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Information and Notices

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Contents

EN

General Court

IV

(Notices)

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*

(2020/C 390/01)

Last publication

OJ C 378, 9.11.2020

Past publications

OJ C 371, 3.11.2020

OJ C 359, 26.10.2020

OJ C 348, 19.10.2020

OJ C 339, 12.10.2020

OJ C 329, 5.10.2020

OJ C 320, 28.9.2020

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Tenth Chamber) of 17 September 2020 — European Union Intellectual Property Office (EUIPO) v Lionel Andrés Messi Cuccittini, J.M.-E.V. e hijos SRL (C-449/18 P) and J. M.-E.V. e hijos SRL v Lionel Andrés Messi Cuccittini, European Union Intellectual Property Office (EUIPO) (C-474/18 P)

(Joined Cases C-449/18 P and C-474/18 P) [1]

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — Opposition proceedings — Application for EU figurative mark MESSI — Earlier EU word marks MASSI — Partial refusal of registration)

(2020/C 390/02)

Language of the case: Spanish

Parties

(Case C-449/18 P)

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: S. Palmero Cabezas, Acting as Agent)

Other parties to the proceedings: Lionel Andrés Messi Cuccittini (represented by: J.-Y. Teindas Maillard and J.-B. Devaureix, abogados), J.M.-E.V. e hijos SRL (represented by: J. Güell Serra and R. Gimeno-Bayón Cobos, abogados)

(Case C-474/18 P)

Appellant: J.M.-E.V. e hijos SRL (represented by: J. Güell Serra and R. Gimeno-Bayón Cobos, abogados)

Other parties to the proceedings: Lionel Andrés Messi Cuccittini (represented by: J.-Y. Teindas Maillard and J.-B. Devaureix, abogados), European Union Intellectual Property Office (EUIPO) (represented by: S. Palmero Cabezas, Acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeals;

2. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs and to pay the costs incurred by Mr Lionel Andrés Messi Cuccittini in Case C-449/18 P;

3. Orders J.M.-E.V. e hijos SRL to bear its own costs and to pay the costs incurred by Mr Lionel Andrés Messi Cuccittini and by the European Union Intellectual Property Office (EUIPO) in Case C-474/18 P.

[1] OJ C 392, 29.10.2018.

Judgment of the Court (Grand Chamber) of 22 September 2020 — Republic of Austria v European Commission and Others

(Case C-594/18 P) ([1])

(Appeal — State aid — Article 107(3)(c) TFEU — Articles 11 and 194 TFEU — Article 1, Article 2(c) and Article 106a(3) of the Euratom Treaty — Planned aid for Hinkley Point C nuclear power station (United Kingdom) — Decision declaring the aid compatible with the internal market — Objective of common interest — Environmental objectives of the European Union — Principle of protection of the environment, 'polluter pays' principle, precautionary principle and principle of sustainability — Determination of the economic activity concerned — Market failure — Proportionality of the aid — Operating or investment aid — Determination of the aid elements — Guarantee Notice)

(2020/C 390/03)

Language of the case: German

Parties

Appellant: Republic of Austria (represented initially by G. Hesse, and subsequently by F. Koppensteiner and M. Klamert, acting as Agents, and by H. Kristoferitsch, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by É. Gippini Fournier, T. Maxian Rusche, P. Němečková and K. Herrmann, acting as Agents), Czech Republic (represented by M. Smolek, J. Vláčil, T. Müller and I. Gavrilová, acting as Agents), French Republic (represented initially by D. Colas and P. Dodeller, and subsequently by P. Dodeller and T. Stehelin, acting as Agents), Grand Duchy of Luxembourg (represented initially by D. Holderer, and subsequently by T. Uri, acting as Agents, and by P. Kinsch, avocat), Hungary (represented by M.Z. Fehér, acting as Agent, and P. Nagy, ügyvéd), Republic of Poland (represented by B. Majczyna, acting as Agent), Slovak Republic (represented by B. Ricziová, acting as Agent), United Kingdom of Great Britain and Northern Ireland (represented by Z. Lavery and S. Brandon, acting as Agents, A. Robertson QC and T. Johnston, Barrister)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders the Republic of Austria to bear its own costs relating to the appeal proceedings and to pay those incurred by the European Commission;

3. Orders the Czech Republic, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Republic of Poland, the Slovak Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

([1]) OJ C 427, 26.11.2018.

Judgment of the Court (Fourth Chamber) of 17 September 2020 (request for a preliminary ruling from the Tribunalul București — Romania) — Autoritatea națională de reglementare în domeniul energiei (ANRE) v Societatea de Producere a Energiei Electrice în Hidrocentrale Hidroelectrica SA

(Case C-648/18) ([1])

(Reference for a preliminary ruling — Internal market in electricity — Free movement of goods — Article 35 TFEU — Quantitative restrictions on exports — Measures having equivalent effect — National measure requiring electricity producers to offer for sale all the electricity available to them exclusively on a centralised competitive market of the Member State concerned)

(2020/C 390/04)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: Autoritatea națională de reglementare în domeniul energiei (ANRE)

Defendant: Societatea de Producere a Energiei Electrice în Hidrocentrale Hidroelectrica SA

Operative part of the judgment

Articles 35 and 36 TFEU must be interpreted as meaning that national legislation, as interpreted by the authority responsible for applying it, which requires national electricity producers to offer for sale all the electricity available to them on the platforms managed by the only operator designated for national electricity market trading services, constitutes a measure having equivalent effect to a quantitative restriction on exports that cannot be justified on grounds of public security connected to the security of energy supply, in so far as such legislation is not proportionate to the objective pursued.

([1]) OJ C 25, 21.1.2019.

Judgment of the Court (Grand Chamber) of 22 September 2020 (requests for a preliminary ruling from the Cour de cassation — France) — Cali Apartments SCI (C-724/18) and HX (C-727/18) v Procureur général près la cour d'appel de Paris and Ville de Paris

(Joined Cases C-724/18 and C-727/18) ([1])

(References for a preliminary ruling — Directive 2006/123/EC — Scope — Repeated short-term letting of furnished premises to a transient clientele which does not take up residence there — National legislation imposing a prior authorisation scheme for certain specific municipalities and making those municipalities responsible for defining the conditions for granting the authorisations provided for by that scheme — Article 4(6) — Concept of 'authorisation scheme' — Article 9 — Justification — Insufficient supply of affordable long-term rental housing — Proportionality — Article 10 — Requirements relating to the conditions for granting authorisations)

(2020/C 390/05)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellants in cassation: Cali Apartments SCI (C-724/18) and HX (C-727/18)

Respondents in cassation: Procureur général près la cour d'appel de Paris and Ville de Paris

Operative part of the judgment

1. Articles 1 and 2 of 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 meaning that that directive applies to legislation of a Member State relating to activities consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there;

2. Article 4 of Directive 2006/123 must be interpreted as meaning that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to prior authorisation is covered by the concept of 'authorisation scheme' within the meaning of paragraph 6 of that article;

3. Article 9(1)(b) and (c) of Directive 2006/123 must be interpreted as meaning that national legislation which, for reasons intended to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities where rent pressure is particularly severe is (i) justified by an overriding reason relating to the public interest consisting in combating the rental housing shortage and (ii) proportionate to the objective pursued, inasmuch as that objective cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective;

4. Article 10(2) of Directive 2006/123 must be interpreted as not precluding national legislation introducing a scheme which makes the exercise of certain activities consisting in the letting, for remuneration, of furnished accommodation subject to prior authorisation, which is based on criteria relating to the fact that the premises in question are let 'repeatedly for short periods to a transient clientele which does not take up residence there' and which gives the local authorities the power to specify, within the framework laid down by that legislation, the conditions for granting the authorisations provided for by that scheme in the light of social diversity objectives and according to the characteristics of the local housing markets and the need to avoid exacerbating the housing shortage, making those authorisations subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing, provided that those granting conditions are in line with the requirements laid down by that provision and that that requirement can be met under conditions that are transparent and accessible.

(1) OJ C 35, 28.1.2019.

Judgment of the Court (Fifth Chamber) of 17 September 2020 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Criminal proceedings against JZ

(Case C-806/18) (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Return of illegally staying third-country nationals — Directive 2008/115/EC — Article 11 — Entry ban — Third-country national against whom an entry ban was issued but who never left the Member State concerned — National legislation providing for a custodial sentence in the event of the third-country national staying in that Member State despite notice of the entry ban issued against him)

(2020/C 390/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Party/parties in the main proceedings

JZ

Operative part of the judgment

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, and in particular Article 11 thereof, must be interpreted as not precluding legislation of a Member State which provides that a custodial sentence may be imposed on an illegally staying third-country national for whom the return procedure set out in that directive has been exhausted but who has not actually left the territory of the Member States, where the criminal act consists in an unlawful stay with notice of an entry ban, issued in particular on account of that third-country national's criminal record or the threat he represents to public policy or national security, provided that the criminal act is not defined as a breach of such an entry ban and that that legislation is sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness, which is for the referring court to ascertain.

(1) OJ C 122, 1.4.2019.

Judgment of the Court (Grand Chamber) of 15 September 2020 (requests for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke

(Joined Cases C-807/18 and C-39/19) ([1])

(Reference for a preliminary ruling — Electronic communications — Regulation (EU) 2015/2120 — Article 3 — Open internet access — Article 3(1) — Rights of end users — Right to access applications and services and to use them — Right to provide applications and services — Article 3(2) — Prohibition of agreements and commercial practices limiting the exercise of end users' rights — Concepts of 'agreements', 'commercial practices', 'end users' and 'consumers' — Assessment of whether the exercise of end users' rights is limited — Detailed rules — Article 3(3) — Obligation of equal and non-discriminatory treatment of traffic — Possibility of implementing reasonable traffic-management measures — Prohibition of measures blocking and slowing down traffic — Exceptions — Commercial practices consisting in offering packages which provide (i) that customers subscribing to them purchase a tariff entitling them to use a given data volume without restriction, without any deduction being made from that volume for using certain specific applications and services covered by 'a zero tariff' and (ii) that once the data volume has been used up, those customers may continue to use those specific applications and services without restriction, while measures blocking or slowing down traffic are applied to the other applications and services)

(2020/C 390/07)

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

Operative part of the judgment

Article 3 of Regulation (EU) 2015/2120 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 must be interpreted as meaning that packages made available by a provider of internet access services through agreements concluded with end users, and under which (i) end users may purchase a tariff entitling them to use a specific volume of data without restriction, without any deduction being made from that data volume for using certain specific applications and services covered by 'a zero tariff' and (ii) once that data volume has been used up, those end users may continue to use those specific applications and services without restriction, while measures blocking or slowing down traffic are applied to the other applications and services available:

— are incompatible with Article 3(2) of Regulation 2015/2120, read in conjunction with Article 3(1) of that regulation, where those packages, agreements, and measures blocking or slowing down traffic limit the exercise of end users' rights, and

— are incompatible with Article 3(3) of that regulation where those measures blocking or slowing down traffic are based on commercial considerations.

([1]) OJ C 139, 15.4.2019.

Judgment of the Court (Fourth Chamber) of 17 September 2020 — Mylène Troszczynski v European Parliament

(Case C-12/19 P) ([1])

(Appeal — Law governing the institutions — Member of the European Parliament — Protocol on the privileges and immunities of the European Union — Article 8 — Parliamentary immunity — Activity not connected to parliamentary duties — Publication on the Member's Twitter account — Article 9 — Parliamentary privilege — Scope — Decision to waive parliamentary immunity)

(2020/C 390/08)

Language of the case: French

Parties

Appellant: Mylène Troszczynski (represented by: F. Wagner, avocat)

Other party to the proceedings: European Parliament (represented by: S. Alonso de León and C. Burgos, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Mylène Troszczynski to pay the costs.

([1]) OJ C 82, 4.3.2019.

Judgment of the Court (Ninth Chamber) of 16 September 2020 — Edison SpA v European Union Intellectual Property Office (EUIPO)

(Case C-121/19 P) ([1])

(Appeal — EU trade mark — Application for registration of a figurative mark including the word element EDISON — Interpretation of the terms in the heading of a class of the Nice Classification and in the accompanying alphabetical list)

(2020/C 390/09)

Language of the case: Italian

Parties

Appellant: Edison SpA (represented by: F. Boscariol de Roberto and D. Martucci, avvocati)

Other party to the proceedings: European Union Intellectual Property Office (represented by: J. Crespo Carrillo, acting as Agent)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Edison SpA to pay, in addition to its own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 288, 26.8.2019.

Judgment of the Court (Seventh Chamber) of 10 September 2020 — Hamas v Council of the European Union, French Republic, European Commission

(Case C-122/19 P) ([1])

(Appeal — Common foreign and security policy — Fight against terrorism — Restrictive measures taken against certain persons and entities — Freezing of funds — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Retention of an organisation on the list of persons, groups and entities involved in terrorist acts — Conditions — Competent authority equivalent to a judicial authority — Sentencing decision — Ongoing risk of involvement in terrorist activities — Factual basis of the decisions to freeze funds — Obligation to state reasons — Right to effective judicial protection)

(2020/C 390/10)

Language of the case: French

Parties

Appellant: Hamas (represented by: L. Glock, avocate)

Other parties to the proceedings: Council of the European Union (represented by: B. Driessen and K. Pavlaki, acting as Agents), French Republic, European Commission (represented initially by F. Castillo de la Torre, A. Bouquet, J. Roberti di Sarsina, C. Zadra and A. Tizzano, subsequently by F. Castillo de la Torre, A. Bouquet and J. Roberti di Sarsina, acting as Agents)

Operative part of the judgment

The Court:

1. The appeal is dismissed;

2. Hamas shall bear its own costs and pay the costs incurred by the Council of the European Union and the European Commission.

([1]) OJ C 131, 8.4.2019.

Judgment of the Court (Eighth Chamber) of 16 September 2020 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — XT v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-312/19) ([1])

(Reference for a preliminary ruling — Directive 2006/112/EC — Common system of value added tax (VAT) — Article 9(1) — Article 193 — Concept of 'taxable person' — Joint activity agreement — Partnership — Allocation of an economic transaction to one of the partners — Determination of the taxable person liable for the tax)

(2020/C 390/11)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: XT

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Operative part of the judgment

Article 9(1) and Article 193 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a natural person who has concluded with another natural person a joint activity agreement setting up a partnership, which lacks legal personality and is characterised by the fact that the first person is empowered to act in the name of the partners as a whole, but participates alone and in his or her own name in relations with third parties when performing acts that form the economic activity pursued by that partnership, must be regarded as a 'taxable person' within the meaning of Article 9(1) of Directive 2006/112 and as having sole liability for the value added tax payable under Article 193 of that directive, since he or she acts on his or her own behalf or on behalf of another person as a commission agent as provided for in Article 14(2)(c) and Article 28 of that directive.

(1) OJ C 220, 1.7.2019.

Judgment of the Court (Ninth Chamber) of 16 September 2020 (request for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — SC Romenergo SA, Aris Capital SA v Autoritatea de Supraveghere Financiară

(Case C-339/19) (1)

(Reference for a preliminary ruling — Free movement of capital — Company law — Shares admitted to trading on the regulated market — Financial investment company — National regulations limiting the shareholding in certain financial investment companies — Statutory presumption of concerted action)

(2020/C 390/12)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicants: SC Romenergo SA, Aris Capital SA

Defendant: Autoritatea de Supraveghere Financiară

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding a national measure which provides for a 5 % limit on a shareholding in a financial investment company, if that measure is not justified by an overriding reason in the public interest, which it is for the referring court to ascertain.

(1) OJ C 255, 29.7.2019.

Judgment of the Court (Tenth Chamber) of 10 September 2020 (request for a preliminary ruling from the Patent- och marknadsdomstolen vid Stockholms tingsrätt — Sweden) — Konsumentombudsmannen v Mezina AB

(Case C-363/19) ([1])

(Reference for a preliminary ruling — Food safety — Nutritional and health claims concerning foodstuffs — Regulation (EC) No 1924/2006 — Articles 5 and 6 — Scientific substantiation for claims — Generally accepted scientific evidence — Article 10(1) — Article 28(5) — Transitional arrangements — Unfair business-to-consumer commercial practices in the internal market — Directive 2005/29/EC — Article 3(4) — Relationship between the provisions of Directive 2005/29 and other EU rules regulating specific aspects of unfair commercial practices)

(2020/C 390/13)

Language of the case: Swedish

Referring court

Patent- och marknadsdomstolen vid Stockholms tingsrätt

Parties to the main proceedings

Applicant: Konsumentombudsmannen

Defendant: Mezina AB

Operative part of the judgment

1. Article 5(1), Article 6(1) and (2), Article 10(1) and Article 28(5) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, as amended by Regulation (EC) No 107/2008 of the European Parliament and of the Council of 15 January 2008, must be interpreted as meaning that, under the transitional arrangements provided for in the latter provision, the burden of proof and standard of proof in respect of the health claims referred to in Article 13(1)(a) of that regulation are governed by Regulation No 1924/2006, which requires the food business operator concerned to be able to justify, by means of generally accepted scientific evidence, the claims which it uses. Those claims must be based on objective evidence which has sufficient scientific agreement.

2. In the event of conflict between the provisions of Regulation No 1924/2006, as amended by Regulation No 107/2008, and those of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), the provisions of that regulation take precedence and apply to unfair commercial practices in relation to health claims, within the meaning of that regulation.

([1]) OJ C 246, 22.7.2019.

Judgment of the Court (Fourth Chamber) of 10 September 2020 (request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil — Slovenia) — Tax-Fin-Lex d.o.o. v Ministrstvo za notranje zadeve

(Case C-367/19) ([1])

(Reference for a preliminary ruling — Public service contracts — Directive 2014/24/EU — Article 2(1)(5) — Concept of 'public contract' — Concept of 'contract for pecuniary interest' — Tenderer's bid at a price of EUR 0.00 — Rejection of the tender — Article 69 — Abnormally low tender)

(2020/C 390/14)

Language of the case: Slovenian

Referring court

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil

Parties to the main proceedings

Applicant: Tax-Fin-Lex d.o.o.

Defendant: Ministrstvo za notranje zadeve

Intervener: LEXPERA d.o.o.,

Operative part of the judgment

Article 2(1)(5) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, as amended by Commission Delegated Regulation (EU) 2017/2365 of 18 December 2017, must be interpreted as not constituting a legal basis for rejecting a tenderer's bid in a public procurement procedure on the sole ground that the price proposed in the tender is EUR 0.00.

([1]) OJ C 263, 5.8.2019.

Judgment of the Court (Seventh Chamber) of 10 September 2020 — Hamas v Council of the European Union, European Commission

(Case C-386/19 P) ([1])

(Appeal — Common foreign and security policy — Fight against terrorism — Restrictive measures taken against certain persons and entities — Freezing of funds — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Retention of an organisation on the list of persons, groups and entities involved in terrorist acts — Conditions — Competent authority equivalent to a judicial authority — Sentencing decision — Ongoing risk of involvement in terrorist activities — Obligation to state reasons — Rights of the defence — Right to effective judicial protection)

(2020/C 390/15)

Language of the case: French

Parties

Appellant: Hamas (represented by: L. Glock, avocate)

Other parties to the proceedings: Council of the European Union (represented by: B. Driessen and S. Van Overmiere, acting as Agents), European Commission (represented initially by F. Castillo de la Torre, L. Baumgart, J. Roberti di Sarsina, C. Zadra and A. Tizzano, subsequently by F. Castillo de la Torre, L. Baumgart and J. Roberti di Sarsina, acting as Agents)

Operative part of the judgment

The Court:

1. The appeal is dismissed;

2. Hamas shall bear its own costs and pay the costs incurred by the Council of the European Union and the European Commission.

(1) OJ C 220, 1.7.2019.

Judgment of the Court (Ninth Chamber) of 16 September 2020 (request for a preliminary ruling from the Comisión Nacional de los Mercados y la Competencia — Spain) — proceedings against Asociación Nacional de Empresas Estibadoras y Consignatarios de Buques (Anesco), Comisiones Obreras, Coordinadora Estatal de Trabajadores del Mar (CETM), Confederación Intersindical Gallega, Eusko Langileen Alkartasuna, Langile Abertzaleen Batzordeak, Unión General de Trabajadores (UGT)

(Case C-462/19) (1)

(Reference for a preliminary ruling — Meaning of 'court or tribunal' for the purposes of Article 267 TFEU — Criteria — Comisión Nacional de los Mercados y la Competencia (National Commission on Markets and Competition, Spain) — Inadmissibility of the request for a preliminary ruling)

(2020/C 390/16)

Language of the case: Spanish

Referring body

Comisión Nacional de los Mercados y la Competencia

Parties to the main proceedings

Asociación Nacional de Empresas Estibadoras y Consignatarios de Buques (Anesco), Comisiones Obreras, Coordinadora Estatal de Trabajadores del Mar (CETM), Confederación Intersindical Gallega, Eusko Langileen Alkartasuna, Langile Abertzaleen Batzordeak, Unión General de Trabajadores (UGT)

Interested party: Asociación Estatal de Empresas Operadoras Portuarias (Asoport)

Operative part of the judgment

The request for a preliminary ruling from the Comisión Nacional de los Mercados y la Competencia (National Commission on Markets and Competition, Spain), made by decision of 12 June 2019, is inadmissible.

(1) OJ C 357, 21.10.2019.

Judgment of the Court (Sixth Chamber) of 10 September 2020 — Romania v European Commission

(Case C-498/19 P) ([1])

(Appeal — European Agricultural Guarantee Fund (EAGF), the European Agricultural Fund for Rural Development (EAFRD) — Decision of the European Commission excluding expenditure from EU financing — Notification to the addressee — Error in the printing of the annex — Publication of the decision in the Official Journal of the European Union — Time limit for filing appeal — Point from which time starts to run — Lateness — Principle of legal certainty — Observance of the adversarial principle)

(2020/C 390/17)

Language of the case: Romanian

Parties

Applicant: Romania (represented initially by C.-R Canțăr, E. Gane O.-C. Ichim and M. Chicu, subsequently by E. Gane, O.-C. Ichim and M. Chicu, acting as Agents)

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

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Romania to pay the costs.

([1]) OJ C 270, 12.8.2019.

Judgment of the Court (Eighth Chamber) of 10 September 2020 (request for a preliminary ruling from the Finanzgericht München — Germany) — BMW Bayerische Motorenwerke AG v Hauptzollamt München

(Case C-509/19) ([1])

(Reference for a preliminary ruling — Customs Union — Union Customs Code — Regulation (EU) No 952/2013 — Article 71(1)(b) — Customs value — Imports of electronic products equipped with software)

(2020/C 390/18)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: BMW Bayerische Motorenwerke AG

Defendant: Hauptzollamt München

Operative part of the judgment

Article 71(1)(b) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as allowing, for the purposes of determining the customs value of imported goods, the economic value of software designed in the European Union and made available free of charge by the buyer to the seller established in a third country to be added to the transaction value of imported goods.

([1]) OJ C 328, 30.9.2019.

Judgment of the Court (Eighth Chamber) of 16 September 2020 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Mitteldeutsche Hartstein-Industrie AG v Finanzamt Y

(Case C-528/19) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 17(2)(a) — Deduction of input tax — Origin and scope of the right to deduct — Extension of a road belonging to a municipality — Entry in the accounts of the costs incurred by the works as part of the taxable person's general costs — Determination of the existence of a direct and immediate link with the economic activity of the taxable person — Supply made free of charge — Supply to be treated as a supply made for consideration — Article 5(6))

(2020/C 390/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Mitteldeutsche Hartstein-Industrie AG

Defendant: Finanzamt Y

Operative part of the judgment

1. Article 17(2)(a) 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 a taxable person is entitled to deduct input value added tax paid for the works for the extension of a municipal road carried out for the benefit of a municipality, where that road is used both by that taxable person in connection with its economic activity and by the public, in so far as those extension works did not exceed what was necessary to allow that taxable person to carry out its economic activity and the costs of those works are included in the price of the output transactions carried out by that taxable person.

2. Sixth Directive 77/388, in particular Article 2(1) thereof, must be interpreted as meaning that the authorisation to operate a quarry granted unilaterally by an authority of a Member State does not constitute consideration received by a taxable person which carried out, without monetary consideration, works for the extension of a road belonging to a municipality, with the result that those extension works do not constitute a transaction carried out for consideration within the meaning of that directive.

3. Article 5(6) of Sixth Directive 77/388 must be interpreted as meaning that works carried out, for the benefit of a municipality, for the extension of a municipal road open to the public but used, in connection with its economic activity, by the taxable person which carried out those works free of charge and by the public, do not constitute a transaction which must be treated as a supply of goods made for consideration within the meaning of that provision.

([1]) OJ C 328, 30.9.2019.

Judgment of the Court (Eighth Chamber) of 16 September 2020 — BP v European Union Agency for Fundamental Rights (FRA)

(Case C-669/19 P) ([1])

(Appeal — Non-contractual liability — Access to documents — Protection of personal data — Allegedly irregular disclosure of such data — Regulations (EC) No 1049/2001 and No 45/2001 — Admissibility of pleas and offers of evidence before the General Court of the European Union — Allocation of costs)

(2020/C 390/20)

Language of the case: English

Parties

Appellant: BP (represented by: E. Lazar, avocate)

Other party to the proceedings: European Union Agency for Fundamental Rights (FRA) (represented by: M. O'Flaherty, acting as Agent, and by D. Waelbroeck and A. Duron, avocats)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders BP to bear her own costs and to pay those incurred by the European Union Agency for Fundamental Rights (FRA).

([1]) OJ C 383, 11.11.2019.

Judgment of the Court (Eighth Chamber) of 16 September 2020 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — 'Skonis ir kvapas' UAB v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

(Case C-674/19) ([1])

(Reference for a preliminary ruling — Structure and rates of excise duty applied to manufactured tobacco — Directive 2011/64/EU — Article 2(2) — Article 5(1) — Concept of 'Products consisting in whole or in part of substances other than tobacco' — Concept of 'Smoking tobacco' — Water-pipe tobacco)

(2020/C 390/21)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: 'Skonis ir kvapas' UAB

Defendant: Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Interested party: Vilniaus teritorinė muitinė

Operative part of the judgment

Articles 2 and 5 of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco must be construed as meaning that water-pipe tobacco, consisting of tobacco, which makes up 24 % thereof, and other substances such as sugar syrup, glycerine, flavourings and preservative, must be regarded as a product 'consisting … in part of substances other than tobacco' and as 'smoking tobacco' within the meaning of those provisions and must therefore be regarded, in its entirety and irrespective of the substances other than tobacco contained therein, as smoking tobacco subject to the excise duty on tobacco.

(1) OJ C 413, 9.12.2019.

Judgment of the Court (Sixth Chamber) of 10 September 2020 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — A v B, C

(Case C-738/19) (1)

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Annex, point 1 (e) — Unfair terms in consumer contracts — Social housing — Obligation of residence and prohibition on subletting the property — Article 3(1) and (3) — Article 4(1) — Assessment of whether penalty clauses are unfair — Criteria)

(2020/C 390/22)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: A

Defendants: B, C

Operative part of the judgment

Article 3(1) and (3) and Article 4(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that, where a national court examines whether a term in a consumer contract is unfair, within the meaning of those provisions, it must take account, among the terms which fall within the scope of that directive, of the degree of interaction between the term at issue and other terms, having regard, inter alia, to their respective scope. In order to assess whether the amount of the penalty imposed on the consumer is disproportionately high, within the meaning of point 1(e) of the annex to that directive, significant weight must be attached to those terms which relate to the same breach.

(1) OJ C 19, 20.1.2020.

Request for a preliminary ruling from the Županijski sud u Puli (Croatia) lodged on 20 February 2020 — criminal proceedings against GR, HS, IT, and INTER CONSULTING d.o.o., in liquidation

(Case C-89/20)

(2020/C 390/23)

Language of the case: Croatian

Referring court

Županijski sud u Puli

Parties to the main proceedings

GR, HS, IT, and INTER CONSULTING d.o.o, in liquidation

By order of 1 October 2020, the Court of Justice (Seventh Chamber) held that the request for a preliminary ruling made by the Županijski sud u Puli (Pula County Court, Croatia) is manifestly inadmissible.

Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovakia) lodged on 28 February 2020 — Slovenský plynárenský priemysel, a.s. v Finančné riaditeľstvo Slovenskej republiky

(Case C-113/20)

(2020/C 390/24)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Slovenský plynárenský priemysel, a.s.

Defendant: Finančné riaditeľstvo Slovenskej republiky

By order of 1 October 2020, the Court (Sixth Chamber) ruled as follows:

Council Directive 90/435/EEC [1] of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States does not apply in a situation in which in which the tax authorities of a Member State recover from the taxpayer unpaid corporation tax in respect of a tax period preceding the accession of that Member State to the European Union by means of a tax adjustment issued after that accession.

[1] OJ 1990 L 225, p. 6.

Appeal brought on 5 June 2020 by Giorgio Armani SpA against the judgment of the General Court (First Chamber) delivered on 26 March 2020 in Case T-653/18, Armani v EUIPO

(Case C-239/20 P)

(2020/C 390/25)

Language of the case: English

Parties

Appellant: Giorgio Armani SpA (represented by: S. Martínez-Almeida y Alejos-Pita, abogada)

Other party to the proceedings: European Union Intellectual Property Office

By order of 30 September 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Appeal brought on 5 June 2020 by Giorgio Armani SpA against the judgment of the General Court (First Chamber) delivered on 26 March 2020 in Case T-654/18, Armani v EUIPO

(Case C-240/20 P)

(2020/C 390/26)

Language of the case: English

Parties

Appellant: Giorgio Armani SpA (represented by: S. Martínez-Almeida y Alejos-Pita, abogada)

Other party to the proceedings: European Union Intellectual Property Office

By order of 30 September 2020, the Court of Justice (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear its own costs.

Request for a preliminary ruling from Tribunalul Argeș (Romania) lodged on 4 August 2020 — Ministerul Dezvoltării Regionale și Administrației Publice v NE

(Case C-360/20)

(2020/C 390/27)

Language of the case: Romanian

Referring court

Tribunalul Argeș

Parties to the main proceedings

Applicant: Ministerul Dezvoltării Regionale și Administrației Publice

Defendant: NE

Questions referred

1. Does the concept of fraud affecting the [European Union's] financial interests, as provided for in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, encompass an offence committed to give a semblance of compliance with the provisions laid down in Article 57(1) of Regulation (EC) No 1083/2006 ([1]), so as to prevent the application by the Member State of the rules laid down in paragraph 3 of that article, in conjunction with those laid down in Article 98 of that regulation, or only an offence committed prior to completion of the execution phase, excluding acts committed in the sustainability phase?

2. May EU law, and in particular the provisions of Article 4(3) TEU, in conjunction with those of Article 325(1) and (2) TFEU, [and] Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, be interpreted as precluding a national provision that exempts from punishment a person accused of an offence committed after completion of the project execution phase — in other words, during the sustainability phase, and with regard to the obligations assumed by that person under the financing agreement — and as further precluding the national rule from being interpreted as meaning that the concept of fraud affecting the [European Union's] financial interests does not also include the unlawful conduct of the beneficiary of the funding during the project sustainability phase, with regard to the obligations assumed under the financing agreement, regardless of the origin of the funds or the amounts disbursed in fulfilment of the obligations assumed by the beneficiary to ensure the sustainability of the project (the beneficiary's own resources or [EU] funds)?

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 4 August 2020 — Eurowings GmbH v GDVI Verbraucherhilfe GmbH

(Case C-365/20)

(2020/C 390/28)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Appellant: Eurowings GmbH

Respondent: GDVI Verbraucherhilfe GmbH

Questions referred

1. Does a passenger have a 'confirmed reservation' within the meaning of Article 3(2)(a) of Regulation (EC) No 261/2004 ([1]) if he has received, from a tour operator with which he has a contract, 'other proof' within the meaning of Article 2(g) of Regulation No 261/2004, by which he is assured transport on a particular flight, individualised by points of departure and destination, times of departure and arrival and flight number, without the tour operator having made a seat reservation for that flight with the air carrier concerned and having received confirmation from the latter?

2. Is there 'denied boarding' within the meaning of Article 4(3) and Article 2(j) of Regulation (EC) No 261/2004 if passengers are re-booked by a tour operator with which they have concluded a package travel contract onto another flight a few days before the scheduled time of departure and after the tour operator had given them binding confirmation of a flight individualised by points of departure and destination, times of departure and arrival and flight number?

3. Is there a 'reasonable ground' for denied boarding within the meaning of the last clause of Article 2(j) of Regulation (EC) No 261/2004 if a tour operator provides binding confirmation of certain flights individualised by date, flight number and flight times, without consulting the airline and without making a 'cover booking' for the passenger, and the tour operator then re-books the passenger onto another flight a few days before the scheduled time of departure — again without consulting the airline — without the airline being able to have any influence on this?

4. Is an air carrier to be regarded as an operating air carrier within the meaning of Article 2(b) of Regulation (EC) No 261/2004 in relation to a passenger if, despite the fact that that passenger has a contract with a tour operator which has promised him carriage on a particular flight, individualised by points of departure and destination, times of departure and arrival and flight number, the tour operator has not, however, reserved a seat for the passenger and has therefore not established a contractual relationship with the air carrier in respect of that flight?

5. Are Articles 4(3) and 7(1) of Regulation (EC) No 261/2004 to be interpreted as meaning that, in a situation such as that in the present case, in which the passenger books an indirect flight with the tour organiser as part of a package tour, and the first segment, which is operated by the defendant airline, is carried out as scheduled but passengers are then denied boarding on the connecting flight, which is also operated by the defendant airline, pursuant to Article 2(j) of Regulation (EC) No 261/2004, with reference being made to the lack of a 'cover booking' by the tour organiser, the amount of compensation is based on the distance of the entire route, from the first point of departure to the final destination, and not only on the distance of the disrupted second segment?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 7 August 2020 — Pro Rauchfrei e.V. v JS e.K.

(Case C-370/20)

(2020/C 390/29)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Pro Rauchfrei e.V.

Respondent in the appeal on a point of law: JS e.K.

Questions referred

1. Does the concept of 'placing on the market' within the meaning of the first sentence of Article 8(3) of Directive 2014/40/EU ([1]) cover the offering of tobacco products via vending machines in such a way that, although the cigarette packets contained in them display the warnings prescribed by law, the cigarette packets are initially stocked in the machine in such a way that they are not visible to the consumer, and the warnings on them become visible only when the customer operates the machine, which has previously been enabled by the cashier, and the cigarette packet is thus dispensed onto the checkout belt prior to the payment process?

2. Does the prohibition in the first sentence of Article 8(3) of Directive 2014/40/EU on warnings being 'hidden by other items' cover the case in which the entire tobacco packaging is hidden when the goods are presented by an automatic vending machine?

3. Is the criterion of 'images of unit packets' in Article 8(8) of Directive 2014/40/EU satisfied even if an image is not a faithful depiction of the original packaging, but the consumer associates the image with tobacco packaging on account of its design in terms of outline, proportions, colour and brand logo?

4. Are the requirements of Article 8(8) of Directive 2014/40/EU satisfied even if the consumer has the opportunity to see the cigarette packaging with the prescribed warnings prior to the conclusion of the contract of sale, irrespective of the depiction used?

([1]) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

Appeal brought on 7 August 2020 by European Commission against the judgment of the General Court (First Chamber, Extended Composition) delivered on 28 May 2020 in Case T-399/16, CK Telecoms UK Investments Ltd v Commission

(Case C-376/20 P)

(2020/C 390/30)

Language of the case: English

Parties

Appellant: European Commission (represented by: G. Conte, C. Urraca Caviedes, J. Szczodrowski, M. Farley, Agents)

Other parties to the proceedings: CK Telecoms UK Investments Ltd, United Kingdom of Great Britain and Northern Ireland, EE Ltd

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 28 May 2020 in Case T-399/16, CK Telecoms UK Investments Ltd v Commission;

— refer the proceedings back to the General Court for reconsideration;

— order the applicant at first instance to pay the costs of the appeal; and

— reserve the costs of the proceedings at first instance.

Pleas in law and main arguments

First ground of appeal: The Judgment applies a standard of proof for the existence of a SIEC ('strong probability') that is stricter than the test set out in the case law and in the EUMR ([1]), which requires the Commission to identify the 'most likely' outcome.

Second ground of appeal: By requiring that, in order to find a SIEC, the Commission should prove that a concentration confers on the merged entity the power to determine, by itself, the parameters of competition, the General Court applies a legal test that is not supported by the EUMR and undermines the very purpose of the 2004 reform. Moreover, the General Court errs in law in setting out a two-criteria test for establishing a SIEC based on non-coordinated effects.

Third ground of appeal: By requiring that an 'important competitive force' ('ICF') needs to stand out from its competitors in terms of impact on competition and also that merging parties need to be 'particularly close competitors', the General Court exceeds the limits of its judicial review, disregards the value of guidelines and distorts the content of the contested decision ([2]); or, alternatively, violates the principle of judicial review, fails to provide adequate reasoning and infringes Article 2 EUMR.

Fourth ground of appeal: By considering that the predicted price increase was not significant and by stating that the Commission should have taken into account 'standard efficiencies', the General Court departs from the EUMR, exceeds the limits of its judicial review, fails to provide adequate reasoning and distorts the evidence.

Fifth ground of appeal: By limiting the review to only some of the findings in the contested decision and by examining those findings in isolation, without assessing all the evidence together, the General Court distorts the contested decision, exceeds the limits of its judicial review, infringes the applicable rules on evidence, misapplies the legal test and fails to provide adequate reasoning.

Sixth ground of appeal: The General Court distorts the contested decision by considering that it does not examine degradation of the quality of the merged entity's network as part of the second theory of harm. The General Court also breaches its duty to state reasons when concluding that the Commission erred in law in classifying the effect of increased transparency on overall network investments as a noncoordinated effect.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

([2]) Commission Decision C(2016) 2796 final of 11 May 2016 declaring a concentration incompatible with the internal market (Case M.7612 — Hutchison 3G UK/Telefónica UK) (OJ 2016 C 357, p. 15).

Request for a preliminary ruling from the Spetsializiran nakazatelen sad (Bulgaria) lodged on 4 September 2020 — Criminal proceedings against MM

(Case C-414/20)

(2020/C 390/31)

Language of the case: Bulgarian

Referring court

Spetsializiran nakazatelen sad

Party to the main proceedings

MM

Questions referred

Is a national law which provides that the European arrest warrant and the national decision on the basis of which that warrant has been issued are to be adopted only by the public prosecutor, and does not permit the court to participate in or to exercise prior or subsequent review, consistent with Article 6(1) of Framework Decision 2002/584?

Is a European arrest warrant which has been issued on the basis of the order for the requested person to be put under investigation, and that order does not involve his detention, consistent with Article 8(1)(c) of Framework Decision 2002/584?

If the answer is in the negative: if, where a court has not participated in the issue of the European arrest warrant, or in the review of its legality and that warrant has been issued on the basis of a national decision which does not provide for the detention of the requested person, that European arrest warrant is in fact executed and the requested person is surrendered, should the requested person be granted an effective remedy in the same criminal proceedings as those during which that European arrest warrant was issued? Should the effective remedy involve placing the requested person in the situation in which he would have been if the infringement had not taken place?

Request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg (Germany) lodged on 7 September 2020 — TR

(Case C-416/20)

(2020/C 390/32)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht Hamburg

Parties to the main proceedings

Person whose surrender is sought: TR

Other party: Generalstaatsanwaltschaft Hamburg

Question referred

In the case of decisions on the extradition for the purposes of criminal prosecution of a person convicted in absentia from a Member State of the European Union to another Member State, are the provisions of Directive 2016/343, ([1]) in particular Articles 8 and 9 thereof, to be interpreted as meaning that the legality of the extradition (in particular in a so-called case of absconding) depends on the fulfilment by the requesting State of the conditions laid down in the Directive?

([1]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

Appeal brought on 12 September 2020 by Carlo Tognoli and Others against the order of the General Court (Eighth Chamber) delivered on 3 July 2020 in Joined Cases T-395/19, T-396/19, T-405/19, T-408/19, T-419/19, T-423/19, T-424/19, T-428/19, T-433/19, T-437/19, T-443/19, T-455/19, T-458/19 to T-462/19, T-464/19, T-469/19 and T-477/19, Tognoli and Others v Parliament

(Case C-431/20 P)

(2020/C 390/33)

Language of the case: Italian

Parties

Appellants: Carlo Tognoli, Emma Allione, Luigi Alberto Colajanni, Claudio Martelli, Luciana Sbarbati, Carla Dimatore, as heir of Mario Rigo, Roberto Speciale, Loris Torbesi, as heir of Eugenio Melandri, Luciano Pettinari, Pietro Di Prima, Carla Barbarella, Carlo Alberto Graziani, Giorgio Rossetti, Giacomo Porrazzini, Guido Podestà, Roberto Barzanti, Rita Medici, Aldo Arroni, Franco Malerba, Roberto Mezzaroma (represented by: M. Merola and L. Florio, avvocati)

Other party to the proceedings: European Parliament

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal and remit the case to the General Court for an examination on the merits;

— order the Parliament to pay the costs of the appeal proceedings, reserving the costs of the proceedings before the General Court.

Grounds of appeal and main arguments

The appellants seek to have set aside, under Article 256 of the Treaty on the Functioning of the European Union and Article 56 of the Statute of the Court of Justice of the European Union, the order of the General Court of the European Union (Eighth Chamber) delivered on 3 July 2020, notified on 3 July 2020, in Joined Cases T-395/19, T-396/19, T-405/19, T-408/19, T-419/19, T-423/19, T-424/19, T-428/19, T-433/19, T-437/19, T-443/19, T-455/19, T-458/19 to T-462/19, T-464/19, T-469/19 and T-477/19, declaring that their actions were manifestly inadmissible.

By their first ground of appeal, the appellants claim that the General Court erred in law by holding that the contested measure did not produce legal effects within the meaning of Article 263 TFEU. That error stems from the lack of any legal basis for considering that the measure was provisional and the failure to consider its legal effects vis-à-vis its addressees. The contested measure did in fact immediately produce legal effects vis-à-vis the appellants, depriving them of a substantial part of their pension rights.

By their second ground of appeal, the appellants claim that the General Court erred in law by interpreting and applying Article 86 of the Rules of Procedure of the General Court in a manner contrary to its purpose and effectiveness. The purpose of that rule is in fact to avoid the unnecessary multiplication of actions. Further, the General Court, by declaring that each action and the statement modifying each application was inadmissible, committed a second error of law, the effect of which is, paradoxically, to deprive the appellants of judicial protection.

By their third ground of appeal, the appellants claim that two procedural errors, which should lead to the setting aside of the order, were committed, in particular: infringement of the principle *audi alteram partem* and an error of law in the application of Article 126 of the Rules of Procedure of the General Court.

As regards the first limb, the appellants were not given the opportunity to respond to the plea of inadmissibility raised by the European Parliament regarding the statement modifying each application. Further, the General Court's conduct is exacerbated by its decision that a second exchange of pleadings was not necessary and its failure to hold a hearing, depriving the appellants of the possibility of setting out their own position on the plea of inadmissibility regarding the statement modifying each application, despite the appellants having made a formal request in that regard.

In addition, the inconsistent procedural choices made by the General Court show that each action was not immediately clearly and unquestionably and therefore manifestly inadmissible within the meaning of Article 126 of the Rules of Procedure of the General Court. Accordingly, the conditions laid down for the application of that article were not satisfied.

Request for a preliminary ruling from the Verwaltungsgericht Wien (Austria) lodged on 14 September 2020 — ZK

(Case C-432/20)

(2020/C 390/34)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicant: ZK

Defendant authority: Landeshauptmann von Wien

Questions referred

1. Must Article 9(1)(c) of Directive 2003/109/EC [1] be interpreted as meaning that any physical stay, no matter how short, of a third-country national who is a long-term resident in the territory of the Community during a period of 12 consecutive months precludes loss of the status of long-term resident third-country national under this provision?
2. If the Court answers Question 1 in the negative: What qualitative and/or quantitative requirements must stays in the territory of the Community for a period of 12 consecutive months satisfy in order to preclude loss of the status of long-term resident third-country national? Do stays during a period of 12 consecutive months in the territory of the Community preclude loss of the status of long-term resident third-country national only if the third-country nationals concerned had their habitual residence or centre of interests in the territory of the Community during that period?
3. Are rules of the legal systems of the Member States, which provide for loss of the status of long-term resident third-country national where such third-country nationals resided in the territory of the Community for a period of 12 consecutive months, but had neither their habitual residence nor centre of interests there, compatible with Article 9(1)(c) of Directive 2003/109/EC?

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[1] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

GENERAL COURT

Judgment of the General Court of 23 September 2020 — CEDC International v EUIPO — Underberg (Shape of a blade of grass in a bottle)

(Case T-796/16) ([1])

(EU trade mark — Opposition proceedings — Application for an EU three-dimensional mark — Shape of a blade of grass in a bottle — Earlier three-dimensional national mark — Genuine use of the earlier mark — Article 15(1) and Article 43(2) and (3) of Regulation (EC) No 40/94 (now Article 18(1) and Article 47(2) and (3) of Regulation (EU) 2017/1001) — Nature of use — Alteration of distinctive character — Use in conjunction with other marks — Scope of the protection — Requirement for clarity and precision — Requirement for the description and the representation to align with one another — Decision taken following annulment of an earlier decision by the General Court — Reference to the grounds of an earlier annulled decision — Obligation to state reasons)

(2020/C 390/35)

Language of the case: English

Parties

Applicant: CEDC International sp. z o.o. (Oborniki Wielkopolskie, Poland) (represented by: M. Siciarek, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Underberg AG (Dietlikon, Switzerland) (represented by: A. Renck, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 August 2016 (Case R 1248/2015 4) relating to opposition proceedings between CEDC International and Underberg.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 August 2016 (Case R 1248/2015 4) in respect of the grounds of opposition set out in Article 8(3) and (4) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark;

2. Dismisses the action as to the remainder;

3. Orders CEDC International sp. z o.o., EUIPO and Underberg AG to bear their own costs.

([1]) OJ C 6, 9.1.2017.

Judgment of the General Court of 23 September 2020 — Landesbank Baden-Württemberg v SRB

(Case T-411/17) ([1])

(Economic and monetary union — Banking union — Single Resolution Mechanism for credit institutions and certain investment firms (SRM) — Single Resolution Fund (SRF) — Decision of the SRB on the calculation of the 2017 ex ante contributions — Action for annulment — Direct and individual concern — Admissibility — Essential procedural requirements — Authentication of the decision — Obligation to state reasons — Right to effective judicial protection — Plea of illegality — Limitation of the temporal effects of the judgment)

(2020/C 390/36)

Language of the case: German

Parties

Applicant: Landesbank Baden-Württemberg (Stuttgart, Germany) (represented by: H. Berger and K. Rübsamen, lawyers)

Defendant: Single Resolution Board (represented by: A. Martin-Ehlers, S. Raes, T. Van Dyck and A. Kopp, lawyers)

Intervener in support of the defendant: European Commission (represented by: A. Steiblytė and K.P. Wojcik, acting as Agents)

Re:

Action pursuant to Article 263 TFEU for annulment of the decision of the Executive Session of the SRB of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. Annuls the decision of the Executive Session of the Single Resolution Board (SRB) of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns Landesbank Baden-Württemberg;

2. Maintains the effects of Decision SRB/ES/SRF/2017/05, in so far as it concerns Landesbank Baden-Württemberg, for six months from the day on which the present judgment becomes final;

3. Orders the SRB to bear its own costs and to pay those incurred by Landesbank Baden-Württemberg;

4. Orders the European Commission to bear its own costs.

([1]) OJ C 277, 21.8.2017.

Judgment of the General Court of 23 September 2020 — Hypo Vorarlberg Bank v SRB

(Case T-414/17) ([1])

(Economic and monetary union — Banking union — Single Resolution Mechanism for credit institutions and certain investment firms (SRM) — Single Resolution Fund (SRF) — Decision of the SRB on the calculation of the 2017 ex ante contributions — Action for annulment — Direct and individual concern — Admissibility — Essential procedural requirements — Authentication of the decision — Obligation to state reasons — Limitation of the temporal effects of the judgment)

(2020/C 390/37)

Language of the case: German

Parties

Applicant: Hypo Vorarlberg Bank AG, formerly Vorarlberger Landes- und Hypothekenbank AG (Bregenz, Austria) (represented by: G. Eisenberger and A. Brenneis, lawyers)

Defendant: Single Resolution Board (represented by: P. Messina and J. Kerlin, acting as Agents, and B. Meyring, S. Schelo, T. Klupsch and S. Ianc, lawyers)

Re:

Application based on Article 263 TFEU seeking annulment of the decision of the SRB in its executive session of 11 April 2017 on the calculation of the 2017 ex-ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. annuls the decision of the Single Resolution Board (SRB) in its executive session of 11 April 2017 on the calculation of the 2017 ex-ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns Hypo Vorarlberg Bank AG;

2. orders the SRB to bear its own costs and to pay those incurred by Hypo Vorarlberg Bank.

([1]) OJ C 277, 21.8.2017.

Judgment of the General Court of 23 September 2020 — Portigon v SRB

(Case T-420/17) ([1])

(Economic and monetary union — Banking union — Single Resolution Mechanism for credit institutions and certain investment firms (SRM) — Single Resolution Fund (SRF) — Decision of the SRB on the calculation of the 2017 ex ante contributions — Action for annulment — Direct and individual concern — Admissibility — Essential procedural requirements — Authentication of the decision — Obligation to state reasons — Limitation of the temporal effects of the judgment)

(2020/C 390/38)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener, V. Jungkind and F. Geber, lawyers)

Defendant: Single Resolution Board (represented by: P. Messina and J. Kerlin, acting as Agents, and B. Meyring, S. Schelo and T. Klupsch, lawyers)

Intervener in support of the defendant: European Commission (represented by: A. Steiblytė and K.-Ph. Wojcik, acting as Agents)

Re:

Application based on Article 263 TFEU for annulment of the decision of the Single Resolution Board in its executive session of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05) in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. Annuls the decision of the Single Resolution Board (SRB) of 11 April 2017 on the calculation of the 2017 ex ante contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05) in so far as it concerns Portigon AG;

2. Orders the SRB to bear its own costs and to pay those incurred by Portigon;

3. Orders the Commission to bear its own costs.

(1) OJ C 277, 21.8.2017.

Judgment of the General Court of 9 September 2020 — P. Krücken Organic v Commission

(Case T-565/18) (1)

(Institutional law — Action for damages — Conditions in which the European Union incurs non-contractual liability — Arrangements for imports of organic products from third countries — Private inspection body — Concept of appropriate supervision within the meaning of Article 33(3) of Regulation (EC) No 834/2007 — Regulation (EC) No 1235/2008 — Attributability of conduct)

(2020/C 390/39)

Language of the case: German

Parties

Applicant: P. Krücken Organic GmbH (Mannheim, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission (represented by: B. Eggers, B. Hofstötter and A. Dawes, acting as Agents)

Re:

Application based on Article 268 TFEU seeking compensation for the harm allegedly suffered by the applicant as a result, first, of the alleged infringement by the Commission of its duties under Article 33(3) of Regulation (EC) No 834/2007 of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1) and, second, of certain conduct on the part of Ecocert SA allegedly attributable to the Commission.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders P. Krücken Organic GmbH to pay the costs.

(1) OJ C 427, 26.11.2018.

Judgment of the General Court of 23 September 2020 — ZL v EUIPO

(Case T-596/18) ([1])

(Civil service — Recruitment — Notice of competition — Decision not to place the applicant's name on the reserve list for the competition — Obligation to state reasons — Rejection of the request for access to the multiple-choice questions asked in the admission tests — Secrecy of the selection board's proceedings)

(2020/C 390/40)

Language of the case: English

Parties

Applicant: ZL (represented by: H. Tettenborn, lawyer)

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

Re:

Application under Article 270 TFEU seeking annulment, first, of the decision of 7 March 2018 of the selection board for competition EUIPO/AD/01/17 — Administrators (AD 6) in the field of intellectual property rejecting the applicant's request for review of that selection board's decision of 1 December 2017 not to place her name on the reserve list drawn up with a view to the recruitment of administrators by EUIPO and, secondly, of EUIPO's decision of 27 June 2018 rejecting her complaints.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders ZL to pay the costs.

([1]) OJ C 445, 10.12.2018.

Judgment of the General Court of 23 September 2020 — Pshonka v Council

(Case T-291/19) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Council's obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of the defence and the right to effective judicial protection)

(2020/C 390/41)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovych Pshonka (Kiev, Ukraine) (represented by M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by R. Pekař and V. Piessevaux, acting as Agents)

Re:

Application under Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 7) and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 1), in so far as those acts maintain the applicant's name on the list of persons, entities and bodies subject to those restrictive measures.

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Viktor Pavlovych Pshonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.

(1) OJ C 246, 22.7.2019.

Judgment of the General Court of 23 September 2020 — Pshonka v Council

(Case T-292/19) (1)

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Council's obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of the defence and the right to effective judicial protection)

(2020/C 390/42)

Language of the case: Czech

Parties

Applicant: Artem Viktorovych Pshonka (Kramatorsk, Ukraine) (represented by M. Mleziva, lawyer)

Defendant: Council of the European Union (represented by R. Pekař and V. Piessevaux, acting as Agents)

Re:

Application under Article 263 TFEU seeking the annulment of Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 7) and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2019 L 64, p. 1), in so far as those acts maintain the applicant's name on the list of persons, entities and bodies subject to those restrictive measures,

Operative part of the judgment

The Court:

1. Annuls Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Artem Viktorovych Pshonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.

(1) OJ C 246, 22.7.2019.

Judgment of the General Court of 23 September 2020 — UE v Commission

(Case T-338/19) ([1])

(Civil service — Temporary members of staff — Health problems alleged to have been caused by working conditions — Request for recognition of an occupational disease — Article 73 of the Staff Regulations — Right to be heard — Article 41 of the Charter of Fundamental Rights — Obligation for the person concerned to be heard before the original decision)

(2020/C 390/43)

Language of the case: English

Parties

Applicant: UE (represented by: S. Rodrigues and A. Champetier, lawyers)

Defendant: European Commission (represented by: T. Bohr and L. Vernier, acting as Agents)

Re:

Action pursuant to Article 270 TFEU seeking the annulment of the decision of the Office for Administration and Payment of Individual Entitlements (PMO) of the Commission, of 1 August 2018, by which the applicant's request for recognition of an occupational disease, pursuant to Article 73 of the Staff Regulations, was dismissed as inadmissible.

Operative part of the judgment

The Court:

1. Annuls the decision of the Office for administration and payment of individual entitlements (PMO) of the European Commission, of 1 August 2018, by which the request by UE for recognition of an occupational disease, pursuant to Article 73 of the Staff Regulations of Officials of the European Union, was dismissed as inadmissible.

2. Orders the Commission to pay the costs.

([1]) OJ C 263, 5.8.2019.

Judgment of the General Court of 23 September 2020 — Spain v Commission

(Case T-370/19) ([1])

(External relations — Technical cooperation — Electronic communications — Regulation (EU) 2018/1971 — Body of European Regulators for Electronic Communications — Article 35(2) of Regulation 2018/1971 — Participation of regulatory authorities of third countries in that body — Participation of the national regulatory authority of Kosovo — Concept of third country — Error of law)

(2020/C 390/44)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: S. Centeno Huerta, acting as Agent)

Defendant: European Commission (represented by: F. Castillo de la Torre, M. Kellerbauer and T. Ramopoulos, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment of the decision of the Commission of 18 March 2019 on the participation of the National Regulatory Authority of Kosovo in the Body of European Regulators for Electronic Communications (OJ 2019 C 115, p. 26).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders the Kingdom of Spain to pay the costs.

(1) OJ C 263, 5.8.2019.

Judgment of the General Court of 23 September 2020 — BASF v Commission

(Case T-472/19) (1)

(Medicinal products for human use — Marketing authorisation for medicinal products for human use containing omega-3 acid ethyl esters — Variation of the terms of the authorisation — First paragraph of Article 116 of Directive 2001/83/EC — Manifest error of assessment — Proportionality)

(2020/C 390/45)

Language of the case: English

Parties

Applicant: BASF AS (Oslo, Norway) (represented by: E. Wright, Barrister, and H. Boland, lawyer)

Defendant: European Commission (represented by: L. Haasbeek and A. Sipos, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Implementing Decision C(2019) 4336 final of 6 June 2019 concerning, in the framework of Article 31 of Directive 2001/83/EC of the European Parliament and of the Council, marketing authorisations of medicinal products for human use containing 'Omega-3 acid ethyl esters' for oral use in secondary prevention after myocardial infarction.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders BASF AS to pay the costs, including the costs relating to the interlocutory proceedings.

(1) OJ C 305, 9.9.2019.

Judgment of the General Court of 23 September 2020 — Aldi v EUIPO (BBQ BARBECUE SEASON)

(Case T-522/19) (1)

(EU trade mark — Application for the EU figurative mark BBQ BARBECUE SEASON — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001 — No distinctive character — Article 7(1)(b) of Regulation 2017/1001)

(2020/C 390/46)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 17 May 2019 (Case R 1359/2018-5), concerning an application for registration of the figurative sign BBQ BARBECUE SEASON as an EU trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;

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

(1) OJ C 305, 9.9.2019.

Judgment of the General Court of 23 September 2020 — Medac Gesellschaft für klinische Spezialpräparate v Commission

(Case T-549/19) (1)

(Medicinal products for human use — Orphan medicinal products — Application for marketing authorisation for the medicinal product Trecondi-treosulfan — Decision to remove a medicinal product from the Register of Orphan Medicinal Products — Article 3(1)(b) of Regulation (EC) No 141/2000 — Concept of 'satisfactory method' — Article 5(12)(b) of Regulation No 141/2000 — Error of law)

(2020/C 390/47)

Language of the case: German

Parties

Applicant: Medac Gesellschaft für klinische Spezialpräparate mbH (Wedel, Germany) (represented by: P. von Czettritz, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann and A. Sipos, acting as Agents)

Re:

Action under Article 263 TFEU seeking the partial annulment of Commission Implementing Decision C(2019) 4858 final of 20 June 2019 granting marketing authorisation for the medicinal product for human use Trecondi-treosulfan.

Operative part of the judgment

The Court:

1. Annuls Article 5 of European Commission Implementing Decision C(2019) 4858 (final) of 20 June 2019 granting marketing authorisation for the medicinal product for human use 'Trecondi-treosulfan';

2. Orders the Commission to pay the costs, including those relating to the interim proceedings.

(1) OJ C 337, 7.10.2019.

Judgment of the General Court of 23 September 2020 — Seven v EUIPO (7Seven)

(Case T-557/19) ([1])

(EU trade mark — EU figurative mark 7Seven — No request for renewal of the registration of the trade mark — Cancellation of the mark on expiry of the registration — Article 53 of Regulation (EU) 2017/1001 — Application for restitutio in integrum submitted by a licensee — Article 104(1) of Regulation 2017/1001 — Duty of due care)

(2020/C 390/48)

Language of the case: English

Parties

Applicant: Seven SpA (Leinì, Italy) (represented by: L. Trevisan, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 4 June 2019 (Case R 2076/2018-5), relating to an application for *restitutio in integrum* of the right to request the renewal of the EU figurative mark 7Seven.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Seven SpA to pay the costs.

([1]) OJ C 328, 30.9.2019.

Judgment of the General Court of 23 September 2020 — FF v Commission

(Case T-654/19) ([1])

(Non-contractual liability — Manufacture, presentation and sale of tobacco products — Directive 2014/40/EU — Use of a photograph in a library of warnings with pictures to be used for tobacco products — Directive 2014/109/EU — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2020/C 390/49)

Language of the case: French

Parties

Applicant: FF (represented by: A. Fittante, lawyer)

Defendant: European Commission (represented by: I. Rubene and D. Martin, acting as Agents)

Re:

Application based on Article 268 TFEU seeking compensation in respect of the harm allegedly suffered by the applicant because of the unauthorised use of a photograph that he regards as representing him.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders FF to bear his own costs and to pay those incurred by the European Commission in the present action and in the proceedings for interim measures.

(1) OJ C 399, 25.11.2019.

Judgment of the General Court of 23 September 2020 — Basaglia v Commission

(Case T-727/19) (1)

(Access to documents — Regulation (EC) No 1049/2001 — Documents concerning certain projects in the context of the eTEN programme and of the fifth and sixth framework programmes for research and technological development — Restriction of the request for access — Partial refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Exception relating to the protection of the commercial interests of a third party — Overriding public interest — Obligation to carry out a specific and individual examination)

(2020/C 390/50)

Language of the case: Italian

Parties

Applicant: Giorgio Basaglia (Milan, Italy) (represented by: G. Balossi, lawyer)

Defendant: European Commission (represented by: C. Ehrbar and A. Spina, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Decision C(2019) 6474 final of 4 September 2019 concerning a confirmatory application for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Operative part of the judgment

The Court:

1. annuls Commission Decision C(2019) 6474 final of 4 September 2019 concerning a confirmatory application for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, in so far as it includes a restriction of the request for access and in so far as it includes a refusal to grant access based on the first indent of Article 4(2) of that regulation;

2. dismisses the action as to the remainder;

3. orders Giorgio Basaglia and the European Commission each to bear their own costs.

(1) OJ C 432, 23.12.2019.

Judgment of the General Court of 23 September 2020 — Huevos Herrera Mejías v EUIPO — Montesierra (MontiSierra HUEVOS CON SABOR A CAMPO)

(Case T-737/19) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark MontiSierra HUEVOS CON SABOR A CAMPO — Earlier EU and national word marks MONTESIERRA — Relative ground for refusal — Likelihood of confusion — Similarity between goods — Similarity between signs — Article 8(1)(b) of Regulation (EU) 2017/1001 — Proof of genuine use of the earlier mark — Article 47(2) and (3) of Regulation 2017/1001 — Obligation to state reasons)

(2020/C 390/51)

Language of the case: Spanish

Parties

Applicant: Huevos Herrera Mejías, SL (Torre Alháquime, Spain) (represented by: E. Manresa Medina, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Montesierra, SA (Jerez de la Frontera, Spain)

Re:

Action brought against the decision of the fourth Board of Appeal of EUIPO of 2 September 2019 (Case R 2021/2018-4), relating to opposition proceedings between Montesierra and Huevos Herrera Mejías.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Huevos Herrera Mejías, SL to pay the costs.

([1]) OJ C 432, 23.12.2019.

Judgment of the General Court of 23 September 2020 — Clouds Sky v EUIPOEUIPO — The Cloud Networks (Wi-Fi Powered by The Cloud)

(Case T-738/19) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark Wi-Fi Powered by The Cloud — Absolute grounds for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001) — No descriptive character — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001))

(2020/C 390/52)

Language of the case: English

Parties

Applicant: Clouds Sky GmbH (Cologne, Germany) (represented by: C. Weil, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: The Cloud Networks Ltd (London, United Kingdom)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 2 September 2019 (Case R 696/2019-5) relating to invalidity proceedings between Clouds Sky and The Cloud Networks.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Clouds Sky GmbH to pay the costs.

([1]) OJ C 10, 13.1.2020.

Judgment of the General Court of 23 September 2020 — Tetra v EUIPO — Neusta next (Wave)

(Case T-869/19) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Wave — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2020/C 390/53)

Language of the case: German

Parties

Applicant: Tetra GmbH (Melle, Germany) (represented by: E. Kessler, lawyer)

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

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 October 2019 (Case R 2440/2018-2), relating to invalidity proceedings between Neusta next and Tetra.

Operative part of the judgment

The Court:

1. Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 October 2019 (Case R 2440/2018-2);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to pay the costs.

([1]) OJ C 61, 24.2.2020.

Order of the General Court of 30 September 2020 — CrossFit v EUIPO — Hochwarter (CROSSBOX)

(Case T-835/19) ([1])

(EU trade mark — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2020/C 390/54)

Language of the case: English

Parties

Applicant: CrossFit Inc. (Scotts Valley, California, United States) (represented by: D. Mărginean, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Marlis Hochwarter (Vienna, Austria)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 October 2019 (Case R 1832/2018-4) relating to invalidity proceedings between CrossFit and Marlis Hochwarter.

Operative part of the order

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

2. The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by CrossFit Inc.

(1) OJ C 36, 3.2.2020.

Action brought on 14 August 2020 — ITD and Danske Fragtmænd v Commission

(Case T-525/20)

(2020/C 390/55)

Language of the case: English

Parties

Applicants: ITD, Brancheorganisation for den danske vejgodstransport (Padborg, Denmark) and Danske Fragtmænd A/S (Åbyhøj, Denmark) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul European Commission Decision C(2020) 3006 final of 12 May 2020 in State aid case SA. 52489 (2018/FC) — Denmark, and in State aid case SA. 52658 (2018/FC) — Sweden (Alleged State aid to PostNord Logistics);

— order the Commission to pay the applicants costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, alleging that the Commission infringed its obligation to initiate the formal investigation procedure.

— The applicants refer to evidence of serious difficulties relating to the length and the circumstances of the preliminary investigation procedure;

— The applicants further refer to an insufficient and incomplete analysis by the defendant regarding the imputability of the capital injection and in particular to:

  — insufficient and incomplete analysis as the Commission has not relied on accurate, reliable and consistent data;

— serious difficulties showed by the fact that the Commission erred when determining that the decision to grant the capital injection was adopted by PostNord Group AB and not by PostNord AB;

— serious difficulties showed by the fact that the Commission erred when determining that the decision of PostNord AB's Board of Directors to grant the capital injection is not imputable to the Danish and Swedish States.

— The applicants finally refer to insufficient and incomplete analysis regarding the cross-subsidisation of PostNord Logistics's costs by Post Danmark A/S.

Action brought on 1st September 2020 — SRB v EDPS

(Case T-557/20)

(2020/C 390/56)

Language of the case: English

Parties

Applicant: Single Resolution Board (SRB) (represented by: H. Ehlers, M. Fernandez Ruperez, J. King, agents, H. Kamann, M. Braun and F. Louis, lawyers)

Defendant: European Data Protection Supervisor (EDPS)

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; and

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

Pleas in law and main arguments

By its application, the SRB seeks the annulment of the decision of the EDPS of 24 June 2020 under its complaint references 2019-0947, 2019-0998, 2019-0999, 2019-1000 and 2019-1122, which held that the SRB infringed Article 15 of Regulation (EU) 2018/1725 ([1]).

In support of its action, the SRB relies on two pleas in law.

First plea in law, alleging that the information shared with the third party was not 'personal data' within the wording and purpose of Article 3(1) of Regulation (EU) 2018/1725.

Second plea in law, alleging that the EDPS infringed the right to a good administration pursuant to Article 41 of the Charter of Fundamental Rights of the European Union by not revealing sufficient information on the complaints.

([1]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

Action brought on 15 September 2020 — Cara Therapeutics v EUIPO — Gebro Holding (KORSUVA)

(Case T-584/20)

(2020/C 390/57)

Language of the case: English

Parties

Applicant: Cara Therapeutics, Inc. (Wilmington, Delaware, United States) (represented by: J. Day, Solicitor and T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark KORSUVA — Application for registration No 17 816 844

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 July 2020 in Case R 2450/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

— allow the contested application to proceed to registration;

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

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 28 September 2020 — Unimax Stationery v EUIPO — Mitsubishi Pencil (UNI-MAX)

(Case T-591/20)

(2020/C 390/58)

Language of the case: English

Parties

Applicant: Unimax Stationery (Daman, India) (represented by: A. Hempel and C. Schmidt, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Mitsubishi Pencil Co. Ltd (Tokyo, Japan)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark UNI-MAX in orange, red, white and black — European Union trade mark No 14 466 932

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 20 July 2020 in Case R 371/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 28 September 2020 — Univers Agro v EUIPO — Shandong Hengfeng Rubber & Plastic (AGATE)

(Case T-592/20)

(2020/C 390/59)

Language of the case: English

Parties

Applicant: Univers Agro EOOD (Sofia, Bulgaria) (represented by: C. Hernández-Martí Pérez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Shandong Hengfeng Rubber & Plastic Co. Ltd (Dongying, China)

Details of the proceedings before EUIPO

Proprietor of the trademark at issue: Applicant before the General Court

Trade mark at issue: European Union word mark AGATE — European Union trade mark No 16 440 596

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 July 2020 in Case R 725/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declares the EUTM No 16 440 596 as a valid trade mark;

— order EUIPO, and if applicable, the intervener, to pay the costs.

Pleas in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by considering the EUTM proprietor acted in bad faith when the application for the mark was filed;

— Infringement of Article 60(1)(c) in conjunction with Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 29 September 2020 — Roller v EUIPO — Flex Equipos de Descanso (Dormillo)

(Case T-597/20)

(2020/C 390/60)

Language of the case: English

Parties

Applicant: Roller GmbH & Co. KG (Gelsenkirchen, Germany) (represented by: W. Zürbig, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Flex Equipos de Descanso, SA (Getafe, Spain)

Details of the proceedings before EUIPO

Proprietor 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 word mark Dormillo — International registration designating the European Union No 1 407 881

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 26 June 2020 in Case R 2847/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition of the opponent as far as protection of international registration No 1 407 881 is refused for the European Union for all the contested goods and services of classes 20, 24 and 35;

— grant protection for the contested international registration Dormillo No 1 407 881 for all contested designated goods and services for the territory of the European Union;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 72(2) in conjunction with Article 8(1)b of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 29 September 2020 — Skechers USA v EUIPO (ARCH FIT)

(Case T-598/20)

(2020/C 390/61)

Language of the case: English

Parties

Applicant: Skechers USA, Inc. II (Manhattan Beach, California, United States) (represented by: T. Holman, A. Reid, Solicitors, J. Bogatz and Y. Stone, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark ARCH FIT — Application for registration No 18 079 677

Contested decision: Decision of the First Board of Appeal of EUIPO of 29 July 2020 in Case R 2631/2019-1

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.

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(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 September 2020 — Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission

(Case T-604/20)

(2020/C 390/62)

Language of the case: Italian

Parties

Applicants: Guangdong Haomei New Materials Co. Ltd (Qingyuan, China) and Guangdong King Metal Light Alloy Technology Co. Ltd (Yuan Tan Town, China) (represented by: M. Maresca, C. Malinconico, D. Maresca, A. Cerutti, A. Malinconico, G. La Malfa Ribolla, D. Guardamagna and M. Guardamagna, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should annul the contested regulation and order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against Commission Implementing Regulation (EU) 2020/1215 of 21 August 2020, published in the Official Journal of the European Union on 24 August 2020, making imports of aluminium extrusions originating in the People's Republic of China subject to registration.

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

1. First plea in law, alleging infringement of Article 14(5) of the Basic Regulation with regard to the subject matter of the imports, illogical and inconsistent reasoning, and misuse of powers in the present case

— The applicants claim in this regard that the contested regulation is characterised by uncertainty and inconsistency regarding the identification of the imports. Further, when the regulation was published on 24 August 2020, the Commission did not clearly identify the subject matter of the imports subject to investigation. In so doing, the Commission immediately penalised the imports, given the obvious and wide-ranging psychological effect of the registration on the aluminium extrusions market, but did not establish that all the requirements for registration imposed by the Basic Regulation were met.

2. Second plea in law, alleging lack of individual standing to submit an application for registration

— The applicants claim in this regard that, under Article 14(5) of the Basic Regulation, the application for registration must be lodged by 'the Union industry'. In that regard, the applicants specify that the European Aluminium Association represents merely part of the industry and, in addition, is the complainant. Further, the complaint provides an incomplete overview that is not objective and global. Moreover, unambiguous information on that association as a genuine representative of the Union industry was not provided in the procedural documents.

3. Third plea in law, alleging insufficient evidence

— The applicants claim in this regard that the contested regulation does not distinguish between the two necessary requirements of 'evidence' and 'purpose', but merely contains a single section entitled 'Grounds'. Such an approach confuses the two requirements, which, however, must be clearly identifiable.

— In addition, the evidence held by the Commission does not show, even as a presumption, the existence of dumping. In addition, the Commission came to the conclusion that there was dumping, not via its own assessment of the information at its disposal, but by merely 'accepting' the grounds provided by the complainant. That modus operandi is not, therefore, sufficient to meet the evidence requirement set out in Article 14(5) of Regulation 1036/2016.

4. Fourth plea in law, alleging failure to assess retroactivity as part of the 'purpose' requirement, and infringement of Article 14(5) of the Basic Regulation, legal certainty, and the principle of legitimate expectations

— The applicants claim in this regard that the contested regulation does not indicate in any way the purpose of the registration, but refers to Article 10(4) of Regulation 1036/2016. The lack of any explicit purpose, based, moreover, on insufficient evidence, means that the contested regulation is unlawful, as it infringes that provision of the Basic Regulation and, above all, infringes the principle of legal certainty and legitimate expectations.

5. Fifth plea in law, alleging failure to assess the impact of COVID-19 on commercial flows, the purpose of the anti-dumping procedure, and registration

— By their fifth plea, the applicants claim that the contested regulation is flawed as regards purpose and evidence, since, despite the seriousness and significance of the pandemic for international trade, the Commission failed to carry out a study or even any kind of documented analysis of the effects of COVID-19 on commercial flows. Moreover, the only response given by the regulation in that regard is that it mentions an — incorrect — reference to an increase in exports.

6. Sixth plea in law, alleging that the duties were not set out, or were set out incorrectly

— The applicants claim in this regard that the contested regulation is unlawful as it infringes Article 14(5) of the Basic Regulation, given that the implementing regulation must set out the estimated amount of possible future liability. The Commission arbitrarily determined the maximum dumping margin for all extrusions, taking as its point of reference the incorrect assessment of *solid profiles* alone, disregarding the procedural documents and deciding, without giving reasons, to extend the estimated dumping margin for one of the four subdivisions to the other three subdivisions.

Action brought on 2 October 2020 — Egis Bâtiments International and InCA v Parliament

(Case T-610/10)

(2020/C 390/63)

Language of the case: French

Parties

Applicants: Egis Bâtiments International (Montreuil, France) and InCA — Ingénieurs Conseils Associés Sàrl (Niederanven, Luxembourg) (represented by: A. Rodesch and R. Jazbinsek, lawyers)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the application formally admissible;

— declare the three pleas in law well founded;

— accordingly, declare that the European Parliament was not able make the following declarations, intended for publication, to the press, without infringing Article 8 of the settlement agreement of 9 April 2019 entered into by the parties or, otherwise, without breaching its duty of good faith in the performance of agreements:

[*confidential*] [1]

— declare that those statements reproduced in published press articles amount to infringements of the confidentiality clause in Article 8 of the settlement agreement of 9 June 2019 entered into by the parties or, otherwise, declare that those statements to the press amount to a failure to perform, in good faith, the settlement agreement pursuant to Article 1134 of the Luxembourg Civil Code;

— accordingly, principally, order the European Union represented by the European Parliament to pay the sum of EUR 100 000 corresponding to the agreed contractual damages or, otherwise, in the alternative, to pay any other sum to be fixed ex aequo et bono representing compensation for the damage suffered as a result of the publications complained of and, in particular, of the infringement of the two applicant companies' right to their image; that sum is to be paid jointly and severally to the simplified joint-stock company ('société par actions simplifiée'), EGIS Bâtiment International SAS, and to the limited liability company, INCA Ingénieurs Conseils Associés SARL, since both applicants are members of the consortium EGIS Bâtiment International — Inca Ingénieurs Conseils Associés, represented by the two applicants, together with the contractual interest or, otherwise, the statutory interest in force as from 27 June 2019, date of the publication of the articles or, otherwise, as from 16 July 2019, date of the first letter before action or, otherwise, as from the present application;

— owing to the European Parliament's refusal to accept its error, the applicants had to bring proceedings and appoint a legal representative;

— in the light of the current Luxembourg case-law, a litigant is entitled to the reimbursement of the costs of legal representation on the basis of the right to full compensation for the damage suffered;

— accordingly, the Luxembourg Cour d'appel (Court of Appeal) has accepted that 'it is an unchallengeable legal principle that damage resulting from any fault, whatever that fault may be, must be made good by the author of the fault and full compensation must be provided. The costs of the defence clearly constitute reparable damage and the victim will not have received full compensation should he or she have to bear those costs of defence or should the individual have to incur costs to have his or her right recognised. The right to full compensation for the damage suffered justifies the repeatability of the costs of the defence, including the costs of legal representation' (Cour d' appel (Court of Appeal), 4 January 2012, Pas.35, p. 848);

— the Luxembourg Cour de cassation (Court of Cassation) has moreover enshrined in its judgment of 9 February 2012 the principle of accumulation of the costs of the proceedings originating in strict liability and of the full reimbursement of the costs of legal representation as damages, stemming from a fault (Cour de cassation (Court of Cassation), 9 February 2012, No 5/12 J.T.L. 2012, p. 54);

— accordingly, on the basis of full compensation for the damage suffered, order the European Union to pay the sum of EUR 5000 in respect of the costs of legal representation to the consortium EGIS Bâtiment International — Inca Ingénieurs Conseils Associés composed of the two applicants, together with the contractual interest or, otherwise, the statutory interest in force as from 27 June 2019, date of the publication of the articles or, otherwise, as from 16 July 2019, date of the first letter before action or, otherwise, as from the present application;

— reserve to the applicants all other rights, remedies, pleas and actions to be raised;

— order the defendant to pay the costs of the proceedings pursuant to Article 134(1) of the Rules of Procedure.

Pleas in law and main arguments

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

1. First plea in law, based on the combined application of Article 8 of the settlement agreement and Article 2044 of the Luxembourg Civil Code, alleging that the European Parliament made statements in the press which infringe the principle of confidentiality which was, however, agreed between the parties in the settlement agreement relating to the termination of the contract which had bound them.

2. Second plea in law, based on the combined application of the settlement agreement of 9 April 2019 and Article 1134 of the Luxembourg Civil Code, in that the declarations made by the Parliament to the press breached the duty of good faith inherent to the performance of any agreement. The Parliament complained in the press that the applicants were incompetent in the performance of their task as project-manager for the monitoring of the works and the takeover and finalisation of the studies for the project to extend and modernise the Konrad Adenauer (KAD) building of the Parliament in Luxembourg, holding them responsible for the additional costs and delays to the KAD project. The applicants claim that that conduct is wrongful in a context where, first, those errors have been disputed and, second, compensation has been received in respect of an unjustified termination of the contract.

3. Third plea in law, based on Article 134(1) of the Rules of Procedure, in that the unsuccessful party is to be ordered to pay the costs. Reimbursement of the costs of legal representation incurred is also requested in the context of the right to full compensation for the damage suffered.

(1) Confidential data omitted.

Action brought on 4 October 2020 — Malacalza Investimenti v ECB

(Case T-612/20)

(2020/C 390/64)

Language of the case: Italian

Parties

Applicant: Malacalza Investimenti Srl (Genoa, Italy) (represented by: M. Condinanzi and L. Boggio, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul and declare null and void the contested decisions, after establishing that they are unlawful;

— order the defendant to pay the costs.

Pleas in law and main arguments

The present action has been brought against the Decision of the Governing Council of the European Central Bank of 1 January 2019, ECB-SSM-2019-ITCAR-11, addressed to the Board of Directors and supervisory board of Banca Carige S.p. A., adopted on the basis of a draft decision of the ECB's Supervisory Board, pursuant to Article 26(8) of Council Regulation (EU) No 1024/2013, pursuant to Articles 69 *octiesdecies*, 70 and 98 of decreto legislativo n. 385 del 1º settembre 1993 (Legislative Decree No 385 of 1 September 1993; 'TUB'), which transpose Article 29 of Directive 2014/59/EU of the European Parliament and of the Council, in conjunction with Article 9(2) of Regulation (EU) No 1024/2013, to dissolve the management and supervisory bodies of Banca Carige S.p.A., having its registered office in Genoa, and to replace them with three special administrators and with a supervisory committee composed of three members, respectively, as well as the subsequent decisions to extend the extraordinary administration.

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

1. First plea in law, alleging failure to observe the principle of proportionality, infringement of Articles 28 and 29 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190), and infringement of Article 69 *octiesdecies* et seq. of Legislative Decree No 385 (TUB).

   — The applicant claims in this regard that the extraordinary administration measure appears to be manifestly excessive and disproportionate.

2. Second plea in law, alleging breach of the obligation to state reasons (Article 296 TFEU and Article 33 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1)), and infringement of the right to an effective judicial remedy.

   — The applicant claims in this regard that the choice of extraordinary administration is not supported by reasons with respect to the gradation of measures that may be taken.

3. Third plea in law, alleging infringement of the last sentence of Article 29 of Directive 2014/59/EU and failure to observe the principle of sound public administration. In any event, failure to state reasons in that regard.

   — The applicant claims in this regard that the appointment made, in so far as regards the nomination, in the context of the extraordinary and temporary administration, of two of the previous board members, as well as of the president and CEO of the former management board, appears to be at variance with the absence of conflicts of interests or potential conflicts of interests.

4. Fourth plea in law, alleging infringement of Article 70 of the TUB, in so far as the dissolution of company bodies may be ordered in the cases expressly provided for in that provision.

5. Fifth plea in law, alleging infringement of Article 29 of the Bank Recovery and Resolution Directive (BRRD) and Article 71 of the TUB.

   — The applicant claims in this regard that there was a failure to state reasons or an inadequate statement of reasons as regards the existence of a conflict of interests.

6. Sixth plea in law, alleging infringement of the rules concerning shareholders' rights contained in Directive (EU) 1132/2017 and in the Italian Civil Code, including as regards implementation of the fundamental principles enshrined in the Charter of Fundamental Rights of the European Union (CFREU), in the European Convention of Human Rights (ECHR) and in the Italian Constitution with respect to the protection of property, the freedom of private economic enterprise and the self-determination of citizens in personal choices.

   — The applicant claims in this regard that, as much as banking companies are subject to special rules which take into account the particular nature of the activity carried on by the company and the particular characteristics of the relevant market, EU laws, like national laws, confer on shareholders, as holders of legal rights enjoying protection, a number of rights which the contested measure affects so adversely that it amounts to a substantial and complete denial of those rights.

Action brought on 3 October 2020 — Junqueras i Vies v Parliament

(Case T-613/20)

(2020/C 390/65)

Language of the case: Spanish

Parties

Applicant: Oriol Junqueras i Vies (Sant Joan de Vilatorrada, Spain) (represented by: A. Van den Eynde Adroer, lawyer)

Defendant: European Parliament

Form of order sought

The applicant requests that the General Court declare that the application bringing an action against the contested measures, together with the documents annexed thereto, was submitted in good time, admit the application and, on the merits, declare the contested measure, which is the subject of the present proceedings, to be invalid and ineffective, and also to order the defendant to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision of the European Parliament announced by President Sassoli in the plenary session of 23 July 2020, that, taking into account the decision of the Junta Electoral Central (Central Electoral Commission, Spain; 'JEC') of 3 January 2020 followed by the decision of the Tribunal Supremo (Supreme Court, Spain) of 9 January 2020 and the judgment of the Court of Justice of the European Union of 19 December 2019 in Case C-502/19 relating to Mr Junqueras, announcing that Mr Jordi Solé i Ferrando had become a Member of the European Parliament (MEP) in the place of Mr Oriol Junqueras i Vies.

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

1. First plea, alleging infringement of the rights of Mr Oriol Junqueras i Vies under Article 41(1) and (2) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') by the procedure for adopting decisions and because the issue is subject to a decision of the General Court of the European Union (Case T-24/20) and interim measures before the Court of Justice (Case C-201/20); and infringement of Article 13(3) of the European Electoral Act (1976) and Rule 4(4), (7) and (8) of the Rules of Procedure of the European Parliament.

   — It is claimed in that regard that Article 13(3) of the European Electoral Act (1976) and Rule 4(7) of the Rules of Procedure of the Parliament are to be interpreted as requiring a procedure in accordance with the rights conferred by those provisions, which allows objections to the declaration that the parliamentary seat of Mr Oriol Junqueras i Vies is vacant and that his replacement by another MEP is invalid to be submitted and challenged.

2. Second plea, alleging infringement of Article 39(1) and (2) of the Charter, Article 14(3) TEU, Article 1(3) of the European Electoral Act (1976), the principle of sincere cooperation under Article 4(3) TEU (in this instance by the Tribunal Supremo), the principle of the primacy of European Union law, Article 9 (second paragraph) of Protocol 7 on Privileges and Immunities, and Rule 6 of the Rules of Procedure of the European Parliament.

   — It is claimed in that respect that no practical effect has been given to the judgment of the Court of Justice of the European Union of 19 December 2019, delivered in Case C-502/19 specifically concerning Mr Oriol Junqueras i Vies, which required waiver (lifting of immunity) to be sought from the European Parliament, and that that judgment has instead been applied in order to proceed with his replacement by another MEP.

   — In the alternative, it is submitted that Article 13(3) of the European Electoral Act and Rule 4(7) of the European Parliament's Rules of Procedure must be interpreted as meaning that the European Parliament may uphold the objections to the vacancy of the parliamentary seat laid down in those provisions where it is possible to consider the plea without engaging in any assessment of the Member State's domestic law, which assessment was in fact carried out in relation to the decision of the JEC of 23 January 2020.

3. Third plea, alleging infringement of Article 39(1) and (2) of the Charter, Article 3 of the First Protocol to the European Convention on Human Rights (ECHR), Article 9 (first paragraph at (a) and (b)) of Protocol 7 on Privileges and Immunities and Rule 6 of the Parliament's Rules of Procedure.

   — The applicant claims that the effectiveness, for Mr Oriol Junqueras i Vies, of the immunities recognised by Article 9 (1)(a) and (b) of Protocol 7 on Privileges and Immunities of the European Union has been unlawfully restricted.

4. Fourth plea, alleging infringement of Article 9 (first paragraph at (a)) of Protocol 7 on Privileges and Immunities, Article 39(1) and (2) of the Charter, Article 3, First Protocol, ECHR, Rule 6 of the European Parliament's Rules of Procedure and Article 13(3) of the European Electoral Act (1976), given that Spanish legislation requires a prior petition for waiver of immunity before proceedings may be brought against elected members of Parliament, and the case-law of the Tribunal Supremo to the contrary is *contra legem* and was established *ad hoc* and *ad hominen*, without there being any precedent, as the Tribunal Supremo itself recognises.

5. Fifth plea, alleging infringement of Article 20 of the Charter for unequal treatment before the law through the failure to apply the same criteria, in the interpretation of EU law, to Mr Oriol Junqueras i Vies and the MEP taking his place according to the contested decision.

Action brought on 3 October 2020 — Mood Media Netherlands v EUIPO — Tailoradio (MOOD MEDIA)

(Case T-615/20)

(2020/C 390/66)

Language in which the application was lodged: French

Parties

Applicant: Mood Media Netherlands BV (Naarden, Netherlands) (represented by: A-M. Pecoraro, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tailoradio Srl (Milan, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union word mark MOOD MEDIA — European Union trade mark No 5 927 496

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 24 July 2020 in Case R 1767/2019-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it revoked the contested mark for the goods and services in Classes 9, 35, 38, 41 and 42;

— dismiss the application for revocation;

— order EUIPO to pay all of the costs.

Plea in law

Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 5 October 2020 — Alessio and Others v ECB

(Case T-620/20)

(2020/C 390/67)

Language of the case: Italian

Parties

Applicants: Roberto Alessio (Turin, Italy) and 56 other applicants (represented by: M. Condinanzi and L. Boggio, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the contested decisions and declare them null and void, after finding them unlawful;

— order the defendant to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision to dissolve the administrative and supervisory bodies of the supervised entity (Banca Carige S.p.A.) and to replace them with three temporary administrators and a supervisory committee for the purposes of Articles 69-octiesdecies, 70 and 98 of Legislative Decree No 385 of 1 September 1993 — ECB-SSM-2019-ITCAR-11 of 1 January 2019, and against the decision extending the special administration of the supervised entity approved by ECB decision ECB-SSM-2019-ITCAR-11 on the basis of Articles 69-octiesdecies, 70 and 98 of Legislative Decree No 385 of 1 September 1993 — ECB-SSM-2019-ITCAR-13, as well as against subsequent measures resulting therefrom and, in particular, decisions extending the special administration of the supervised entity.

The pleas in law and main arguments are similar to those raised in Case T-612/20, *Malacalza Investimenti* v *ECB*.

Order of the General Court of 23 September 2020 — Director-General of OLAF v Commission

(Case T-251/16) ([1])

(2020/C 390/68)

Language of the case: French

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

([1]) OJ C 260, 18.7.2016.

Order of the General Court of 30 September 2020 — Czech Republic v Commission

(Case T-13/19) ([1])

(2020/C 390/69)

Language of the case: Czech

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

([1]) OJ C 103, 18.3.2019.

Order of the General Court of 28 September 2020 — Sky v EUIPO — Safran Electronics & Defense (SKYNAUTE by SAGEM)

(Case T-523/19) ([1])

(2020/C 390/70)

Language of the case: English

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

([1]) OJ C 305, 9.9.2019.

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