

Form of order sought

— annul the contested decisions of Eurojust 62/2018/AD of 20 November 2018, AD 2018-26 and AD 2018-27 of 4 May 2018 and the recovery decision of 4 May 2018 pursuant to Article 270 TFEU;

— declare that French must be regarded as Mr Broughton's second language and Dutch as his third language;

— determine that the recovery ordered against the applicant is unlawful and cease it and determine that the applicant must be reimbursed the amounts recovered by Eurojust;

— determine that Eurojust must return the applicant to the same legal position he was in prior to the contested decisions;

— order Eurojust to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, directed against all the contested decisions

— the investigation was not carried out objectively and carefully;

— the facts which form the basis of the contested decisions were not established on the basis of a careful and independent investigation;

— the decision is factually unfounded;

— the applicant's interests were not sufficiently taken into account, in breach of the 'equality of arms' principle.

2. Second plea in law, directed against orders AD 2018-26 and AD 2018-27: the decisions are factually unfounded

— the facts underpinning the decision cannot support the decision;

— the facts were incorrectly laid down;

— the evidence was assessed incorrectly.

3. Third plea in law, directed against the recovery decision

— the decision is factually unfounded;

— the decision was insufficiently reasoned.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (currencymachineassistant)

(Case T-88/19)

(2019/C 139/72)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 currencymachineassistant — Application for registration No 15 225 071

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1059/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (robodealer)

(Case T-89/19)

(2019/C 139/73)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 (robodealer) — Application for registration No 15 225 212

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1058/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (currencyassistant)

(Case T-90/19)

(2019/C 139/74)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 currencyassistant — Application for registration No 15 224 876

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1057/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (tradingcurrency-assistant)

(Case T-91/19)

(2019/C 139/75)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 tradingcurrencyassistant — Application for registration No 15 225 238

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1056/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (CKPL)

(Case T-92/19)

(2019/C 139/76)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 (CKPL) — Application for registration No 15 368 897

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1060/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (AI moneypersonalassistant)

(Case T-93/19)

(2019/C 139/77)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 AI moneypersonalassistant — Application for registration No 15 225 188

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1055/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (moneyassistant)

(Case T-94/19)

(2019/C 139/78)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 moneyassistant — Application for registration No 15 225 105

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1054/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (AI currencypersonalassistant)

(Case T-95/19)

(2019/C 139/79)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 AI currencypersonalassistant — Application for registration No 15 225 097

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1053/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 14 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (CNTX Trading)

(Case T-96/19)

(2019/C 139/80)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (New York, New York, United States)

Details of the proceedings before EUIPO

Applicant: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark CNTX Trading — Application for registration No 15 368 939

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 986/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (AIdealer)

(Case T-97/19)

(2019/C 139/81)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 AIdealer — Application for registration No 15 216 765

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1063/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 February 2019 — Cinkciarz.pl v EUIPO — MasterCard International (CNTX)

(Case T-98/19)

(2019/C 139/82)

Language of the case: English

Parties

Applicant: Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska and K. Gajek, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: MasterCard International, Inc. (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 CNTX — Application for registration No 15 368 954

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 1064/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and MasterCard International Incorporated to bear their own costs and to pay those incurred by the applicant, including those incurred in the proceedings before the EUIPO.

Pleas in law

— Infringement of Article 71(1) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 41(2) of the Charter of Fundamental Rights of the European Union;

— Infringement of the principles of equal treatment and sound administration;

— Infringement of Article 8(1)(b) and Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 19 February 2019 — L. Oliva Torras v EUIPO — Mecánica del Frío (Vehicle couplings)

(Case T-100/19)

(2019/C 139/83)

Language in which the application was lodged: Spanish

Parties

Applicant: L. Oliva Torras, SA (Manresa, Spain) (represented by: E. Sugrañes Coca, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mecánica del Frío, SL (Cornellá de Llobregat, Spain)

Details of the proceedings before EUIPO

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

Design at issue: European Union design (Vehicle couplings) — European Union design No 2217 588-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 19 November 2018 in Case R 1397/2017-3

Form of order sought

The applicant claims that the Court should:

— With regard to the ground of invalidity: uphold the findings of the Board of Appeal on this point and allow the proceedings seeking invalidity of a European Union design in respect of each of Articles 4 to 9 of the Regulation on Community designs, under 'Requirements for protection'.

— With regard to the precedence on which the claims of lack of novelty and individual character are based: the applicant submits that the comparison conducted by the Cancellation Division and the Board of Appeal, based solely on image A (render of the catalogue), is incorrect, and requests that the comparison be conducted taking into account all of the evidence submitted and the specific circumstances of the present case.

— The substance: lack of novelty of the European Union design sought. The applicant requests that the contested design be declared invalid since it is almost identical and therefore consists in an unauthorised, practically identical imitation of the designed marketed by the applicant. Consequently, the contested design lacks the novelty required to acquire protection by means of the registration of a European Union design.

— The substance: lack of individual character of the European Union design sought. The applicant requests that the contested design be declared invalid on the ground of lack of individual character with respect to the designs released earlier by L. Oliva Torras, S.A., bearing in mind the little degree of creative freedom allowed by the technical functionality of the part which must be mounted on a specific vehicle motor, the characteristics of an informed user and the similarities between the parts compared.

— The substance: existence of exclusions to the protection of a European Union design within the meaning of Article 8 of the Regulation on Community designs. The applicant requests that the contested design be declared invalid on the ground that it is subject to the prohibition laid down in Article 8(1) and (2), as the appearance of the design is dictated solely by its technical function, and that it be declared invalid on the ground that it is subject to the absolute prohibition under Article 4 of the Regulation on Community designs since it constitutes a component of a complex product.

— The substance: conflict of the European Union design with Article 9 of the Regulation on Community designs. The applicant requests that the decision of the Board of Appeal be upheld on that point.

— In accordance with Article 134(1) of the Rules of Procedure of the General Court, under 'General rules as to the allocation of costs', the applicant requests that the unsuccessful party be ordered to play the costs if they have been applied for in the successful party's pleadings.

Plea in law

— Infringement of Articles 5, 6, 8 and 9 of Council Regulation (EC) No 6/2002.

Action brought on 19 February 2019 — Garriga Polledo and Others v Parliament

(Case T-102/19)

(2019/C 139/84)

Language of the case: French

Parties

Applicants: Salvador Garriga Polledo (Madrid, Spain) and 45 other applicants (represented by: A. Schmitt and A. Waisse, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— where necessary, by way of measures of organisation of procedure or measures of inquiry in the case, order the European Parliament to disclose the opinions given by the European Parliament Legal Service on 16 July 2018 and 3 December 2018, although perhaps not on those exact dates, but in any event before the adoption of the decision taken by the Bureau of the Parliament on 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament (OJ 2018 C 466, p.8);

— annul the abovementioned decision taken by the Bureau of the Parliament on 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament, in so far as it amends Article 76 of the IMS (recitals 5 and 6, Article 1(7)) and Article 2 in so far as it concerns Article 76 of the IMS of the abovementioned decision), or, alternatively, if those sections were not considered to be severable from the remainder of the contested measure, to annul the abovementioned measure in its entirety;

— order the Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the Bureau's lack of competence ratione materiae

— first, the contested measure infringed the Statute for Members of the European Parliament adopted by decision of the European Parliament of 28 September 2005, 2005/684/EC, Euratom, (OJ 2005 L 262, p.1) ('the Statute'). The contested measure is in particular contrary to Article 27 of the Statute which requires that 'acquired rights' and 'future entitlements' must be maintained.

— secondly, the contested measure introduces a tax by imposing a special levy amounting to 5 % of the nominal amount of the pension, whereas the introduction of a tax does not fall within the competence of the Bureau under Article 223(2) TFEU.

2. Second plea in law, alleging infringement of essential procedural requirements.

— first, the Bureau is criticised for having adopted the contested measure without complying with the rules imposed by Article 223 TFEU.

— secondly, the contested measure is insufficiently reasoned and thus infringes the duty to state reasons laid down in the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging infringement of acquired rights and future entitlements and of the principle of legitimate expectations.

— first, the contested measure infringes acquired rights and future entitlements resulting from general legal principles and the Statute, which expressly requires that those rights and entitlements be maintained 'in full' (Article 27).

— secondly, the contested measure infringes the principle of legitimate expectations.

4. Fourth plea in law, alleging infringement of the principle of proportionality and of the principles of equal treatment and non-discrimination.

— first, the infringements of the applicants' rights are disproportionate to the objectives pursued by the contested measure.

— secondly, the contested measure must be annulled on the basis that it infringes the principles of equal treatment and non-discrimination.

5. Fifth plea in law, alleging infringement of the principle of legal certainty and the absence of transitional measures.

— first, the contested measure infringes the principle of legal certainty in that it is unlawfully coupled with retroactive effect.

— secondly, the contested measure infringes the principle of legal certainty in that it failed to lay down transitional measures.

Action brought on 20 February 2019 — Mende Omalanga v Council

(Case T-103/19)

(2019/C 139/85)

Language of the case: French

Parties

Applicant: Lambert Mende Omalanga (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 11 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 11 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(a) of Decision 2010/788/CFSP and Article 2b(1)(a) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of the defence, including breach of the obligation to state reasons justifying the measures and ensuring effective judicial protection and breach of the right to be heard.

2. Second plea in law, alleging a manifest error of assessment as regards the involvement of the applicant in acts impeding a consensual and peaceful solution with a view to holding elections in the Democratic Republic of the Congo.

3. Third plea in law, alleging infringement of the right to privacy and the principle of proportionality.

4. Fourth plea in law, alleging that the provisions of Article 3(2)(a) of Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ 2010 L 336, p. 30) and Article 2b(1)(a) of Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2005 L 193, p. 1) are inapplicable. In that regard, the applicant submits that the legal criterion, as defined in those articles, on which the inclusion of the applicant's name on the lists at issue is based, infringes the principle of the foreseeability of Union acts and the principle of proportionality in so far as it confers arbitrary and discretionary power on the Council.

Action brought on 19 February 2019 — Dermavita v EUIPO — Allergan Holdings France (JUVÉDERM)

(Case T-104/19)

(2019/C 139/86)

Language of the case: English

Parties

Applicant: Dermavita Co. Ltd (Beirut, Lebanon) (represented by: G. Paricheva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Allergan Holdings France SAS (Courbevoie, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark JUVÉDERM — European Union trade mark No 5 807 169

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 December 2018 in Case R 2630/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the Board of Appeal to bear their own costs and pay those of the applicant for annulment at every stage of the action for revocation and appeal proceedings, including the cost of these proceedings.

Plea in law

— Infringement of Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 February 2019 — Louis Vuitton Malletier/EUIPO — Wisniewski (Representation of a chequerboard pattern)

(Case T-105/19)

(2019/C 139/87)

Language of the case: English

Parties

Applicant: Louis Vuitton Malletier (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, N. Parrotta and F. Rossi, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Norbert Wisniewski (Warsaw, Poland)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark representing a chequer-board pattern — International registration designating the European Union No 2 829 851

Contested decision: Decision of the Second Board of Appeal of EUIPO of 22 November 2018 in Case R 274/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs incurred by the applicant during these proceedings;

— order Norbert Wisniewski to pay the costs incurred by the applicant in these proceedings.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 59(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 February 2019 — ACRE v Parliament

(Case T-107/19)

(2019/C 139/88)

Language of the case: English

Parties

Applicant: Alliance of Conservatives and Reformists in Europe (ACRE) (Brussels, Belgium) (represented by: E. Plasschaert and E. Montens, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament's decision of 10 December 2018, contained in the letter of 12 December 2018 bearing the reference D202862 on the applicant's final grant for 2017, in as much as it:

— reclassified the amount related to the 'Survey on attitude on UK minority groups in the EU', namely EUR 108 985.58, as a non-eligible expenditure to be reimbursed based on the alleged non-compliance with Article 7 of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003; ([1])

— reclassified the amount related to the 'UK Trade Partnership Conference', namely EUR 122 295.10, as a non-eligible expenditure to be reimbursed based on an alleged non-compliance with Article 7 of Regulation No 2004/2003;

— reclassified the amount related to the 'Conservative International — Miami Conference of 26-27 May 2017', namely EUR 249 589.17, as a non-eligible expenditure to be reimbursed based of an alleged non-compliance with Article 8 of Regulation No 2004/2003;

— reclassified the amount related to the 'Conservative International — Kampala Conference of 13-15 July 2017', namely EUR 91 546.58, as non-eligible expenditure to be reimbursed based of an alleged non-compliance with Article 8 of Regulation No 2004/2003;

— hold that the payment of the membership fee of EUR 133 043.80 by the Prosperous Armenian Party is subject to the limit of EUR 12 000 imposed on donations; and forced the applicant to return the excess over EUR 12 000 to the said member, i.e. the amount of EUR 121 043.80;

— annul the contribution decision with number FINS-2019-5, in as much as it renders the payment by the European Parliament of 100 % of the pre-financing amount of EUR 4422 345.48, dependent on the reimbursement prior to 15 January 2019 of (i) the amount of EUR 535 609.48 to the European Parliament of (ii) any payment unduly received by any third party to such third party and, as a consequence, annul Article 1.5.1 of the special terms and conditions attached to said contribution decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

Pleas related to all disputed aspects of the decision:

1. First plea in law, alleging a breach of the principle of good administration, of Articles 7 and 8 of the decision of the Bureau of the European Parliament of 29 March 2004 laying down the procedures for implementing Regulation No 2004/2003, Article II.14.1 of the 2017 grant award decision and a violation of the applicant's right of the defence.

2. Second plea in law, alleging a breach of Article 9(3) of Regulation 2004/2003.

Pleas in respect of the reclassification of the amount of EUR 108 985.58 as non-eligible and to be reimbursed:

3. Third plea in law, alleging a breach of Article 7 of Regulation 2004/2003, at the least a manifest error of assessment.

4. Fourth plea in law, alleging a breach of the EU general principle of legal certainty.

5. Fifth plea in law, alleging a breach of the EU general principle of equal treatment.

Pleas in respect of the reclassification of the amount of EUR 122 295.10 as non-eligible and to be reimbursed:

6. Sixth plea in law, alleging a breach of Article 7 of Regulation 2004/2003, at the least a manifest error of assessment.

7. Seventh plea in law, alleging a breach of the EU general principle of equal treatment.

Pleas in respect of the reclassification of the amounts of EUR 249 589.17 and of EUR 91 546.58 as non-eligible and to be reimbursed:

8. Eighth plea in law, alleging a breach of Article 8 of Regulation 2004/2003, Article 10(4) TEU, Article 204a of the financial regulation as well as of Articles 11 and 12 of the Charter of Fundamental Rights of the European Union, at the least a manifest error of assessment.

9. Ninth plea in law, alleging a breach of the EU principle of legal certainty.

10. Tenth plea in law, alleging a breach of the EU general principle of equal treatment and non-discrimination.

Pleas in respect of the reclassification of the amount of EUR 133 043 and the order to reimburse EUR 121 043.80:

11. Eleventh plea in law, alleging a breach of Articles 2 and 6 of Regulation 2004/2003, at the least a manifest error of assessment.

12. Twelfth plea in law, alleging a breach of the EU principle of legal certainty.

13. Thirteenth plea in law, alleging a breach of the EU principle of equal treatment and non-discrimination.

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

1. First plea in law, alleging a breach of the principle of good administration, of Article 19 of Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 ([2]) and a violation of the applicant's right of the defence.

2. Second plea in law, alleging a breach of Article 6(1) of the decision of the Bureau of the European Parliament of 28 May 2018 laying down the procedures for implementing Regulation No 1141/2014.

(1) Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ L 297, 15.11.2003, p. 1).

(2) Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

Action brought on 20 February 2019 — Kerry Luxembourg/EUIPO — Döhler (TasteSense By Kerry)

(Case T-108/19)

(2019/C 139/89)

Language of the case: English

Parties

Applicant: Kerry Luxembourg Sàrl (Luxembourg, Luxembourg) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Döhler GmbH (Darmstadt, Germany)

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 TasteSense By Kerry — Application for registration No 15 820 509

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 November 2018 in Case R 1179/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the opposition brought by Döhler GmbH against the registration of the mark TasteSense By Kerry No. 15 820 509;

— order EUIPO and Döhler, if it should intervene in these proceedings, 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 20 February 2019 — Kerry Luxembourg/EUIPO — Döhler (TasteSense)

(Case T-109/19)

(2019/C 139/90)

Language of the case: English

Parties

Applicant: Kerry Luxembourg Sàrl (Luxembourg, Luxembourg) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Döhler GmbH (Darmstadt, Germany)

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 TasteSense –Application for registration No 15 820 525

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 November 2018 in Case R 1178/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the opposition brought by Döhler GmbH against the registration of the mark TasteSense By Kerry No. 15 820 525;

— order EUIPO and Döhler, if it should intervene in these proceedings, 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 20 February 2019 — Kazembe Musonda v Council

(Case T-110/19)

(2019/C 139/91)

Language of the case: French

Parties

Applicant: Jean-Claude Kazembe Musonda (Lubumbashi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 10 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 10 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Boshab v Council

(Case T-111/19)

(2019/C 139/92)

Language of the case: French

Parties

Applicant: Évariste Boshab (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 8 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 8 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Kibelisa Ngambasai v Council

(Case T-112/19)

(2019/C 139/93)

Language of the case: French

Parties

Applicant: Roger Kibelisa Ngambasai (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 6 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 6 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(a) of Decision 2010/788/CFSP and Article 2b(1)(a) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Kampete v Council

(Case T-113/19)

(2019/C 139/94)

Language of the case: French

Parties

Applicant: Ilunga Kampete (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 1 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 1 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 19 February 2019 — Bacardi v EUIPO — La Fée (ANGEL'S ENVY)

(Case T-115/19)

(2019/C 139/95)

Language of the case: English

Parties

Applicant: Bacardi Co. Ltd (Vaduz, Liechtenstein) (represented by: A. Parassina, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: La Fée LLP (Hertfordahire, United Kingdom)

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 ANGEL'S ENVY — Application for registration No 13 896 551

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2018 in Case R 338/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition against the registration of the word-device mark No. 13 896 551 for goods in class 33;

— transmit the judgment of the General Court of the CJEU to EUIPO;

— order La Feè LLP to pay all costs and expenses.

Pleas in law

— Infringement of Article 95 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 27(2) to (4) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 11 of the Charter of Fundamental Rights of the European Union;

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

Action brought on 20 February 2019 — Kande Mupompa v Council

(Case T-116/19)

(2019/C 139/96)

Language of the case: French

Parties

Applicant: Alex Kande Mupompa (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 9 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 9 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Kahimbi Kasagwe v Council

(Case T-117/19)

(2019/C 139/97)

Language of the case: French

Parties

Applicant: Delphin Kahimbi Kasagwe (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 7 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 7 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(a) of Decision 2010/788/CFSP and Article 2b(1)(a) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Amisi Kumba v Council

(Case T-118/19)

(2019/C 139/98)

Language of the case: French

Parties

Applicant: Gabriel Amisi Kumba (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 2 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 2 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Mutondo v Council

(Case T-119/19)

(2019/C 139/99)

Language of the case: French

Parties

Applicant: Kalev Mutondo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 14 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 14 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(a) and (b) of Decision 2010/788/CFSP and Article 2b(1)(a) and (b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Numbi v Council

(Case T-120/19)

(2019/C 139/100)

Language of the case: French

Parties

Applicant: John Numbi (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 5 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 5 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(a) of Decision 2010/788/CFSP and Article 2b(1)(a) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Ruhorimbere v Council

(Case T-121/19)

(2019/C 139/101)

Language of the case: French

Parties

Applicant: Éric Ruhorimbere (Mbuji-Mayi, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 12 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 12 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Ramazani Shadary v Council

(Case T-122/19)

(2019/C 139/102)

Language of the case: French

Parties

Applicant: Emmanuel Ramazani Shadary (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 13 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 13 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Kanyama v Council

(Case T-123/19)

(2019/C 139/103)

Language of the case: French

Parties

Applicant: Célestin Kanyama (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 4 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 4 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 20 February 2019 — Ilunga Luyoyo v Council

(Case T-124/19)

(2019/C 139/104)

Language of the case: French

Parties

Applicant: Ferdinand Ilunga Luyoyo (Kinshasa, Democratic Republic of the Congo) (represented by: T. Bontinck, P. De Wolf, M. Forgeois, and A. Guillerme, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (CFSP) 2018/1940 of 10 December 2018, in so far as the applicant remains at No 3 in Annex II to Decision 2010/788/CFSP;

— annul Council Implementing Regulation (EU) 2018/1931 of 10 December 2018, in so far as the applicant remains at No 3 in Annex Ia to Regulation (EC) No 1183/2005;

— rule that the provisions of Article 3(2)(b) of Decision 2010/788/CFSP and Article 2b(1)(b) of Regulation (EC) 1183/2005/EC are unlawful;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are in essence identical or similar to those raised in Case T-103/19, *Mende Omalanga* v *Council*.

Action brought on 21 February 2019 — Dyson and Others v Commission

(Case T-127/19)

(2019/C 139/105)

Language of the case: English

Parties

Applicants: Dyson Ltd (Malmesbury, United Kingdom) and 14 other applicants (represented by: E. Batchelor, T. Selwyn Sharpe and M. Healy, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— hold the defendant liable for the damage sustained by the applicants as a consequence of the adoption of Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013, ([1]) in the sum of approximately:

  — EUR 176 100 000, including compensatory interest, for the no-label counterfactual, starting from the entry into force of Delegated Regulation No 665/2013 until 19 January 2019 when labelling regulation was annulled; and/or alternatively

  — EUR 127 100 000, including compensatory interest, for the dust-loaded counterfactual, starting from the entry into force of Delegated Regulation No 665/2013 until 19 January 2019 when labelling regulation was annulled; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached Article 10(1) of Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 ([2]) and exceeded its legal competence as permitted by Article 290 TFEU by adopting an empty receptacle testing method in the Delegated Regulation No 665/2013.

   The defendant would have disregarded an essential element of Article 10(1) of Directive 2010/30/EU and would have exceeded its competence contrary to Article 290 TFEU.

2. Second plea in law, alleging that the defendant breached the fundamental principle of equal treatment by adopting Delegated Regulation No 665/2013 that would have unlawfully discriminated between traditional bagged vacuum cleaners and bagless, cyclonic technology such as applicants', without objective justification.

3. Third plea in law, alleging that the defendant breached the fundamental principle of sound administration and/or its duty to act diligently by adopting an empty receptacle testing method which: (i) would have disregarded an essential element of Directive 2010/30/EU; (ii) would have discriminated against fundamentally different technologies; and (iii) would have failed to carefully and impartially assess the available alternative dust-loaded testing methods at the time.

4. Fourth plea in law, alleging that the defendant breached the applicants' fundamental right to pursue a trade or business.

The defendant adopted a regulation that would have biased in favour of traditional bagged vacuum cleaners which would lose performance as the receptacle filled with dust, rather than those like applicants' cyclonic technology-based machines which would maintain their performance throughout use. This restricted applicants' ability to do business and compete fairly with competitors whose inferior performance when filling with dust would have been masked by the defendant's label which would have provided for testing in pristine conditions.

5. Fifth plea in law, alleging that these serious breaches of the European Union law caused the applicants significant material and non-material damage for which the defendant should be held liable to pay compensation to the applicants.

([1]) [1]Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ L 192, 13.7.2013, p. 1).

([2]) Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ L 153, 18.6.2010, p. 1).

Action brought on 26 February 2019 — Spadafora v Commission

(Case T-130/19)

(2019/C 139/106)

Language of the case: Italian

Parties

Applicant: Sergio Spadafora (Brussels, Belgium) (represented by: G. Belotti, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul the decision, adopted on 26 November 2018 by the Director-General of OLAF, by which the complaint lodged by the applicant on 24 July 2018 was rejected;

— Annul the decision, adopted by the acting Director-General of OLAF in his capacity as appointing authority, concerning the appointment of the Head of the Unit OLAF.C4 ('Legal Advice') as from 1 June 2018;

— Order the European Commission to pay compensation to the applicant for material and non-material damage;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

The present action is brought principally against the decision appointing the Head of the Legal Advice Unit of the Investigation Support Directorate of OLAF as of 1 June 2018, and the decision rejecting the complaint lodged by the applicant under Article 90(2) of the Staff Regulations against the appointment decision.

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

1. First plea in law, alleging infringement of Article 8(1) and (2) of Commission Decision C (2016) 3288 final.

— The applicant claims in this regard that the assessments contained in the reports of the external consultancy firm were not taken into account by the appointing authority, as required by Article 8(1) of the abovementioned Commission Decision in order for there to have been a lawful procedure for the selection of a Head of Unit.

2. Second plea in law, alleging infringement of the requirement of impartiality.

— The applicant claims in this regard that Article 41 of the Charter of Fundamental Rights of the European Union was not complied with in the present case, since the decision appointing the Head of Unit in question, rather than being the lawful result of a fair selection process, was the objective pursued from the outset by the defendant's unlawful plan. In the defendant's unlawful plan, it is possible to identify two principal elements: (i) favouritism towards one of the applicant's competitors; (ii) debasement of the judgment of the General Court of the European Union (Appeal Chamber) of 5 December 2017, in Case T-250/16 P.

3. Third plea in law, alleging that, although, under Article 8(2)(a) of Commission Decision C (2016) 3288 final, '*before deciding on the appointment, the Director-General concerned [is to] consult the Member of the Commission responsible for the department*', the appointing authority did not follow this consultation procedure in the present case, agreeing, instead, with one or more individuals on the candidate to appoint as Head of Unit.

Action brought on 28 February 2019 — Off-White v EUIPO (OFF-WHITE)

(Case T-133/19)

(2019/C 139/107)

Language of the case: English

Parties

Applicant: Off-White LLC (Springfield, Illinois, United States) (represented by: M. Decker, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark OFF-WHITE — Application for registration No 17 360 009

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 December 2018 in Case R 580/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— in any event, order EUIPO to pay the costs of the proceedings, including those incurred OFF-WHITE LLC before the present Court and the Board of Appeal of the EUIPO.

Pleas in law

— The contested decision did not take into account previous practice and violates the legal principles of sound administration, legal certainty and equal treatment.

— Infringement of Article 41(2) of the Charter of Fundamental Rights of the European Union.

— Infringement of Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 March 2019 — Pilatus Bank v ECB

(Case T-139/19)

(2019/C 139/108)

Language of the case: English

Parties

Applicant: Pilatus Bank plc (Ta'Xbiex, Malta) (represented by: O. Behrends, M. Kirchner and L. Feddern, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— declare the contested decision void pursuant to Article 264 TFEU, by which the ECB refused to take over direct supervision of the applicant pursuant to Article 6(5)(b) SSMR. ([1])

— order the defendant to bear the costs of the applicant pursuant to Articles 134 and 135 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging an erroneous assumption of the ECB that it no longer has competence for supervision of the applicant following the withdrawal of its licence agreement.

2. Second plea in law, alleging that the ECB is obliged to take over supervision as it has to maintain high supervisory standards.

3. Third plea in law, alleging a violation of the right to an effective remedy and of the principle of equality of arms.

4. Fourth plea in law, alleging a violation of the principle of legitimate expectations and legal certainty.

5. Fifth plea in law, alleging a violation of the principle of proportionality.

6. Sixth plea in law, alleging a misuse of power.

7. Seventh plea in law, alleging a lack of appropriate reasoning.

8. Eighth plea in law, alleging a violation of the right to be heard.

9. Ninth plea in law, alleging a violation of the nemo auditor principle.

(1) Council Regulation (EU) No 1024/2013 of 15 October 2013 concerning specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions OJ L 287, 29.10.2013, p. 63.

Action brought on 7 March 2019 — Kludi v EUIPO — Adlon Brand (ADLON)

(Case T-144/19)

(2019/C 139/109)

Language in which the application was lodged: German

Parties

Applicant: Kludi GmbH & Co. KG (Menden, Germany) (represented by: A. Zafar, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Adlon Brand GmbH & Co. KG (Düren, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark ADLON — Application for registration No 11 115 961

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 November 2018 in Case R 1500/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 7 of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 27(4) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of the principle that the subject matter of an action is defined by the parties.

Order of the General Court of 27 February 2019 — Seigneur v ECB

(Case T-674/16) ([1])

(2019/C 139/110)

Language of the case: French

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

([1]) OJ C 419, 14.11.2016.

Order of the General Court of 27 February 2019 — Bowles v BCE

(Case T-677/16) ([1])

(2019/C 139/111)

Language of the case: French

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

([1]) OJ C 419, 14.11.2016.

Order of the General Court of 27 February 2019 — Government of Gibraltar v Commission

(Case T-783/16) ([1])

(2019/C 139/112)

Language of the case: English

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

([1]) OJ C 22, 23.1.2017.

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