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(2021/C 481/01)

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COURT PROCEEDINGS

COURT OF JUSTICE

Opinion of the Court (Grand Chamber) of 6 October 2021 — European Parliament

(Opinion 1/19) [1]

(Opinion pursuant to Article 218(11) TFEU — Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) — Signature by the European Union — Draft conclusion by the European Union — Concept of an 'agreement envisaged', within the meaning of Article 218(11) TFEU — External competences of the European Union — Substantive legal basis — Article 78(2) TFEU — Article 82(2) TFEU — Article 83(1) TFEU — Article 84 TFEU — Article 336 TFEU — Articles 1 to 4a of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice — Partial participation of Ireland in the conclusion of the Istanbul Convention by the European Union — Possibility of splitting the act concluding an international agreement into two separate decisions according to the applicable legal bases — Practice of 'common accord' — Compatibility with the TEU and the TFEU)

(2021/C 481/02)

Language of the case: all the official languages

Applicant

European Parliament (represented by: by D. Warin, A. Neergaard and O. Hrstková Šolcová, acting as Agents)

Operative part of the Opinion

1. Subject to full compliance, at all times, with the requirements laid down in Article 218(2), (6) and (8) TFEU, the Treaties do not prohibit the Council of the European Union, acting in conformity with its Rules of Procedure, from waiting, before adopting the decision concluding the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on behalf of the European Union, for the 'common accord' of the Member States to be bound by that convention in the fields falling within their competences. However, the Treaties do prohibit the Council from adding a further step to the conclusion procedure laid down in that article by making the adoption of the decision concluding that convention contingent on the prior establishment of such a 'common accord';

2. The appropriate substantive legal basis for the adoption of the Council act concluding, on behalf of the European Union, the part of the Istanbul Convention covered by the envisaged agreement, within the meaning of Article 218(11) TFEU, is made up of Article 78(2), Article 82(2) and Articles 84 and 336 TFEU;

3. Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the TEU and the TFEU and Protocol (No 22) on the position of Denmark annexed to the TEU and the TFEU justify the division of the Council act concluding, on behalf of the European Union, the part of the Istanbul Convention covered by the envisaged agreement into two separate decisions only in so far as that division is intended to take account of the circumstance that Ireland or the Kingdom of Denmark is not participating in the measures adopted in respect of the conclusion of that agreement which fall within the scope of those protocols, considered in their entirety.

[1] OJ C 413, 9.12.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — Sigma Alimentos Exterior SL v European Commission

(Case C-50/19 P) ([1])

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/03)

Language of the case: Spanish

Parties

Appellant: Sigma Alimentos Exterior SL (represented: initially by M. Linares-Gil and M. Muñoz Pérez, abogados, and subsequently by M. Muñoz Pérez, abogado)

Other party to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents)

Intervener in support of the appellant: Federal Republic of Germany (represented by: R. Kanitz and J. Möller, Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Sigma Alimentos Exterior SL to pay the costs;

3. Orders the Federal Republic of Germany to bear its own costs.

([1]) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — World Duty Free Group SA, formerly Autogrill España SA (C-51/19 P), Kingdom of Spain (C-64/19 P) v European Commission, Federal Republic of Germany, Ireland

(Joined Cases C-51/19 P and C-64/19 P) ([1])

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/04)

Language of the case: Spanish

Parties

Appellants: World Duty Free Group SA, formerly Autogrill España SA (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados) (C-51/19 P), Kingdom of Spain (represented: initially by A. Rubio González and A. Sampol Pucurull, and subsequently by S. Centeno Huerta and S. Jiménez García, Agents) (C-64/19 P)

Other parties to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents), Federal Republic of Germany (represented by: J. Möller and R. Kanitz, Agents), Ireland

Operative part of the judgment

The Court:

1. Dismisses the appeals;

2. Orders World Duty Free Group SA and the Kingdom of Spain to bear their own costs and to pay those incurred by the European Commission;

3. Orders the Federal Republic of Germany to bear its own costs.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — Banco Santander SA v European Commission

(Case C-52/19 P) (1)

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/05)

Language of the case: Spanish

Parties

Appellant: Banco Santander SA (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados)

Other party to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Banco Santander SA to pay the costs.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — Banco Santander SA, Santusa Holding SL (C-53/19 P), Kingdom of Spain (C-65/19 P) v European Commission, Federal Republic of Germany, Ireland

(Joined Cases C-53/19 P and C-65/19 P) [1]

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/06)

Language of the case: Spanish

Parties

Appellants: Banco Santander SA, Santusa Holding SL (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados) (C-53/19 P), Kingdom of Spain (represented: initially by A. Rubio González and A. Sampol Pucurull, and subsequently by S. Centeno Huerta and S. Jiménez García, Agents) (C-65/19 P)

Other parties to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents), Federal Republic of Germany (represented by: J. Möller and R. Kanitz, Agents), Ireland

Operative part of the judgment

The Court:

1. Dismisses the appeals;

2. Orders Banco Santander SA, Santusa Holding SL and the Kingdom of Spain to bear their own costs and to pay those incurred by the European Commission;

3. Orders the Federal Republic of Germany to bear its own costs.

[1] OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — Axa Mediterranean Holding SA v European Commission

(Case C-54/19 P) [1]

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/07)

Language of the case: Spanish

Parties

Appellant: Axa Mediterranean Holding SA (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados)

Other party to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Axa Mediterranean Holding SA to pay the costs.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 — Prosegur Compañía de Seguridad SA v European Commission

(Case C-55/19 P) (1)

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporate tax provisions allowing undertakings which are tax resident in Spain to amortise the goodwill resulting from the acquisition of shareholdings in companies which are tax resident outside that Member State — Concept of 'State aid' — Condition relating to selectivity — Reference system — Derogation — Difference in treatment — Justification for the difference in treatment)

(2021/C 481/08)

Language of the case: Spanish

Parties

Appellant: Prosegur Compañía de Seguridad SA (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, abogados)

Other party to the proceedings: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Prosegur Compañía de Seguridad SA to pay the costs.

(1) OJ C 112, 25.3.2019.

Judgment of the Court (Full Court) of 30 September 2021 — European Court of Auditors v Karel Pinxten

(Case C-130/19) (1)

(Article 286(6) TFEU — Breach of the obligations arising from the office of Member of the European Court of Auditors — Deprivation of the right to a pension — Right to effective judicial protection — Regularity of the investigation by the European Anti-Fraud Office (OLAF) — Internal procedure at the Court of Auditors — Activity incompatible with the duties of a Member of the Court of Auditors — Mission expenses and daily allowances — Representation and entertainment expenses — Use of an official car — Use of a driver — Conflict of interests — Proportionality of the penalty)

(2021/C 481/09)

Language of the case: French

Parties

Applicant: European Court of Auditors (represented by: initially, C. Lesauvage, J. Vermer and É. von Bardeleben, and, subsequently, C. Lesauvage, acting as Agents)

Defendant: Karel Pinxten (represented by: L. Levi, avocate)

Operative part of the judgment

The Court:

1. Dismisses Mr Karel Pinxten's application for a stay of proceedings pending the outcome of the criminal proceedings brought by the Luxembourg authorities following the transmission to those authorities of the report of the European Anti-Fraud Office (OLAF) concerning Case No OC/2016/0069/A 1;

2. Dismisses Mr Karel Pinxten's application for an order that the European Court of Auditors disclose a report drawn up following an internal audit and the measures taken as a result of that report, and also any notes from that institution relating to a possible interference with the independence of the internal auditor;

3. Orders the email sent from the President of the European Court of Auditors to the other Members of that institution and its Secretary General, dated 13 February 2019, submitted by Mr. Karel Pinxten in Annex B.10 to his defence, to be removed from the case file;

4. Finds that Mr Karel Pinxten breached the obligations arising from his office as a Member of the European Court of Auditors, within the meaning of Article 286(6) TFEU, with respect to:

   — undeclared and unlawful activity within the governing body of a political party;

   — improper use of the resources of the Court of Auditors to finance activities unrelated to the duties of a Member of that institution to the extent found in paragraphs 387 to 799 of the present judgment;

   — the use of a fuel card to purchase fuel for vehicles belonging to third parties; and

   — a conflict of interest created in the context of a relationship with the head of an audited entity;

5. Declares that Mr Karel Pinxten is deprived of two thirds of his right to a pension as from the date of delivery of the present judgment;

6. Dismisses the action as to the remainder;

7. The Court lacks jurisdiction to rule on the claim for compensation submitted by Mr Karel Pinxten;

8. Orders Mr Karel Pinxten to bear his own costs and to pay those incurred by the European Court of Auditors.

([1]) OJ C 148, 29.4.2019.

Judgment of the Court (First Chamber) of 6 October 2021 — Scandlines Danmark ApS, Scandlines Deutschland GmbH v European Commission, Kingdom of Denmark, Föreningen Svensk Sjöfart, Naturschutzbund Deutschland (NABU) eV (C-174/19 P), Stena Line Scandinavia AB v European Commission, Kingdom of Denmark, Föreningen Svensk Sjöfart (C-175/19 P)

(Joined Cases C-174/19 P and C-175/19 P) ([1])

(Appeal — Action for annulment — State aid — Public financing of the Fehmarn Belt fixed rail-road link — Individual aid — Notified aid declared compatible with the internal market — Execution of an important project of common European interest — Decision not to raise any objections — Monopoly — Distortion of competition and effect on trade)

(2021/C 481/10)

Language of the case: English

Parties

(Case C-174/19 P)

Appellants: Scandlines Danmark ApS, Scandlines Deutschland GmbH (represented by: L. Sandberg-Mørch, advokat)

Other parties to the proceedings: European Commission (represented by: V. Bottka, S. Noë and L. Armati, acting as Agents), Kingdom of Denmark (represented: initially by J. Nymann-Lindegren, and subsequently by V. Jørgensen, acting as Agents, and R. Holdgaard, advokat), Föreningen Svensk Sjöfart (represented by: J.L. Buendía Sierra, abogado), Naturschutzbund Deutschland (NABU) eV (represented by: T. Hohmuth, Rechtsanwalt, and L. Sandberg-Mørch, advokat)

Interveners in support of the appellants: Aktionsbündnis gegen eine feste Fehmarnbeltquerung eV (represented by: L. Sandberg-Mørch, advokat, and W. Mecklenburg, Rechtsanwalt), Rederi Nordö-Link AB (represented by: L. Sandberg-Mørch and A. Godsk Fallesen, advokater), Trelleborg Hamn AB (represented by: L. Sandberg-Mørch, advokat, and J.L. Buendía Sierra, abogado)

(Case C-175/19 P)

Appellant: Stena Line Scandinavia AB (represented by: L. Sandberg-Mørch, advokat, and P. Alexiadis, Solicitor)

Other parties to the proceedings: European Commission (represented by: V. Bottka, S. Noë and L. Armati, acting as Agents), Kingdom of Denmark (represented: initially by J. Nymann-Lindegren, and subsequently by V. Jørgensen, acting as Agents, and by R. Holdgaard, advokat), Föreningen Svensk Sjöfart (represented by: J.L. Buendía Sierra, abogado)

Interveners in support of the appellant: Aktionsbündnis gegen eine feste Fehmarnbeltquerung eV (represented by: L. Sandberg-Mørch, advokat, and W. Mecklenburg, Rechtsanwalt), Rederi Nordö-Link AB (represented by: L. Sandberg-Mørch and A. Godsk Fallesen, advokater), Trelleborg Hamn AB (represented by: L. Sandberg-Mørch, advokat, and J.L. Buendía Sierra, abogado)

Operative part of the judgment

The Court:

1. Dismisses the main appeals and the cross-appeals;

2. Orders Scandlines Danmark ApS, Scandlines Deutschland GmbH and Stena Line Scandinavia AB to pay, in addition to their own costs, those incurred by the European Commission in connection with the main appeals;

3. Orders the European Commission to bear its own costs in connection with the cross-appeals;

4. Orders the Kingdom of Denmark, Föreningen Svensk Sjöfart and Naturschutzbund Deutschland (NABU) eV to bear their own costs;

5. Orders Nordö-Link AB, Trelleborg Hamn AB and Aktionsbündnis gegen eine feste Fehmarnbeltquerung eV to bear their own costs.

(1) OJ C 148, 29.4.2019.

Judgment of the Court (First Chamber) of 6 October 2021 — ClientEarth v European Commission, European Chemicals Agency

(Case C-458/19 P) (1)

(Appeal — Action for annulment — Commission Implementing Decision C(2016) 3549 final — Authorisation for uses of bis(2-ethylhexyl) phthalate (DEHP) — Regulation (EC) No 1907/2006 — Articles 60 and 62 — Regulation (EC) No 1367/2006 — Request for internal review — Commission Decision C(2016) 8454 final — Rejection of the request)

(2021/C 481/11)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: A. Jones, Barrister, and J. Stratford BL)

Other parties to the proceedings: European Commission (represented by: G. Gattinara, R. Lindenthal and K. Mifsud-Bonnici, acting as Agents), European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and F. Becker, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders ClientEarth to bear its own costs and to pay the costs incurred by the European Commission;

3. Orders the European Chemicals Agency (ECHA) to bear its own costs.

(1) OJ C 263, 5.8.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Proceedings brought by W.Ż.

(Case C-487/19) (1)

(Reference for a preliminary ruling — Rule of law — Effective legal protection in the fields covered by EU law — Second subparagraph of Article 19(1) TEU — Principles of the irremovability of judges and judicial independence — Transfer without consent of a judge of an ordinary court — Action — Order of inadmissibility made by a judge of the Sąd Najwyższy (Izba Kontroli Nadzwyczajnej i Spraw Publicznych) (Supreme Court (Chamber of Extraordinary Control and Public Affairs), Poland) — Judge appointed by the President of the Republic of Poland on the basis of a resolution of the National Council of the Judiciary, despite a court decision ordering that the effects of that resolution be suspended pending a preliminary ruling of the Court — Judge not constituting an independent and impartial tribunal previously established by law — Primacy of EU law — Possibility of finding such an order of inadmissibility to be null and void)

(2021/C 481/12)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: W.Ż.

Intervening parties: Prokurator Generalny zastępowany przez Prokuraturę Krajową, formerly Prokurator Prokuratury Krajowej Bożena Górecka, Rzecznik Praw Obywatelskich

Operative part of the judgment

The second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law must be interpreted as meaning that a national court seised of an application for recusal as an adjunct to an action by which a judge holding office in a court that may be called upon to interpret and apply EU law challenges a decision to transfer him without his consent, must — where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law — declare to be null and void an order by which a court, ruling at last instance and comprising a single judge, has dismissed that action, if it follows from all the conditions and circumstances in which the process of the appointment of that single judge took place that (i) that appointment took place in clear breach of fundamental rules which form an integral part of the establishment and functioning of the judicial system concerned, and (ii) the integrity of the outcome of that procedure is undermined, giving rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned, with the result that that order may not be regarded as being made by an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU.

(1) OJ C 337, 7.10.2019.

Judgment of the Court (Fourth Chamber) of 6 October 2021 (request for a preliminary ruling from the Curtea de Apel Constanța — Romania) — TS, UT, VU v Casa Națională de Asigurări de Sănătate, Casa de Asigurări de Sănătate Constanța

(Case C-538/19) ([1])

(Reference for a preliminary ruling — Social security — Sickness insurance — Regulation (EC) No 883/2004 — Article 20(1) and (2) — Medical treatment received in a Member State other than that in which the insured person resides — Prior authorisation — Conditions — Requirement for a report prescribing treatment, drawn up by a doctor of the national public sickness insurance scheme — Prescription, by way of a second medical opinion, drawn up in a Member State other than that in which the insured person resides, of an alternative treatment which has the advantage of not causing a disability — Full reimbursement of the medical expenses incurred in respect of that alternative treatment — Freedom to provide services — Article 56 TFEU)

(2021/C 481/13)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Parties to the main proceedings

Applicants and appellants: TS, UT, VU

Defendants and respondents: Casa Națională de Asigurări de Sănătate, Casa de Asigurări de Sănătate Constanța

Operative part of the judgment

Article 20 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, read in conjunction with Article 56 TFEU, must be interpreted as meaning that an insured person who has received, in a Member State other than that in which he or she resides, treatment that is among the benefits provided for by the legislation of the Member State of residence, is entitled to full reimbursement of the expenses for that treatment, under the conditions laid down in that regulation, where that person could not obtain authorisation from the competent institution in accordance with Article 20(1) of that regulation on the ground that, even though the diagnosis and the need to administer treatment as a matter of urgency had been confirmed by a doctor belonging to the sickness insurance scheme of his or her Member State of residence, that doctor had prescribed him or her a different treatment as compared to the treatment which that person chose in accordance with a second medical opinion, drawn up by a doctor in another Member State, and which, unlike the former treatment, does not give rise to a disability.

([1]) OJ C 357, 21.10.2019.

Judgment of the Court (First Chamber) of 6 October 2021 (request for a preliminary ruling from the Administrativen sad — Blagoevgrad — Bulgaria) — 'ECOTEX BULGARIA' EOOD v Teritorialna direktsia na Natsionalnata agentsia za prihodite — Sofia

(Case C-544/19) ([1])

(Reference for a preliminary ruling — Article 63 TFEU — Free movement of capital — Directive (EU) 2015/849 — Scope — National legislation requiring payments exceeding a certain amount to be made only by transfer or deposit into a payment account — Article 65 TFEU — Justification — Combating tax evasion and tax avoidance — Proportionality — Administrative penalties of a criminal nature — Article 49 of the Charter of Fundamental Rights of the European Union — Principles of legality and proportionality of criminal offences and penalties)

(2021/C 481/14)

Language of the case: Bulgarian

Referring court

Administrativen sad — Blagoevgrad

Parties to the main proceedings

Appellant in cassation: 'ECOTEX BULGARIA' EOOD

Respondent in cassation: Teritorialna direktsia na Natsionalnata agentsia za prihodite — Sofia

Interested party: Prokuror ot Okrazhna prokuratura — Blagoevgrad

Operative part of the judgment

1. Legislation of a Member State which, for domestic payments the amount of which is equal to or exceeds a set threshold, prohibits natural and legal persons from making payments in cash and requires them to make a transfer or deposit into a payment account does not come within the scope of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

2. Article 63 TFEU, read in conjunction with Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State which, with a view to combating tax evasion and tax avoidance, first, prohibits natural and legal persons from making domestic payments in cash where the amount of the payment is equal to or exceeds a set threshold and requires, to that end, a transfer or deposit into a payment account, including as regards the distribution of dividends of a company, and second, provides for a system of penalties for infringing that prohibition in the context of which the amount of the fine that may be imposed is calculated as a fixed percentage of the total amount of the payment made in breach of that prohibition, without it being possible to adjust that fine depending on the particular circumstances of the case, provided that that legislation is appropriate for securing attainment of those objectives and does not go beyond what is necessary for attaining them.

(1) OJ C 357, 21.10.2019.

Judgment of the Court (Grand Chamber) of 6 October 2021 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Consorzio Italian Management, Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA

(Case C-561/19) (1)

(Reference for a preliminary ruling — Article 267 TFEU — Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling — Exceptions to that obligation — Criteria — Question on the interpretation of EU law raised by the parties to the national proceedings after the Court has given a preliminary ruling in those proceedings — Failure to state the reasons justifying the need for an answer to the questions referred for a preliminary ruling — Partial inadmissibility of the request for a preliminary ruling)

(2021/C 481/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Consorzio Italian Management, Catania Multiservizi SpA

Defendant: Rete Ferroviaria Italiana SpA

Operative part of the judgment

Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to bring before the Court of Justice a question concerning the interpretation of EU law that has been raised before it, unless it finds that that question is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.

The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union.

Such a court or tribunal cannot be relieved of that obligation merely because it has already made a reference to the Court for a preliminary ruling in the same national proceedings. However, it may refrain from referring to the Court a question for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal, subject to compliance with the principles of equivalence and effectiveness.

(1) OJ C 357, 21.10.2019.

Judgment of the Court (Fifth Chamber) of 6 October 2021 (request for a preliminary ruling from the Tribunal Superior de Justicia del País Vasco — Spain) — Confederación Nacional de Centros Especiales de Empleo (Conacee) v Diputación Foral de Gipuzkoa

(Case C-598/19) (1)

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 20 — Reserved contracts — National legislation reserving the right to participate in certain public procurement procedures to Social initiative special employment centres — Additional conditions not provided for by the directive — Principles of equal treatment and proportionality)

(2021/C 481/16)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia del País Vasco

Parties to the main proceedings

Applicant: Confederación Nacional de Centros Especiales de Empleo (Conacee)

Defendant: Diputación Foral de Gipuzkoa

Operative part of the judgment

Article 20(1) 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 must be interpreted as not precluding a Member State from imposing additional criteria beyond those laid down by that provision, thereby excluding from reserved public procurement procedures certain economic operators which satisfy the criteria laid down in that provision, provided that that Member State complies with the principles of equal treatment and proportionality.

(1) OJ C 363, 28.10.2019.

Judgment of the Court (Tenth Chamber) of 30 September 2021 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovak Republic) — HYDINA SK s.r.o. v Finančné riaditeľstvo Slovenskej republiky

(Case C-186/20) ([1])

(Reference for a preliminary ruling — Administrative cooperation and combating fraud in the field of value added tax (VAT) — Regulation (EU) No 904/2010 — Articles 10 to 12 — Exchange of information — Tax audit — Time limits — Suspension of the tax audit in case of exchange of information — Non-compliance with the time limits laid down for providing information — Effect on the lawfulness of the suspension of the tax audit)

(2021/C 481/17)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: HYDINA SK s.r.o.

Defendant: Finančné riaditeľstvo Slovenskej republiky

Operative part of the judgment

Article 10 of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, read in the light of recital 25 thereof, must be interpreted as not laying down time limits, the non-compliance with which is liable to affect the lawfulness of the suspension of a tax audit provided for by the law of the requesting Member State pending the communication, by the requested Member State, of the information requested under the administrative cooperation mechanism established by that regulation.

([1]) OJ C 222, 6.7.2020.

Judgment of the Court (Eighth Chamber) of 30 September 2021 (request for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — K v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)

(Case C-285/20) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 883/2004 — Article 65(2) and (5) — Scope — Wholly unemployed worker — Unemployment benefits — Worker who resides and pursues an activity as an employed person in the competent Member State — Transfer of his or her residence to another Member State — Person not actually pursuing an activity as an employed person in the competent Member State before becoming wholly unemployed — Person on sick leave and receiving, on that basis, sickness benefits paid by the competent Member State — Pursuit of an activity as an employed person — Comparable legal situations)

(2021/C 481/18)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: K

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)

Operative part of the judgment

1. Article 65(2) and (5) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as applying to a situation in which, before being wholly unemployed, the person concerned resided in a Member State other than the competent Member State and was not actually employed but was on sick leave and received, on that basis, sickness benefits paid by the competent Member State, provided, however, that, in accordance with the national law of the competent Member State, entitlement to such benefits is treated in the same way as the pursuit of an activity as an employed person;

2. Article 65(2) and (5) of Regulation No 883/2004, as amended by Regulation No 465/2012, must be interpreted as meaning that the reasons, in particular of a family nature, for which the person concerned has transferred his or her residence to a Member State other than the competent Member State do not have to be taken into account for the purposes of applying that provision.

(1) OJ C 313, 21.9.2020.

Judgment of the Court (Sixth Chamber) of 30 September 2021 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Commerzbank AG v E.O.

(Case C-296/20) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of judgments — Civil and commercial matters — Lugano II Convention — Article 15(1)(c) — Jurisdiction over consumer contracts — Transfer of the consumer's domicile to another State bound by the convention)

(2021/C 481/19)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Commerzbank AG

Defendant: E.O.

Operative part of the judgment

Article 15(1)(c) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that that provision determines jurisdiction where the parties to a consumer contract — the consumer and the professional counterparty — were, at the time that contract was concluded, domiciled in the same State bound by that convention, and where an international element in the legal relationship emerged only after that contract was concluded, on account of the subsequent transfer of the consumer's domicile to another State bound by that convention.

(1) OJ C 348, 19.10.2020.

Judgment of the Court (First Chamber) of 30 September 2021 (request for a preliminary ruling from the Conseil d'État — France) — Icade Promotion SAS, formerly Icade Promotion Logement SAS v Ministère de l'Action et des Comptes publics

(Case C-299/20) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 392 — Margin taxation scheme — Scope — Supply of buildings and building land purchased for resale — Taxable person for whom the VAT on the purchase of buildings was not deductible — Resale subject to VAT — Concept of 'building land')

(2021/C 481/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Icade Promotion SAS, formerly Icade Promotion Logement SAS

Defendant: Ministère de l'Action et des Comptes publics

Operative part of the judgment

1. Article 392 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as allowing the margin scheme to be applied to transactions involving the supply of building land both where the purchase thereof was subject to value added tax (VAT), without the taxable person who sold it being entitled to deduct that tax, and where the purchase of that property was not subject to VAT even though the price at which the taxable dealer purchased those goods incorporated an amount of VAT, paid as input VAT by the initial seller. However, apart from in the latter situation, that provision does not apply to transactions involving the supply of building land on whose initial purchase no VAT was paid, either because that purchase is not subject to VAT or because an exemption applies;

2. Article 392 of Directive 2006/112 must be interpreted as precluding the application of the margin scheme to transactions involving the supply of building land where that purchased land which has not been built on has become, between the time of its purchase and the time at which it is resold by the taxable person, building land. That provision does not, however, preclude the application of the margin scheme to transactions involving the supply of building land where that land has been subject, between the time of its purchase and the time at which it is resold by the taxable person, to alterations such as its partitioning into lots or the carrying out of works for the connection of those lots to grids and networks, including, inter alia, the gas and electricity networks.

([1]) OJ C 297, 7.9.2020.

Appeal brought on 21 July 2021 by the Grand Duchy of Luxembourg against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 12 May 2021 in Joined Cases T-516/18 and T-525/18,

Grand Duchy of Luxembourg and Engie Global LNG Holding and Others v Commission

(Case C-451/21 P)

(2021/C 481/21)

Language of the case: French

Parties

Appellant: Grand Duchy of Luxembourg (represented by: A. Germeaux and T. Uri, acting as Agents, and D. Waelbroeck and J. Bracker, avocats)

Other parties to the proceedings: European Commission, Ireland

Form of order sought

The Grand Duchy of Luxembourg claims that the Court should:

— set aside the judgment of the General Court of the European Union of 12 May 2021 in Joined Cases T-516/18 and T-525/18, *Luxembourg and Engie Global LNG Holding and Others* v *Commission*;

— principally, give final judgment in the matter, in accordance with Article 61 of the Statute of the Court of Justice, and uphold the forms of order sought by the Grand Duchy of Luxembourg at first instance by annulling Commission Decision (EU) 2019/421 of 20 June 2018 on State aid SA.44888 (2016/C) (ex 2016/NN) implemented by Luxembourg in favour of ENGIE (OJ 2019 L 78, p. 1);

— in the alternative, refer the case back to the General Court;

— order the Commission to pay the costs incurred by the Grand Duchy of Luxembourg.

Grounds of appeal and main arguments

In support of the appeal, the Grand Duchy of Luxembourg raises four grounds of appeal.

The first ground of appeal alleges infringement of Article 107 TFEU, inasmuch as the General Court confirmed that the two sets of tax rulings at issue conferred a 'selective' advantage in the light of the 'narrow' reference framework used by the Commission. (i) By accepting the existence of a 'narrow' reference framework (namely, the Luxembourg corporate income tax system rules relating to the participation exemption and the taxation of profit distributions), the General Court committed several errors of law. It not only endorsed an incomplete and artificially limited reference framework, but also distorted Luxembourg law by upholding a *contra legem* interpretation of the provisions at issue. In addition, the judgment under appeal endorses discrimination between cross-border transactions and purely national transactions, inasmuch as it excludes from the reference framework Luxembourg companies with participating interests in companies from other Member States. (ii) The finding of a derogation from the 'narrow' reference framework is incorrect. That finding is based on a rewriting of the national law and infringes the case-law of the Court of Justice concerning the analysis of selectivity and in particular the line of case-law requiring discrimination vis-à-vis undertakings in a comparable situation to be shown.

The second ground of appeal alleges infringement of Article 107 TFEU inasmuch as the General Court confirmed the existence of a 'selective' advantage on account of the non-application of the Luxembourg provision on abuse of law, and, in the alternative, infringement of Regulation (EU) 2015/1589 [1] and the rights of the defence. (i) The legal classification of 'selectivity' by the General Court on account of the non-application of the Luxembourg provision on abuse of law is based on an incorrect premiss and a distortion of the national law. Contrary to what the General Court states, recourse to a 'direct' ZORA would have led to the same taxable result. (ii) The General Court's reasoning concerning the determination of the reference framework is vitiated by several errors of law and flaws in the reasoning. (iii) The General Court's reasoning concerning the existence of a derogation is incorrect. The finding that the criteria necessary for the application of the provision on abuse of law were met in the case at hand is based on the incorrect premiss that recourse to a 'direct' ZORA would not have led to the same taxable result. The judgment under appeal also infringes Article 107 TFEU, inasmuch as it operates on a presumption of an abuse of law and an absence of non-tax related reasons. The General Court also infringed its obligation to state reasons and failed to carry out a comprehensive assessment of the facts, by disregarding certain facts confirming that an abuse of law could not be established under Luxembourg law. Lastly, the General Court infringed Article 107 TFEU inasmuch as it failed to show that there was any discrimination whatsoever in favour of Engie as compared to companies in a comparable factual and legal situation. (iv) Lastly, in the alternative, the judgment under appeal infringes the rights of defence of the Grand Duchy of Luxembourg.

The third ground of appeal alleges infringement of Articles 4 and 5 TEU. The Grand Duchy of Luxembourg submits that the judgment under appeal restricts the autonomy of the national tax authorities in an area reserved for the competence of the Member States, thus infringing Articles 4 and 5 TEU and the principles governing the division of competences between the Member States and the European Union.

The fourth ground of appeal alleges infringement of Article 296 TFEU, inasmuch as the General Court failed to comply with its obligation to state reasons.

[1] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Request for a preliminary ruling from the Sofiyski rayonen sad (Bulgaria) lodged on 6 August 2021 — Banka DSK EAD v M. V.

(Case C-489/21)

(2021/C 481/22)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicant: Banka DSK EAD

Defendant: M. V.

Questions referred

1. Is Article 3(1) of Directive 93/13/EEC, ([1]) read in conjunction with subparagraphs (e) and (f) of paragraph 1 of the annex to that directive, to be interpreted as meaning that terms are contrary to the requirement of good faith and are to the disadvantage of the consumer if they substantially increase the consumer's costs under a credit agreement in the event that the consumer does not transfer his or her salary to [an account with] the lending bank each month, taking into account that, under the terms of the agreement, that consumer is obliged to create a pledge on his or her claim to salary, irrespective of how and in which country he or she receives that salary?

2. If the first question is answered in the negative, is Article 3(1) of Directive 93/13/EEC, read in conjunction with subparagraphs (e) and (f) of paragraph 1 of the annex to that directive, to be interpreted as meaning that terms are contrary to the requirement of good faith and are to the disadvantage of the consumer if they oblige the consumer, in addition to transferring his or her salary to [an account with] the trader granting the credit, to effectively use other services of that trader?

3. If the second question is answered in the affirmative, as a matter of principle, on what criteria should the national court base its assessment of unfairness? In particular, should it take account of the degree of the connection between the subject matter of the credit agreement and the ancillary services which the consumer is obliged to use, the number of services and the national rules on the restriction of tied sales?

4. Does the principle of interpreting national law in conformity with EU law, as established in paragraph 26 of the judgment in Case 14/83, *von Colson*, also apply to the interpretation of national legal provisions governing areas of law (*in casu*, rules on unfair competition) which are different from those introduced into EU law but are related to the legal subject matter of the act of EU law applied by the national court in the proceedings before it (*in casu*, Directive 93/13/EEC on unfair terms in consumer contracts), and are the standards of the Charter of Fundamental Rights of the European Union to be applied in such an interpretation?

5. Are Article 7(2) of Directive 2005/29/EC, ([2]) read in conjunction with Article 6(1)(d) thereof, and Article 10(2)(f) of Directive 2008/48/EC ([3]) to be interpreted as prohibiting the indication of a lower borrowing rate in the main consumer credit agreement if the granting of the credit at that borrowing rate is made subject to conditions laid down in an annex to the agreement? Should such an assessment entail an examination of the wording of the conditions for the reduction of the borrowing rate, the loss of such a reduction and the means by which that reduction can be recovered?

6. Is Article 5(2)(b) of Directive 2005/29/EC to be interpreted as meaning that, when assessing the possibility that the economic behaviour of consumers might be materially altered, the market share of a bank granting consumer loans must be taken into account, having regard to the needs of the consumers who use such products?

7. Is Article 3(g) of Directive 2008/48/EC to be interpreted as meaning that the costs specified in contracts which relate to a consumer credit agreement and the performance of which results in the granting of a discount on the interest under the consumer credit agreement form part of the annual percentage rate of charge of the loan and must be included in the calculation thereof?

8. Is Article 3(g) of Directive 2008/48/EC, read in conjunction with Article 5 of Directive 93/13/EEC, to be interpreted as meaning that, in the event of non-performance of obligations under contracts relating to the credit agreement, which is tied to an increase in the borrowing rate of the loan, the annual percentage rate of charge of the loan must be calculated also on the basis of the increased borrowing rate in the event of non-performance?

9. Is Article 10(2)(g) of Directive 2008/48/EC to be interpreted as meaning that an incorrect indication of the annual percentage rate of charge in a credit agreement between a trader and a consumer borrower must be regarded as a failure to indicate the annual percentage rate of charge in the credit agreement and that the national court must apply the legal consequences provided for under domestic law for failure to indicate the annual percentage rate of charge in a consumer credit agreement?

10. Is Article 22(4) of Directive 2008/48/EC to be interpreted as meaning that a penalty provided for by the national legislature, in the form of nullity of the consumer credit agreement, whereby only the principal amount granted is to be repaid, is proportionate in situations where a consumer credit agreement does not contain an accurate indication of the annual percentage rate of charge?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
(2) 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') (OJ 2005 L 149, p. 22).
(3) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 10 August 2021 — WA v Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne

(Case C-491/21)

(2021/C 481/23)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Appellant: WA

Respondent: Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date din Ministerul Afacerilor Interne

Question referred

1. Must Article 26(2) TFEU, Articles 20, 21(1) and 45(1) of the Charter of Fundamental Rights of the European Union and Articles 4, 5 and 6 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (1) be interpreted as precluding national legislation which does not permit the issue of an identity card — which may serve as a travel document within the European Union — to a national of a Member State on the ground that he has established his domicile in a different Member State?

(1) OJ 2004 L 158, p. 77.

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 16 September 2021 — CC v VO

(Case C-572/21)

(2021/C 481/24)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: CC

Defendant: VO

Question referred

Does the court of a Member State retain jurisdiction under Article 8(1) of the Brussels II Regulation [1] if the child concerned by the case changes his or her habitual residence during the proceedings from a Member State to a third country which is a party to the 1996 Hague Convention (see Article 61 of the regulation)?

[1] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 20 September 2021 — QT v 02 Czech Republic a.s.

(Case C-574/21)

(2021/C 481/25)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: QT

Defendant: 02 Czech Republic a.s.

Questions referred

1. Must the expression 'the commission lost by the commercial agent,' within the meaning of Article 17(2)(a), second indent, of Council Directive 86/653/EEC [1] of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, be interpreted to the effect that such commissions include commissions for the conclusion of contracts which a commercial agent would have entered into had the commercial agency [contract] endured, with the customers that he or she brought the principal or with which he or she significantly increased the volume of business?

2. If so, subject to what conditions does this conclusion apply to 'one-off commissions' for the conclusion of a contract?

[1] OJ 1986 L 382, p. 17.

Request for a preliminary ruling from the Itä-Suomen hallinto-oikeus (Finland) lodged on 22 September 2021 — J.M.

(Case C-579/21)

(2021/C 481/26)

Language of the case: Finnish

Referring court

Itä-Suomen hallinto-oikeus

Parties to the main proceedings

Applicant: J.M.

Other parties: Assistant Data Protection Supervisor, Pankki S

Questions referred

1. Is the data subject's right of access under Article 15(1) of the General Data Protection Regulation, ([1]) considered in conjunction with the [concept of] 'personal data' within the meaning of point 1 of Article 4 of that regulation, to be interpreted as meaning that information collected by the controller which indicates who processed the data subject's personal data and when and for what purpose they were processed does not constitute information in respect of which the data subject has a right of access, in particular because it consists of data concerning the controller's employees?

2. If Question 1 is answered in the affirmative and the data subject does not have a right of access to the information referred to in that question on the basis of Article 15(1) of the General Data Protection Regulation because it does not constitute 'personal data' of the data subject within the meaning of point 1 of Article 4 of the General Data Protection Regulation, it remains necessary in the present case to consider the information in respect of which the data subject does have a right of access in accordance with Article 15(1)[(a) to (h)]:

   a. How is the purpose of processing within the meaning of Article 15(1)(a) to be interpreted in relation to the scope of the data subject's right of access, that is to say, can the purpose of the processing give rise to a right of access to the user log data collected by the controller, such as information concerning personal data of the processors and the time and the purpose of the processing of the personal data?

   b. In that context, can the persons who processed J.M.'s customer data be regarded, under certain criteria, as recipients of the personal data within the meaning of Article 15(1)(c) of the General Data Protection Regulation, in respect of whom the data subject would be entitled to obtain information?

3. Is the fact that the bank at issue performs a regulated activity or that J.M. was both an employee and a customer of the bank at the same time relevant to the present case?

4. Is the fact that J.M.'s data were processed before the entry into force of the General Data Protection Regulation relevant to the examination of the questions set out above?

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Order of the President of the Court of 9 September 2021 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio — Italy) — Irideos SpA v Poste Italiane SpA, interveners: Fastweb SpA, Tim SpA

(Case C-419/19) ([1])

(2021/C 481/27)

Language of the case: Italian

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

([1]) OJ C 328, 30.9.2019.

Order of the President of the Court of 15 September 2021 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Stichting Brein v News-Service Europe BV

(Case C-442/19) ([1])

(2021/C 481/28)

Language of the case: Dutch

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

([1]) OJ C 357, 21.10.2019.

Order of the President of the Third Chamber of the Court of 9 September 2021 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Axpo Trading Ag v Gestore dei Servizi Energetici SpA — GSE, intervener: Fallimento Esperia SpA

(Case C-705/19) [1]

(2021/C 481/29)

Language of the case: Italian

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

[1] OJ C 432, 23.12.2019.

GENERAL COURT

Judgment of the General Court of 6 October 2021 — Sipcam Oxon v Commission

(Case T-518/19) ([1])

(Plant protection products — Active substance chlorothalonil — Non-renewal of inclusion in the annex to Implementing Regulation (EU) No 540/2011 — Assessment procedure — Rights of the defence — Proposed classification of an active substance — Legal certainty — Proportionality — Precautionary principle)

(2021/C 481/30)

Language of the case: English

Parties

Applicant: Sipcam Oxon SpA (Milan, Italy) (represented by: C. Mereu and P. Sellar, lawyers)

Defendant: European Commission (represented by: F. Castilla Contreras, A. Dawes and I. Naglis, acting as Agents)

Re:

Application under Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2019/677 of 29 April 2019 concerning the non-renewal of the approval of the active substance chlorothalonil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ 2019 L 114, p. 15).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Sipcam Oxon SpA to pay the costs, including those relating to the proceedings for interim measures.

([1]) OJ C 305, 9.9.2019.

Judgment of the General Court of 6 October 2021 — Kondyterska korporatsiia 'Roshen' v EUIPO — Krasnyj Octyabr (Representation of a lobster)

(Case T-254/20) ([1])

(EU trade mark — Invalidity proceedings — Application for an EU figurative mark representing a lobster — 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) — Right to be heard — Article 94 of Regulation 2017/1001)

(2021/C 481/31)

Language of the case: English

Parties

Applicant: Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' (Kiev, Ukraine) (represented by: I. Lukauskienė, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard Monguiral and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: PAO Moscow Confectionery Factory 'Krasnyj Octyabr' (Moscow, Russia)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 March 2020 (Case R 1916/2019-4), relating to invalidity proceedings between Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' and PAO Moscow Confectionery Factory 'Krasnyj Octyabr'.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dochirnie pidpryiemstvo Kondyterska korporatsiia 'Roshen' to pay the costs.

([1]) OJ C 215, 29.6.2020.

Judgment of the General Court of 6 October 2021 — Indo European Foods v EUIPO — Chakari (Abresham Super Basmati Selaa Grade One World's Best Rice)

(Case T-342/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark Abresham Super Basmati Selaa Grade One World's Best Rice — Earlier non-registered word mark BASMATI — Agreement on the withdrawal of the United Kingdom from the European Union and Euratom — Transition period — Interest in bringing proceedings — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 (now Article 8(4) of Regulation (EU) 2017/1001) — Rules governing common law actions for passing off — Likelihood of misrepresentation — Likelihood of dilution of the reputation of the earlier mark)

(2021/C 481/32)

Language of the case: English

Parties

Applicant: Indo European Foods Ltd (Harrow, United Kingdom) (represented by: A. Norris, Barrister, and N. Welch, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Hamid Ahmad Chakari (Vienna, Austria)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 April 2020 (Case R 1079/2019 4), relating to opposition proceedings between Indo European Foods and Mr Chakari.

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 2 April 2020 (Case R 1079/2019-4);

2. Dismisses the action as to the remainder;

3. Orders EUIPO to pay the costs, including the costs necessarily incurred by Indo European Foods Ltd for the purposes of the proceedings before the Board of Appeal of EUIPO.

([1]) OJ C 262, 10.8.2020.

Judgment of the General Court of 6 October 2021 — Dermavita Company v EUIPO — Allergan Holdings France (JUVEDERM)

(Case T-372/20) ([1])

(EU trade mark — Revocation proceedings — EU word mark JUVEDERM — Genuine use of the mark — Use in connection with the goods in respect of which the mark is registered — Use with the consent of the proprietor — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 481/33)

Language of the case: English

Parties

Applicant: Dermavita Company S.a.r.l. (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

Defendant: European Union Intellectual Property Office (represented by: K. Zajfert, J. Crespo Carrillo and V.J. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Allergan Holdings France SAS (Courbevoie, France) (represented by: J. Day, Solicitor, and T. de Haan, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 April 2020 (Case R 877/2019-4), relating to revocation proceedings between Dermavita Company and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dermavita Company S.a.r.l. to pay the costs of the present proceedings.

([1]) OJ C 262, 10.8.2020.

Judgment of the General Court of 6 October 2021 — Allergan Holdings France v EUIPO — Dermavita Company (JUVEDERM)

(Case T-397/20) ([1])

(EU trade mark — Revocation proceedings — EU word mark JUVEDERM — Genuine use of the mark — Use in connection with the goods in respect of which the mark is registered — Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001))

(2021/C 481/34)

Language of the case: English

Parties

Applicant: Allergan Holdings France SAS (Courbevoie, France) (represented by: J. Day, Solicitor, and T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (represented by: K. Zajfert and V.J. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Dermavita Company S.a.r.l. (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 April 2020 (Case R 877/2019-4), relating to revocation proceedings between Dermavita Company and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Rejects the plea of inadmissibility;

2. Dismisses the action;

3. Orders Allergan Holdings France SAS to bear, in addition to its own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO) and two-thirds of the costs incurred by Dermavita Company S.a.r.l. relating to the present proceedings;

4. Orders Dermavita Company S.a.r.l. to bear a third of its own costs relating to the present proceedings.

([1]) OJ C 279, 24.8.2020.

Judgment of the General Court of 6 October 2021 — Global Translation Solutions v Commission

(Case T-404/20) ([1])

(Public service contracts — Tendering procedure — Translation services — Rejection of a tenderer's bid — Award of the contract to another tenderer — Award criteria — Method of evaluation — Manifest error of assessment — Equal treatment — Transparency — Obligation to state reasons — Duty of diligence — Principle of sound administration)

(2021/C 481/35)

Language of the case: English

Parties

Applicant: Global Translation Solutions ltd. (Valletta, Malta) (represented by: C. Mifsud-Bonnici, lawyer)

Defendant: European Commission (represented by: A. Katsimerou, L. André and M. Ilkova, acting as Agents)

Re:

Application under Article 263 TFEU for annulment of the Commission's decision contained in the letter of 17 April 2020 rejecting the tender submitted by the applicant for Lot 22 (EN>MT) in tendering procedure TRAD 19 and awarding that lot to another tenderer, and for annulment of 'all related decisions'.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Global Translation Solutions ltd. to pay the costs.

([1]) OJ C 297, 7.9.2020.

Judgment of the General Court of 6 October 2021 — Esteves Lopes Granja v EUIPO — IVDP (PORTWO GIN)

(Case T-417/20) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark PORTWO GIN — Earlier designation of origin 'Porto' — Concepts of 'use' and 'exploitation' of a protected designation of origin — Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013)

(2021/C 481/36)

Language of the case: English

Parties

Applicant: Joaquim José Esteves Lopes Granja (Vila Nova de Gaia, Portugal) (represented by: O. Santos Costa, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Instituto dos Vinhos do Douro e do Porto, IP (IVDP) (Peso da Régua, Portugal) (represented by: P. Sousa e Silva, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 21 April 2020 (Case R 993/2019-2) relating to opposition proceedings between Instituto dos Vinhos do Douro e do Porto, IP and Joaquim Jósé Esteves Lopes Granja.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Joaquim José Esteves Lopes Granja to pay the costs.

([1]) OJ C 279, 24.8.2020.

Judgment of the General Court of 6 October 2021 — Guo v EUIPO — Sand Cph (sandriver)

(Case T-505/20) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark sandriver — Earlier EU word mark SAND — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2021/C 481/37)

Language of the case: English

Parties

Applicant: Xiuling Guo (Shanghai, China) (represented by: L. Le Stanc, lawyer)

Defendant: European Union Intellectual Property Office (represented by: J. Mrozowski, A. Folliard-Monguiral and V. Ruzek, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Sand Cph A/S (Copenhagen, Denmark)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 June 2020 (Case R 2019/2019-2) relating to invalidity proceedings between Sand Cph and Ms Guo.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Ms Xiuling Guo to pay the costs.

(1) OJ C 320, 28.9.2020.

Judgment of the General Court of 6 October 2021 — Dermavita Company v EUIPO — Allergan Holdings France (JUVÉDERM VYBRANCE)

(Case T-635/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark JUVÉDERM VYBRANCE — Late payment of the appeal fee — Inadmissibility of the appeal before the Board of Appeal — Article 101(4) of Regulation (EU) 2017/1001 — Article 106(1)(b) of Regulation 2017/1001 — Restitutio in integrum)

(2021/C 481/38)

Language of the case: English

Parties

Applicant: Dermavita Company S.a.r.l. (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 August 2020 (Case R 1014/2020-4), relating to invalidity proceedings between Dermavita Company and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dermavita Company S.a.r.l. to pay the costs.

(1) OJ C 443, 21.12.2020.

Judgment of the General Court of 6 October 2021 — Dermavita Company v EUIPO — Allergan Holdings France (JUVÉDERM VOLUMA)

(Case T-636/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark JUVÉDERM VOLUMA — Late payment of the appeal fee — Inadmissibility of the appeal before the Board of Appeal — Article 101(4) of Regulation (EU) 2017/1001 — Article 106(1)(b) of Regulation 2017/1001 — Restitutio in integrum)

(2021/C 481/39)

Language of the case: English

Parties

Applicant: Dermavita Company S.a.r.l. (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 August 2020 (Case R 1016/2020-4), relating to invalidity proceedings between Dermavita Company and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dermavita Company S.a.r.l. to pay the costs.

(1) OJ C 443, 21.12.2020.

Judgment of the General Court of 6 October 2021 — Dermavita Company v EUIPO — Allergan Holdings France (JUVÉDERM VOLITE)

(Case T-637/20) (1)

(EU trade mark — Invalidity proceedings — EU word mark JUVÉDERM VOLITE — Late payment of the appeal fee — Inadmissibility of the appeal before the Board of Appeal — Article 101(4) of Regulation (EU) 2017/1001 — Article 106(1)(b) of Regulation 2017/1001 — Restitutio in integrum)

(2021/C 481/40)

Language of the case: English

Parties

Applicant: Dermavita Company S.a.r.l. (Beirut, Lebanon) (represented by: D. Todorov, lawyer)

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 21 August 2020 (Case R 1015/2020-4), relating to invalidity proceedings between Dermavita Company and Allergan Holdings France.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Dermavita Company S.a.r.l. to pay the costs.

(1) OJ C 443, 21.12.2020.

Judgment of the General Court of 6 October 2021 — Power Horse Energy Drinks v EUIPO — Robot Energy Europe (UNSTOPPABLE)

(Case T-3/21) ([1])

(EU trade mark — Invalidity proceedings — EU word mark UNSTOPPABLE — 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) — Lack of descriptive character — Article 7(1)(c) of Regulation No 207/2009 (now Article 7(1)(c) of Regulation 2017/1001))

(2021/C 481/41)

Language of the case: German

Parties

Applicant: Power Horse Energy Drinks GmbH (Linz, Austria) (represented by: M. Woller, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Robot Energy Europe (Mijas, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 6 October 2020 (Case R 232/2020-2), relating to invalidity proceedings between Power Horse Energy Drinks and Robot Energy Europe.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Power Horse Energy Drinks GmbH to pay the costs.

([1]) OJ C 62, 22.2.2021.

Action brought on 18 August 2021 — TB v ENISA

(Case T-511/21)

(2021/C 481/42)

Language of the case: English

Parties

Applicant: TB (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Union Agency for Cybersecurity (ENISA)

Form of order sought

The applicant claims that the Court should:

— annul the decision taken by ENISA to renew the applicant's employment contract, in so far as it reassigns the applicant to a post with non-managerial functions, this decision being formalised by the signed version of the document sent by ENISA on 13 October 2020 and presented as an amendment of her contract and by the signature of such document by both the applicant and ENISA on 26 October 2020;

— in so far as necessary, annul the defendant's decision of 12 May 2021, rejecting the complaint lodged by the applicant under Article 90(2) of the Staff Regulations against the renewal decision;

— order the compensation of the material prejudice and the moral prejudice suffered by the applicant;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the renewal decision is illegal, in so far as it results from the reorganisation process launched by ENISA, which, it is alleged, has not been carried out in the interests of the service — Breach of Article 7(1) of the Staff Regulations, breach of the principles of transparency and non-discrimination, and breach of Articles 18(1) and 20(2)(a) of Management Board decision MB/2018/14.

   — The reorganisation process is vitiated by a lack of clarity and transparency, by a breach of the principle of legal certainty, by a manifest error of assessment and by a violation of principle 6 of Decision MB/2020/5.

   — The reorganisation process is vitiated by a lack of motivation.

   — The reorganisation process has been carried out in violation of Annex 1 of the Administrative Notice.

   — The reorganisation process has been carried out in violation of principles 7 and 8 of Decision MB/2020/5, of the principle of good administration, of Article 41 of the Charter of Fundamental Rights and in violation of the duty of care.

2. Second plea in law, alleging that the renewal decision is illegal in so far as the applicant's contract was not renewed through a transparent and fair process — Breach of Article 1 of ED Decision 38/2017, and of point 5.1 of the Standard Operating Procedure, and breach of the duty of good administration.

Action brought on 2 September 2021 — TB v ENISA

(Case T-560/21)

(2021/C 481/43)

Language of the case: English

Parties

Applicant: TB (represented by: L. Levi and N. Flandin, lawyers)

Defendant: European Union Agency for Cybersecurity

Form of order sought

The applicant claims that the Court should:

— annul the decision taken by the ENISA Selection Board not to place the applicant's name on the list of successful candidates for the post of Head of Unit of the Executive Director Office (TA/AD 9) — Ref. ENISA-TA-70-AD- 2020-04;

— annul the decision taken by the ENISA Selection Board not to place the applicant's name on the list of successful candidates regarding the post of Head of Unit of Corporate Support Services (TA/AD 9) — Ref. ENISA TA71-AD-2020-05;

— annul also, in so far as necessary, the defendant's decision of 8 June 2021 rejecting the complaint lodged by the applicant under Article 90(2) of the Staff Regulations against the abovementioned decisions;

— order the compensation of the moral prejudice suffered by the applicant;

— order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Executive Director Office (EDO) and Corporate Support Services (CSS) decisions are illegal, in so far as they result from the decision of 5 August 2020 publishing two vacancy notices for the posts of EDO and CSS Heads of Unit which is also illegal.

2. Second plea in law, alleging breach of the principle of good administration and lack of sufficient motivation of the EDO and CSS decisions.

3. Third plea in law, alleging that the EDO decision is vitiated by a lack of impartiality of the Selection Board and by illegality — Breach of Article 41 of the Charter of Fundamental Rights of the EU and breach of Article 14 of ENISA Management Board Decision MB/2013/6.

Action brought on 9 September 2021 — Zásilkovna v Commission

(Case T-585/21)

(2021/C 481/44)

Language of the case: English

Parties

Applicant: Zásilkovna s. r. o (Praha, Czech Republic) (represented by: R. Kubáč, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision in case SA.55208 (2020/C) — Czech Post USO compensation for the period 2018-2022, in the form of a letter dated (i) 9 July 2021 and (ii) 31 August 2021, partially dismissing the complaint of the applicant of 8 November 2019 as regards the cross-subsidisation by Česká pošta s.p. of its commercial activities;

— order the Commission to bear its own costs and to pay those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission made a manifest error in concluding that Czech Post's cross-subsidisation does not constitute State aid under Article 107(1) TFEU.

   — In particular, it is argued that Czech Post's cross-subsidisation constitutes a stand-alone incompatible State aid under Article 107(1) TFEU, taking place already at least in the 2013–2017 period (but very likely even before), which the Commission should thus have thoroughly assessed in separate administrative proceedings, and not as an ancillary issue within the proceedings in case SA.55208 (2020/C), limited to the 2018–2022 period. This is supported by the Commission's previous case law. However, the Commission wrongly concluded that this cross-subsidisation does not constitute State aid at all.

2. Second plea in law, alleging that the Commission infringed an essential procedural requirement, as its decision not to consider Czech Post's cross-subsidisation as a stand-alone State aid is not duly reasoned.

   — In particular, the Commission failed adequately to state the reasons in the contested decision. Therefore, the Commission infringed the applicant's essential procedural right, since all EU institutions are obliged to state the reasons for the measure in question to ensure its reviewability before the courts.

Action brought on 16 September 2021 — Serrano Velázquez v Parliament

(Case T-589/21)

(2021/C 481/45)

Language of the case: Spanish

Parties

Applicant: María Teresa Serrano Velázquez (Seville, Spain) (represented by: F. Vázquez Sánchez, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

— Annul the decision of the Petitions Committee of the European Parliament given in respect of Petition 0242/21 by María Teresa Serrano Velázquez, and investigate the matters raised therein.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the decision is not correctly reasoned in accordance with the provisions of Article 296 TFEU.

Action brought on 20 September 2021 — WS and Others v Frontex

(Case T-600/21)

(2021/C 481/46)

Language of the case: English

Parties

Applicants: WS and 5 other applicants (represented by: A. van Eik and L.-M. Komp, lawyers)

Defendant: European Border and Coast Guard Agency

Form of order sought

The applicants claim that the Court should:

— Determine that the Agency is responsible under article 268 and article 340 paragraph 2 TFEU for the damages caused by the Agency to the Applicants;

— Determine that there is a sufficiently serious breach of the Agency's obligations under articles 16, 22, 26, 28, 34 and 72 of Regulation 2016/1624, steps 1-5 of the Standard Operating Procedures, and article 4 Code of Conduct, conferring rights on the Applicants as enshrined in articles 1, 4, 18, 19, 24, 41 and 47 EU Charter and a sufficiently serious breach of the Applicants' fundamental rights laid down in articles 1, 4, 18, 19, 24, 41 and 47 EU Charter by the Agency, thereby directly causing the damages suffered by the Applicants;

— Oblige the Agency to compensate the damages suffered by the Applicants as a direct consequence of the unlawful conduct of the Agency in whole, being EUR 96 212,55 in September 2021 in material damages to be increased with the interest due on the date of payment, and EUR 40,000 in immaterial damages to be increased with the interest due on the date of payment, as set out above, or in part as to be determined by the Court;

— Order the Agency to pay the costs incurred by the Applicants for the current proceedings to be paid with interest;

— All to be paid within two weeks after rendering judgment and increased by interests for each day the payment is delayed.

Pleas in law and main arguments

In support of the action, the Applicants relies on eight pleas in law.

1. First plea in law, alleging that the Agency failed to perform a risk assessment as required under article 34 of Regulation 2016/1624 ([1]), articles 18 and 19 of the EU Charter, and step 1 and 2 of the Standard Operating Procedures ([2]).

2. Second plea in law, alleging that the Agency failed to take measures that could have reasonably been expected to mitigate serious risks to fundamental rights as required under article 34 of Regulation 2016/1624, articles 18 and 19 of EU Charter of Fundamental Rights, and step 1(2) of the Standard Operating Procedures.

3. Third plea in law, alleging that the Agency failed to draft a (sufficiently detailed) Operational Plan as required under articles 16 and 34 of Regulation 2016/1624, articles 18 and 19 of EU Charter of Fundamental Rights and step 2 of the Standard Operating Procedures.

4. Forth plea in law, alleging that the Agency conducted the return operation in a way that fundamental rights violations could not be noted, nor signalled in contravention of articles 22, 25, 28 and 34 of Regulation 2016/1624, articles 18 and 19 of EU Charter of Fundamental Rights, step 3 of the Standard Operating Procedures and article 4(3)(a) of the Code of Conduct ([3]).

5. Fifth plea in law, alleging that the Agency did not take any measures in response to clearly visible violations of articles 1, 4 and 24 of EU Charter of Fundamental Rights, in violation of articles 22 and 34 Regulation 2016/1624 and article 4 of the Code of Conduct.

6. Sixth plea in law, alleging that the Agency failed to ensure effective monitoring of the joint return operation as required under articles 28 and 34 of Regulation 2016/1624.

7. Seventh plea in law, alleging that the Agency failed to evaluate the return operation as required by articles 26 and 28 of Regulation 2016/1624 and steps 4 and 5 of the Standard Operating Procedures.

8. Eighth plea in law, alleging that the Agency failed to duly take into consideration the Applicants' complaint under the individual complaints mechanism as required under articles 34 and 72 of Regulation 2016/1624, article 10 of the Rules on the complaints mechanism ([4]), 41 and 47 EU Charter of the Fundamental Rights.

([1]) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, JO 2016 L 251, p. 1.

([2]) Decision of the Executive Director n 2012/87 on the adoption of the Frontex Standard Operating Procedure to ensure respect of Fundamental Rights in Frontex joint operations and pilot projects of 19 July 2012.

([3]) Decision of the Executive Director nº 2013/67 on Code of Conduct for joint return operations coordinated by Frontex, of 7 October 2013.

([4]) Decision of the Executive Director Nº R-ED-2016-106 on the Complaints Mechanism of 6 October 2016.

Action brought on 20 September 2021 — Pharmadom v EUIPO — Wellstat Therapeutics (WELLMONDE)

(Case T-601/21)

(2021/C 481/47)

Language of the case: English

Parties

Applicant: Pharmadom (Boulogne-Billancourt, France) (represented by: M.-P. Dauquaire, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wellstat Therapeutics Corp. (Rockville, Maryland, United States)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark WELLMONDE — Application for registration No 16 152 803

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 June 2021 in Case R 1776/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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 22 September 2021 — L'Oréal v EUIPO — Heinze (K K WATER)

(Case T-610/21)

(2021/C 481/48)

Language of the case: English

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Arne-Patrik Heinze (Hamburg, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark K K WATER — Application for registration No 18 092 777

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 21 June 2021 in Case R 2327/2020-2

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision;

— order EUIPO and the intervener to bear the costs, including those incurred by the applicant before the Office's Second Board of Appeal.

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 24 September 2021 — KPMG Advisory v Commission

(Case T-614/21)

(2021/C 481/49)

Language of the case: Italian

Parties

Applicant: KPMG Advisory SpA (Milan, Italy) (represented by: G. Roberti, I. Perego and R. Fragale, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

– (i) pursuant to the fourth paragraph of Article 263, annul, in whole or in part, the *decision of 13th July 2021 on the exclusion of KPMG Advisory S.p.A. from participating in award procedures governed by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council or from being selected for implementing Union funds [Ref. Ares(2021)4544873]*, notified on 14 July 2021 ('the contested decision');

– (ii) in the alternative, pursuant to Article 261 TFEU and Article 143(9) of the 2018 Financial Regulation, annul or reduce the exclusion penalty and/or annul the publication penalty imposed by the contested decision;

– (iii) if need be, declare, pursuant to Article 277 TFEU, that Article 73(3) of Regulation 2018/1046 ([1]) and/or Article 146 (6) of Regulation 2018/1046 is unlawful, and

– (iv) in any event, order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements and of the principle of collective responsibility.

   — The applicant claims in that regard that the decision is vitiated by an infringement of essential procedural requirements and of the principle of collective responsibility in so far as it was not adopted by the Commission but by the Director-General contrary to the requirements relating to delegation laid down in Articles 1 and 14 of the Rules of Procedure of the Commission.

   — The applicant also raises a plea of illegality in respect of Article 73(3) of Regulation 2018/1046.

2. Second plea in law, alleging infringement of the rights of the defence and of the fundamental right to good administration.

   — The applicant claims in that regard that the decision is flawed in so far as the applicant was not given the opportunity to exercise fully its right to be heard, before the authorising officer responsible for the adoption of the decision in particular.

   — The applicant claims, in addition, that the obligation to undertake an impartial and diligent examination, enshrined in Article 41 of the Charter, was infringed.

   — The applicant also raises a plea of illegality in respect of Article 136(6) of Regulation 2018/1046.

3. Third plea in law, alleging infringement of Article 106(1) of the 2015 Financial Regulation ([2]) and Article 136(2) of Regulation 2018/1046 — errors of assessment and failure to state reasons.

   — The applicant claims in that regard that the decision is flawed in so far as the authorising officer should have, in the decision, verified, assessed and given reasons relating to the existence of grave professional misconduct, in the light of all the relevant factors.

4. Fourth plea in law, alleging infringement of Article 136(6) and (7) of Regulation 2018/1046 — errors of assessment and failure to state reasons.

   — The applicant claims in that regard that the contested decision is flawed in so far as the authorising officer, as a result of a failure to undertake an investigation and of errors of assessment, found that the remedial measures adopted by the applicant for the purposes of Article 136(6) and (7) of Regulation 2018/1046 were unsuitable.

5. Fifth plea in law, alleging that the power to exclude an economic operator for the purposes of Article 136 of Regulation 2018/1046 is time-barred and infringement of the principle of proportionality.

   — The applicant claims in that regard that the power of the authorising officer to exclude the applicant and order the publication of the exclusion is time-barred.

   — The imposition of the exclusion and its publication infringe the principle of proportionality.

([1]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

([2]) Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ 2015, L 286, p. 1).

Action brought on 29 September 2021 — Primagran v EUIPO — Primagaz (prımagran)

(Case T-624/21)

(2021/C 481/50)

Language of the case: English

Parties

Applicant: Primagran sp. z o.o. (Stegna, Poland) (represented by: E. Jaroszyńska-Kozłowska, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Compagnie des gaz de pétrole Primagaz (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark prımagran — Application for registration No 18 051 750

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 28 July 2021 in Case R 2486/2020-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it dismissed the applicant's appeal R 2486/2020-4 against EUIPO's Opposition Division's decision of 30 October 2020 ruling on EUTM application No 18 051 750 and ordered each party to bear its own costs for the opposition and the appeal proceedings;

— order EUIPO to bear the costs of the proceedings, and in case the other party before the Board of Appeal joins the proceedings, the intervener.

Pleas in law

— Infringement of Article 27(2) of Commission Delegated Regulation (EU) 2018/625 and Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of the principle of the prohibition of *reformatio in pejus*;

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

Action brought on 4 October 2021 — Apart v EUIPO — S. Tous (Representation of the outline of a bear)

(Case T-638/21)

(2021/C 481/51)

Language of the case: English

Parties

Applicant: Apart sp. z o.o. (Suchy Las, Poland) (represented by: J. Gwiazdowska, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: S. Tous, SL (Manresa, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark (Representation of the outline of a bear) — European Union trade mark No 8 127 144

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 30 July 2021 in Case R 1437/2020-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision as a whole and alter the decision by revocation of the trade mark at issue;

— alternatively, annul the contested decision as a whole and refer of the case back to the Board of Appeal;

— order EUIPO and S. TOUS, S.L. to pay the costs of the appeal proceedings and those of the proceedings before the General Court.

Pleas in law

— Infringement of Article 51(1)(a) in conjunction with Article 15(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1) and Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by lack of the reasons on which the assumptions about the character of the contested trademark are based;

— Infringement of Article 20 and Article 41(1) and (2)(a) and (c) of Charter of Fundamental Rights of the European Union in particular the right to be heard, the obligation of the administration to give reasons for its decisions, the principles of good administration, legal certainty and equal treatment.

Action brought on 4 October 2021 — CB v EUIPO — China Construction Bank (CCB)

(Case T-639/21)

(2021/C 481/52)

Language of the case: English

Parties

Applicant: Groupement des cartes bancaires (CB) (Paris, France) (represented by: C. Herissay-Ducamp, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: China Construction Bank Corp. (Beijing, China)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark CCB — Application for registration No 13 359 609

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 July 2021 in Case R 1305/2020-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, uphold the opposition and reject the application for trade mark No 13 359 609;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 94 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

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

Action brought on 5 October 2021 — Foodwatch v Commission

(Case T-643/21)

(2021/C 481/53)

Language of the case: German

Parties

Applicant: Foodwatch eV (Berlin, Germany) (represented by: R. Klinger, C. Douhaire and S. Ernst, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 5 August 2021 (C(2021)5963 final) pursuant to Regulation (EC) No 1049/2001, rejecting the applicant's confirmatory application of 6 May 2021 for full access to the document 'Briefing for the EU RCF co-chair for the Regulatory Cooperation Forum meeting on 3-4 February 2020' (Ares(2021)1264866), in so far as the rejection is based on the ground for refusal laid down in the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, and

— order the Commission to pay the costs of the proceedings including those incurred by the applicant.

Pleas in law and main arguments

In support of the action against Commission Decision C(2021)5963 final of 5 August 2021, refusing unrestricted access to a preparatory document relating to a meeting of the Regulatory Cooperation Forum (RCF) concerning the EU-Canada Comprehensive Economic and Trade Agreement (CETA), the applicant relies on the following pleas in law:

1. First plea in law, alleging infringement of the third indent of Article 4(1)(a) of Regulation No 1049/2001 [1] through misapplication of the law

   — The assumption that international relations would be undermined within the meaning of this provision on the basis that disclosure of internal strategic considerations could jeopardise the successful outcome of the ongoing exchanges related to the implementation of the agreement is incorrect.

   — The assumption that international relations would be undermined within the meaning of this provision on the basis that the information used could also be used by third countries against the EU is incorrect.

   — The assumption that international relations would be undermined within the meaning of this provision on the basis that cooperation with Canada could otherwise be threatened is also incorrect.

2. Second plea in law, alleging infringement of Article 4(6) of Regulation No 1049/2001, as a result of the incorrect decision to disclose only parts of the document at issue.

3. Third plea in law, alleging infringement of Article 4(7) of Regulation No 1049/2001, because no time limit was placed on the refusal of access.

4. Fourth plea in law, alleging infringement of the duty to state reasons pursuant to Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

[1] 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).

Action brought on 6 October 2021 — Bloom v Parliament and Council

(Case T-645/21)

(2021/C 481/54)

Language of the case: French

Parties

Applicant: Bloom (Paris, France) (represented by: C. Saynac and L. Chovet-Ballester, lawyers)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul in part, on the basis of Articles 256 and 263 TFEU, Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ 2021 L 247, p. 1), in particular Articles 17, 18 and 19 thereof;

— order the European Parliament and the Council of the European Union to pay the costs in their entirety.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the objectives of sustainable development and a high level of environmental protection. The applicant claims that Articles 17, 18 and 19 of Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 ('the EMFAF Regulation') reintroduces subsidies that are detrimental to the marine environment, in disregard of the objectives of sustainable development and a high level of environmental protection, reaffirmed by EU legislation.

2. Second plea in law, alleging infringement of the general principles of EU law, namely the precautionary principle and the principle of proportionality. According to the applicant, Articles 17, 18 and 19 of the EMFAF Regulation are contrary to the precautionary principle enshrined in Article 191(2) TFEU. Furthermore, the effects of the aforementioned articles are contrary to the principle of proportionality applied in fisheries matters.

3. Third plea in law, alleging infringement of the United Nations Convention on the Law of the Sea of 10 December 1982, the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean of 9 July 2004, and the principle of performance of agreements in good faith. The applicant maintains that Articles 17, 18 and 19 of the EMFAF Regulation run counter to the obligations relating to tackling over-fishing and the conservation of marine resources laid down in those conventions. The Parliament and the Council infringed the principle of performance of agreements in good faith by adopting the contested articles.

Action brought on 1 October 2021 — Sberbank Europe v ECB

(Case T-647/21)

(2021/C 481/55)

Language of the case: English

Parties

Applicant: Sberbank Europe AG (Vienna, Austria) (represented by: M. Fellner, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 2 August 2021 ([1]); and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant violated the prohibition of double punishment pursuant to Article 50 of the Charter of the Fundamental Rights ('CFR') of the European Union and Article 4 of the European Convention of Human Rights ('ECHR').

2. Second plea in law, alleging that the defendant violated Article 49 of the CFR and Article 7 of ECHR by imposing a penalty exceeding the amount limits laid down in Article 18(1) of Regulation (EU) No 1024/2013 ([2]).

3. Third plea in law, alleging that the defendant violated Article 17 CFR and Article 1 of the First Additional Protocol to the ECHR.

4. Fourth plea in law, alleging that the defendant infringed the principle of good faith, because the defendant violated the method of setting administrative pecuniary penalties pursuant to Articles 18(1) and (7) of Regulation (EU) No 1024/2013.

5. Fifth plea in law, alleging that the defendant violated Article 6 of the ECHR.

6. Sixth plea in law, alleging that the defendant violated the amount of limits for sanctions pursuant to Article 18(1) of Regulation (EU) No 1024/2013.

7. Seventh plea in law, alleging that Article 97 of the Austrian Banking Act ('BWG') is not applicable if no advantage is gained or no loss is avoided by exceeding the large exposure limit.

8. Eighth plea in law, alleging that the defendant's ability to impose absorption interest on the applicant is time-barred pursuant to Article 97 BWG in connection with Article 395 of Regulation (EU) No 575/2013.

9. Ninth plea in law, alleging that the defendant misapplied Article 97(1) BWG in connection with Article 30(a) BWG and Article 395(1) of Regulation (EU) No 575/2013.

10. Tenth plea in law, alleging that the applicant had no intention to exceed limits to large exposure pursuant to Article 395 of Regulation (EU) No 575/2013 ([3]).

11. Eleventh plea in law, alleging that the applicant gained no advantage or avoided any loss to be absorbed by exceeding the large exposure limits in the contested period.

12. Twelfth plea in law, alleging that the defendant misused its discretion by not granting to the applicant the exception under Article 396(1) of Regulation (EU) No 575/2013.

([1]) No ECB-SSM-2021-ATSBE-7 — ESA-2020-00000051.
([2]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63-89).
([3]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ 2013 L 176, p. 1-337).

Action brought on 7 October 2021 — Saure v Commission

(Case T-651/21)

(2021/C 481/56)

Language of the case: German

Parties

Applicant: Hans-Wilhelm Saure (Berlin, Germany) (represented by: C. Partsch, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 2 June 2021 refusing to grant the applicant's requested access to Commission documents and the Commission's decision of 11 August 2021 refusing to grant the applicant's requested access to Commission documents, through the issuing of copies of all Commission communications

  (a) with the company BioNTech SE,

(b) with the Federal Chancellery, Germany, regarding the company BioNTech SE and its products,

(c) with the German Federal Minister for Health regarding the purchasing of vaccines to combat the coronavirus pandemic,

from 1 April 2020 and in particular as regards the quantity of vaccines offered by BioNTech and their delivery times, in so far as those decisions do not grant the applicant access or grant him access only in part;

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

Pleas in law and main arguments

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

1. First plea in law: The applicant claims that he is entitled to access the European Commission documents at issue in accordance with Article 2(1) of Regulation (EC) No 1049/2001. ([1])

2. Second plea in law: The applicant submits that Article 4(1)(b) of Regulation No 1049/2001 does not preclude the right of access to the information at issue. The information requested is necessary in the interests of national security, public safety and the economic well-being of the country, for the prevention of disorder, and for the protection of health. Therefore, a potential interference with privacy and the integrity of the individual is permissible. Lastly, the disclosure of the information requested is of significant public interest.

3. Third plea in law: The applicant submits that the second indent of Article 4(2) of Regulation (EC) No 1049/2001 does not preclude the right of access to the information at issue. There is no ground for exclusion under that provision, since it provides for a ground for exclusion which is limited in time and relates only to ongoing legal advice. The applicant's request for information, however, concerns only the completed operations.

4. Fourth plea in law: The applicant claims that the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 does not preclude the right of access to the information at issue. According to the applicant, only the current decision-making process is protected by that provision. The object of the applicant's request for access to documents is, however, documentation concerning the defendant's negotiations on vaccine deliveries. Those negotiations have already been completed. There is, moreover, an overriding public interest in the disclosure of the information at issue, since the EU's vaccine procurement has been discussed and reported for weeks at European level.

5. Fifth plea in law: The applicant submits that the first indent of Article 4(2) of Regulation (EC) No 1049/2001 does not preclude the right of access to the information at issue. Disclosure of the information would not undermine the commercial interests of a natural or legal person. According to the applicant, the information requested does not contain any trade secrets within the meaning of Directive (EU) 2016/943. ([2])

6. Sixth plea in law: Lastly, the applicant claims that there is an overriding public interest in the disclosure of the documents requested.

([1]) 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).

([2]) Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ 2016 L 157, p. 1).

Action brought on 11 October 2021 — L. Oliva Torras v EUIPO — Mecánica del Frío (Vehicle couplings)

(Case T-652/21)

(2021/C 481/57)

Language in which the application was lodged: Spanish

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Design at issue: European Union design (Vehicle couplings) — European Union design No 002217588-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 27 August 2021 in Case R 1306/2020-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; or

— alter the contested decision; and

— order the unsuccessful party to pay the costs, if these have been applied for in the successful party's pleadings.

Pleas in law

— Infringement of Article 4(2) and (3) and Article 8(1) and (2) of Council Regulation No 6/2002;

— Infringement of Articles 5, 6 and 7 of Regulation No 6/2002.

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