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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 23 November 2016 — European Commission v Stichting Greenpeace Nederland, Pesticide Action Network Europe (PAN Europe)

(Case C-673/13 P) ([1])

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Environment — Aarhus Convention — Regulation (EC) No 1367/2006 — Article 6(1) — Risk of an adverse effect on the commercial interests of a natural or legal person — Concept of 'information relating to emissions into the environment' — Documents relating to the authorisation procedure for an active substance contained in plant protection products — Active substance glyphosate)

(2017/C 030/02)

Language of the case: English

Parties

Appellant: European Commission (represented by: B. Smulders, P. Ondrůšek, P. Oliver, and by L. Pignataro-Nolin, Agents)

Other parties to the proceedings: American Chemistry Council Inc. (ACC), CropLife America Inc., National Association of Manufacturers of the United States of America (NAM) (respresented by: M. Abenhaïm, avocat, K. Nordlander, advokat, and P. Harrison, Solicitor), CropLife International AISBL (CLI) (represented by: D. Abrahams, Barrister, R. Cana and E. Mullier, avocats, and A. Patsa, dikigoros), European Chemical Industry Council (Cefic), European Crop Protection Association (ECPA) (represented by: I. Antypas and D. Waelbroeck, avocats, and D. Slater, Solicitor), European Crop Care Association (ECCA) (represented by S. Pappas, dikigoros), Federal Republic of Germany (represented by: T. Henze and A. Lippstreu, acting as Agents,

The other parties to the proceedings being: Stichting Greenpeace Nederland, Pesticide Action Network Europe (PAN Europe) (represented by: B. Kloostra and A. van den Biesen, advocaten)

Intervener in support of the respondent: Kingdom of Sweden (represented by: E. Karlsson, L. Swedenborg, A. Falk, U. Persson, C. Meyer-Seitz and N. Otte Widgren, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 8 October 2013, Stichting Greenpeace Nederland and PAN Europe v Commission (T-545/11, EU:T:2013:523);*

2. *Refers Case T-545/11 back to the General Court of the European Union;*

3. *Reserves the costs*

([1]) OJ C 71, 8.3.2014.

Judgment of the Court (Fifth Chamber) of 23 November 2016 (request for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — Bayer CropScience SA-NV, Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden

(Case C-442/14) ([1])

(Reference for a preliminary ruling — Environment — Aarhus Convention — Directive 2003/4/EC — Article 4(2) — Public access to information — Concept of 'information relating to emissions into the environment' — Directive 91/414/EEC — Directive 98/8/EC — Regulation (EC) No 1107/2009 — Placing of plant protection products and biocides on the market — Confidentiality — Protection of industrial and commercial interests)

(2017/C 030/03)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Bayer CropScience SA-NV, Stichting De Bijenstichting

Defendant: College voor de toelating van gewasbeschermingsmiddelen en biociden

third party: Makhtesim-Agan Holland BV

Operative part of the judgment

1. *Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as meaning that the fact that the applicant for authorisation to place a plant protection product or biocide on the market, did not, during the procedure for obtaining that authorisation, request that information submitted under that procedure be treated as confidential on the basis of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, Article 19 of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market or Article 33(4) and Article 63 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC does not preclude the competent authority, which has received, following the closure of that procedure, a request for access to the information submitted on the basis of Directive 2003/4 by a third party, from examining the applicant's objection to that request for access and refusing it, if necessary, pursuant to point (d) of the first subparagraph of Article 4(2) of that directive on the ground that the disclosure of that information would adversely affect the confidentiality of commercial or industrial information.*

2. *The second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as follows:*

— *'emissions into the environment' within the meaning of that provision covers the release into the environment of products or substances such as plant protection products or biocides and substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use;*

— *'information on emissions into the environment' within the meaning of that provision covers information concerning the nature, composition, quantity, date and place of the 'emissions into the environment' of those products or substances, and data concerning the medium to long-term consequences of those emissions on the environment, in particular information relating to residues in the environment following application of the product in question and studies on the measurement of the substance's drift during that application, whether the data comes from studies performed entirely or in part in the field, or from laboratory or translocation studies.*

3. *The second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as meaning, in the event of a request for access to information on emissions into the environment whose disclosure would adversely affect one of the interests referred to in points (a), (d), and (f) to (h) of the first subparagraph of Article 4(2) of that directive, that only relevant data which may be extracted from the source of information concerning emissions into the environment must be disclosed where it is possible to separate those data from the other information contained in that source, which is for the referring court to assess.*

([1]) OJ C 462, 22.12.2014.

Judgment of the Court (Fifth Chamber) of 24 November 2016 — European Commission v Kingdom of Spain

(Case C-461/14) ([1])

(Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Special protection areas — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats)

(2017/C 030/04)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: C. Hermes, E. Sanfrutos Cano, D. Loma-Osorio Lerena and G. Wilms, acting as Agents)

Defendant: Kingdom of Spain (represented by: A. Gavela Llopis, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take appropriate steps to avoid, in the special protection area 'Campiñas de Sevilla', the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which that area was established, the Kingdom of Spain failed, in respect of the period before 29 July 2008, to fulfil its obligations under Article 4(4) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and, in respect of the period after that date, has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

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

3. *Orders the European Commission and the Kingdom of Spain to bear their own costs.*

([1]) OJ C 462, 22.12.2014.

Judgment of the Court (Fifth Chamber) of 24 November 2016 (request for a preliminary ruling from the Tribunal Tributário de Lisboa — Portugal) — SECIL — Companhia Geral de Cal e Cimento SA v Fazenda Pública

(Case C-464/14) ([1])

(Reference for a preliminary ruling — Free movement of capital — Articles 63 to 65 TFEU — EC-Tunisia Association Agreement — Articles 31, 34 and 89 — EC-Lebanon Association Agreement — Articles 31, 33 and 85 — Corporation tax — Dividends received by a company established in the Member State of the beneficiary company — Dividends received from a company established in a non-member State which is party to the association agreement — Difference of treatment — Restriction — Justification — Efficacy of fiscal supervision — Possibility of relying on Article 64 TFEU in relation to the EC-Tunisia and EC-Lebanon association agreements)

(2017/C 030/05)

Language of the case: Portuguese

Referring court

Tribunal Tributário de Lisboa

Parties to the main proceedings

Applicant: SECIL — Companhia Geral de Cal e Cimento SA

Defendant: Fazenda Pública

Operative part of the judgment

1. *Articles 63 and 65 TFEU must be interpreted as meaning that:*

— *a company established in Portugal which receives dividends from companies established in Tunisia and Lebanon respectively may rely on Article 63 TFEU in order to challenge the tax treatment of dividends in that Member State based on legislation which is not intended to apply exclusively to situations in which the beneficiary company has a decisive influence on the distributing company;*

— *legislation such as that at issue in the main proceedings, according to which a company which is a resident of a Member State may deduct in full or in part, from its taxable amount, dividends received where the dividends are distributed by a company which is resident in the same Member State, but cannot make such a deduction where the distributing company is resident in a non-member State, constitutes a restriction on the movement of capital between Member States and non-member States which is in principle prohibited by Article 63 TFEU;*

— *the refusal to grant a full or partial deduction from the taxable amount in respect of the dividends received, pursuant to Article 46 (1) and (8) of the Código do Imposto sobre o Rendimento das Pessoas Coletivas (Corporation Tax Code), in the version in force in 2009, may be justified by overriding reasons in the public interest based on the need to ensure the effectiveness of fiscal supervision where it proves impossible, for the tax authorities of the Member State in which the beneficiary company is resident, to obtain information from the non-member State in which the company distributing those dividends is resident, allowing those authorities to verify whether the condition that the latter company be subject to tax is satisfied;*

— *the refusal to grant a partial deduction in accordance with Article 46(11) of the Corporation Tax Code, in that version, cannot be justified by overriding reasons in the general interest based on the need to ensure the effectiveness of fiscal supervision where that provision may be applied to situations in which the tax liability of the distributing company in the State in which it is resident cannot be verified, a matter which it is for the referring court to determine.*

2. *Article 64(1) TFEU must be interpreted as meaning that:*

— *in so far as the adoption of the tax benefit scheme for contractual investments established in Article 41(5)(b) of the Estatuto dos Benefícios Fiscais (Tax Advantages Scheme), in the version in force in 2009 and the scheme provided for in Article 42 of that law for dividends from the Portuguese-speaking African Countries and Timor-Leste, have not changed the legal framework for the tax treatment of dividends from Tunisia and Lebanon, the adoption of those schemes has not affected the classification, as an existing restriction, of the exclusion of dividends paid by companies established in those non-member States countries from the possibility of benefiting from a full or partial deduction;*

— *a Member State waives the power provided for in Article 64(1) TFEU where, without formally repealing or amending the existing rules, it concludes an international agreement, such as an association agreement, which provides, in a provision with direct effect, for a liberalisation of a category of capital referred to in Article 64(1) TFEU; such a change in the legal framework must therefore be deemed to amount, in its effects on the possibility of invoking Article 64(1) TFEU, to the introduction of new legislation, based on a logic different from that of the existing legislation.*

3. *Article 34(1) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, signed in Brussels on 17 July 1995 and approved on behalf of the European Community and the European Coal and Steel Community by Decision 98/238/EC, ECSC of the Council and of the Commission of 26 January 1998, must be interpreted as meaning that:*

— *it has direct effect and may be relied on in a situation such as that at issue in the main proceedings in which a company resident in Portugal receives dividends from a company resident in Tunisia as a result of the direct investment which it has made in the distributing company, in order to challenge the tax treatment reserved for the those dividends in Portugal;*

— *legislation, such as that at issue in the main proceedings, according to which a company which is a resident of a Member State may deduct in full or in part, from its taxable amount, dividends received where the dividends are distributed by a company which is resident in the same Member State, but cannot make such a deduction where the distributing company is resident in Tunisia, constitutes a restriction on the free movement of capital, prohibited in principle as regards direct investment and, in particular, the repatriation of the proceeds of those investments, by Article 34(1) of that agreement;*

— *the effect of that provision is not limited, in a situation such as that at issue in the main proceedings, by Article 89 of that agreement;*

— *the refusal to grant, pursuant to Article 46(1) and (8) of the Corporation Tax Code, in the version in force in 2009, a full or partial deduction of the dividends received from the beneficiary company's taxable amount may be justified by overriding reasons in the public interest relating to the need to preserve the effectiveness of fiscal supervision where it is impossible for the tax authorities of the Member State in which the beneficiary company is resident to obtain information from the Republic of Tunisia, in which the company distributing such dividends is resident, in order to allow it to be verified that the condition relating to the tax liability of the company distributing those dividends is satisfied;*

— *the refusal to grant such a partial deduction in accordance with Article 46(11) of the Corporation Tax Code, in that version, cannot be justified by overriding reasons in the public interest relating to the need to preserve the effectiveness of fiscal supervision, where that provision can be applied in situations in which the distributing company's tax liability in Tunisia, in which that company is resident, cannot be verified, a matter which it is for the referring court to determine.*

4. *Article 31 of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, signed in Luxembourg on 17 June 2002 and approved on behalf of the European Community by Council Decision 2006/356/EC of 14 February 2006, must be interpreted as meaning that:*

— *it has direct effect;*

— *a situation, such as that at issue in the main proceedings, concerning the tax treatment of dividends stemming from direct investments in Lebanon by a person resident in Portugal, falls within the situation referred to in Article 33(2) of that agreement; consequently, Article 33(1) of that agreement does not preclude Article 31 thereof from being relied on in the present case;*

— *legislation, such as that at issue in the main proceedings, according to which a company which is a resident of a Member State may deduct in full or in part, from its taxable amount, dividends received where the dividends are distributed by a company which is resident in the same Member State, but cannot make such a deduction where the distributing company is resident in Lebanon, constitutes a restriction on the free movement of capital, prohibited in principle by Article 31 of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part;*

— *the effect of that provision is not limited, in a situation such as that at issue in the main proceedings, by Article 85 of that agreement;*

— *the refusal to grant, pursuant to Article 46(1) and (8) of the Corporation Tax Code, in the version in force in 2009, a full or partial deduction from the beneficiary company's taxable amount of the dividends received may be justified by overriding reasons in the public interest relating to the need to preserve the effectiveness of fiscal supervision where it is impossible for the tax authorities of the Member State in which the beneficiary company is resident to obtain information from the Republic of Lebanon, the State in which the companies distributing such dividends are resident, allowing it to be verified that the condition relating to the tax liability of the company distributing those dividends is satisfied;*

— *the refusal to grant such a partial deduction in accordance with Article 46(11) of the Corporation Tax Code, in that version, cannot be justified by overriding reasons in the public interest based on the need to preserve the effectiveness of fiscal supervision, where that provision can be applied in situations in which the distributing company's liability to tax in Lebanon, where that company is resident, cannot be verified, a matter which it is for the referring court to determine.*

5. *As regards the consequences for the case at issue in the main proceedings, of the interpretation of Articles 63 to 65 TFEU and the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, and the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part:*

— *where the authorities of the Member State in which the beneficiary company is resident can obtain information from the Republic of Tunisia, the State in which the company paying the dividends is resident, allowing them to verify that the condition relating to the tax liability of the company distributing these dividends is satisfied, Articles 63 and 65 TFEU and Article 34(1) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, preclude the refusal to grant, pursuant to Article 46(1) or Article 46(8) of the Corporation Tax Code, in the version in force in 2009, a full or partial deduction from the taxable amount of the company receiving the dividends distributed, and the Portuguese Republic may not rely, in this respect, on Article 64(1) TFEU;*

— *Articles 63 and 65 TFEU and Article 34(1) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, and Article 31 of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part preclude the refusal to grant, pursuant to Article 46(11) of the Corporation Tax Code, in the version in force in 2009, a partial deduction from the taxable amount of the company receiving the dividends distributed, where that provision may be applied in situations in which the tax liability of the distributing companies in Tunisia and Lebanon, where those companies are resident, cannot be verified, a matter which it is for the referring court to determine, and the Portuguese Republic may not rely on Article 64(1) TFEU in that regard;*

— *the amounts collected in breach of Union law must be repaid, with interest, to the taxpayer.*

([1]) OJ C 34, 2.2.2015.

Judgment of the Court (Third Chamber) of 23 November 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Nelsons GmbH v Ayonnax Nutripharm GmbH, Bachblütentreff Ltd

(Case C-177/15) ([1])

(Reference for a preliminary ruling — Consumer information and protection — Regulation (EC) No 1924/2006 — Nutrition and health claims made on foods — Transitional measures — Article 28(2) — Products bearing trade marks or brand names existing before 1 January 2005 — 'Bach flower' remedies — European Union mark RESCUE — Products marketed as medicinal products before 1 January 2005 and as foodstuffs after that date)

(2017/C 030/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Nelsons GmbH

Defendants: Ayonnax Nutripharm GmbH, Bachblütentreff Ltd

Operative part of the judgment

Article 28(2), first sentence, of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, as amended by Regulation (EC) No 107/2008 of the European Parliament and of the Council of 15 January 2008, must be interpreted as meaning that that provision applies in the situation in which a foodstuff bearing a trade mark or brand name was, before 1 January 2005, marketed as a medicinal product and then, although having the same physical characteristics and bearing the same trade mark or brand name, as a foodstuff after that date.

([1]) OJ C 213, 29.6.2015.

Judgment of the Court (Sixth Chamber) of 23 November 2016 — European Commission v French Republic

(Case C-314/15) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Treatment of urban waste water — Article 4(1) and (3) — Secondary treatment or equivalent treatment)

(2017/C 030/07)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: S. Ghiandoni, A. Daly and D. Colas)

Operative part of the judgment

The Court:

1. *Declares that, by failing to ensure secondary treatment or equivalent treatment for urban waste water from the agglomerations of Goyave, Bastelica, Morne-à-l'Eau, Aiguilles-Château-Ville Vieille, Borgo-Nord, Isola, Plombières-les-Bains, Saint-Céré, Vincey, Etueffont, Volx and Villeneuve, either for the entire amount of their discharges, in the case of agglomerations having a population equivalent of between 10 000 and 15 000, or for discharges into fresh water and estuaries, in the case of agglomerations having a population equivalent of between 2 000 and 10 000, the French Republic has failed to fulfil its obligations under Article 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008;*

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

3. *Orders the French Republic to pay the costs.*

([1]) OJ C 294, 7.9.2015.

Judgment of the Court (Third Chamber) of 1 December 2016 (request for a preliminary ruling from the Juzgado de lo Social No 33 de Barcelona — Spain) — Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal

(Case C-395/15) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 1 to 3 — Prohibition of all discrimination based on a disability — Whether a 'disability' exists — Concept of 'long-term physical, mental, intellectual or sensory impairments' — Charter of Fundamental Rights of the European Union — Articles 3, 15, 21, 30, 31, 34 and 35 — Dismissal of a worker who is temporarily unable to work, within the definition of national law, for an indeterminate period of time)

(2017/C 030/08)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Barcelona

Parties to the main proceedings

Applicant: Mohamed Daouidi

Defendants: Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal

Operative part of the judgment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that:

— *the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work, as defined in national law, for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person's capacity can be classified as being 'long-term', within the meaning of the definition of 'disability' laid down by that directive, read in the light of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009;*

— *the evidence which makes it possible to find that such a limitation is 'long-term' includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and*

— *in the context of the verification of that 'long-term' nature, the referring court must base its decision on all of the objective evidence in its possession, in particular on documents and certificates relating to that person's condition, established on the basis of current medical and scientific knowledge and data.*

([1]) OJ C 354, 26.10.2015, p. 19.

Judgment of the Court (Sixth Chamber) of 24 November 2016 — Ackermann Saatzucht GmbH & Co. KG and Others (C-408/15 P), ABZ Aardbeien Uit Zaad Holding BV and Others (C-409/15 P) v European Parliament, Council of the European Union

(Joined Cases C-408/15 P and C-409/15 P) ([1])

(Appeal — Action for annulment — Fourth paragraph of Article 263 TFEU — Right to bring an action — Locus standi — Act of individual concern to natural or legal persons by reason of 'certain attributes which are peculiar to them' — Regulation (EU) No 511/2014 — Measures concerning compliance by users in the Union with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation — Regulation (EC) No 2100/94 — Limitation of the effects of Community plant variety rights — Breeders' exemption)

(2017/C 030/09)

Language of the cases: English

Parties

Appellants: Ackermann Saatzucht GmbH & Co.KG, Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG, Deutsche Saatveredelung AG, Ernst Benary, Samenzucht GmbH, Freiherr Von Moreau Saatzucht GmbH, Hybro Saatzucht GmbH & Co. KG, Klemm + Sohn GmbH & Co. KG, KWS Saat AG, Norddeutsche Pflanzenzucht Hans-Georg Lembke KG, Nordsaat Saatzuchts GmbH, Peter Franck-Oberaspach, P. H. Petersen Saatzucht Lundsgaard GmbH, Saatzucht Streng — Engelen GmbH & Co. KG, Saka Pflanzenzucht GmbH & Co. KG, Strube Research GmbH & Co. KG, Gartenbau und Spezialkulturen Westhoff GbR, W. von Borries-Eckendorf GmbH & Co. KG (C-408/15 P), ABZ Aardbeien Uit Zaad Holding BV, Agriom BV, Agrisemen BV, Anthura BV, Barenbrug Holding BV, De Bolster BV, Evanthia BV, Gebr. Vletter & Den Haan VOF, Hilverda Kooij BV, Holland-Select BV, Könst Breeding BV, Koninklijke Van Zanten BV, Kweek- en Researchbedrijf Agirco BV, Kwekerij de Wester-Bouwing BV, Limgroup BV, Ontwikkelingsmaatschappij Het Idee BV (C-409/15 P) (represented by: P. de Jong, E. Bertolotto, K. Claeyé, P. Vlaemminck and B. Van Vooren, avocats)

Other parties to the proceedings: European Parliament (represented by: L. Visaggio, J. Rodrigues and R. van de Westelaken, acting as Agents), Council of the European Union (represented by: M. Simm and M. Moore, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Ackermann Saatzucht GmbH & Co. KG, Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG, Deutsche Saatveredelung AG, Ernst Benary, Samenzucht GmbH, Freiherr Von Moreau Saatzucht GmbH, Hybro Saatzucht GmbH & Co. KG, Klemm + Sohn GmbH & Co. KG, KWS Saat AG, Norddeutsche Pflanzenzucht Hans-Georg Lembke KG, Nordsaat Saatzuchts GmbH, Peter Franck-Oberaspach, P.H. Petersen Saatzucht Lundsgaard GmbH, Saatzucht Streng — Engelen GmbH & Co. KG, Saka Pflanzenzucht GmbH & Co. KG, Strube Research GmbH & Co. KG, Gartenbau und Spezialkulturen Westhoff GbR, W. von Borries-Eckendorf GmbH & Co. KG, ABZ Aardbeien Uit Zaad Holding BV, Agriom BV, Agrisemen BV, Anthura BV, Barenbrug Holding BV, De Bolster BV, Evanthia BV, Gebr. Vletter & Den Haan VOF, Hilverda Kooij BV, Holland-Select BV, Könst Breeding BV, Koninklijke Van Zanten BV, Kweek- en Researchbedrijf Agirco BV, Kwekerij de Wester-Bouwing BV, Limgroup BV, Ontwikkelingsmaatschappij Het Idee BV to pay the costs.*

([1]) OJ C 328, 5.10.2015.

Judgment of the Court (First Chamber) of 24 November 2016 (request for a preliminary ruling from the Labour Court — Ireland) — David L. Parris v Trinity College Dublin and Others

(Case C-443/15) ([1])

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 2 — Prohibition of discrimination on grounds of sexual orientation and age — National pension scheme — Payment of a survivor's benefit to the civil partner — Condition — Partnership contracted before the 60th birthday of the member of the scheme — Civil partnership — Not possible in the Member State concerned before 2010 — Existing stable relationship — Article 6(2) — Justification of differences of treatment on grounds of age)

(2017/C 030/10)

Language of the case: English

Referring court

Labour Court

Parties to the main proceedings

Applicant: David L. Parris

Defendants: Trinity College Dublin, Higher Education Authority, Department of Public Expenditure and Reform, Department of Education and Skills

Operative part of the judgment

1. *Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a national rule which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of sexual orientation.*

2. *Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule, such as that at issue in the main proceedings, which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of age.*

3. *Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule such as that at issue in the main proceedings is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation.*

([1]) OJ C 354, 26.10.2015.

Judgment of the Court (Second Chamber) of 24 August 2015 (request for a preliminary ruling from the Hessisches Landesarbeitsgericht — Germany) — Jürgen Webb-Sämann v Christopher Seagon (acting as liquidator in the insolvency of Baumarkt Praktiker DIY GmbH)

(Case C-454/15) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2008/94/EC — Article 8 — Protection of employees in the event of the insolvency of their employer — Provisions related to social security — Scope — Measures necessary to protect immediate or prospective entitlements of employees under supplementary pension schemes — Obligation to provide for a right to have outstanding pension contributions excluded from the scope of insolvency proceedings — Absence)

(2017/C 030/11)

Language of the case: German

Referring court

Hessisches Landesarbeitsgericht

Parties to the main proceedings

Applicant: Jürgen Webb-Sämann

Defendant: Christopher Seagon (acting as liquidator in the insolvency of Baumarkt Praktiker DIY GmbH)

Operative part of the judgment

Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that it does not require that, in the event of employer insolvency, money withheld from a former employee's salary converted into pension contributions, which that employer should have paid into a pension fund on behalf of that employee, be excluded from the scope of insolvency proceedings.

([1]) OJ C 389, 23.11.2015.

Judgment of the Court (Sixth Chamber) of 30 November 2016 — European Commission v French Republic, Orange, Federal Republic of Germany

(Case C-486/15 P) ([1])

(Appeal — State aid — Financial measures for France Télécom — Shareholder loan offer — Public statements by representatives of the French State — Decision declaring the aid incompatible with the common market — Definition of 'aid' — Concept of 'economic advantage' — Prudent private investor criterion — Obligation of the General Court to state reasons — Limits of judicial review — Distortion of the decision at issue)

(2017/C 030/12)

Language of the case: French

Parties

Appellant: European Commission (represented by: C. Giolito, B. Stromsky, D. Grespan and T. Rusche, acting as Agents)

Other parties to the proceedings: French Republic (represented by: G. de Bergues and D. Colas and by J. Bousin, acting as Agents), Orange, formerly France Télécom (represented by: S. Hautbourg and S. Cochard-Quesson, avocats), Federal Republic of Germany

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to pay the costs.*

(1) OJ C 381, 16.11.2015.

Judgment of the Court (Third Chamber) of 1 December 2016 — *Toni Klement* v *European Union Intellectual Property Office (EUIPO), Bullerjan GmbH*

(Case C-642/15 P) (1)

(Appeal — Regulation (EC) No 207/2009 — EU trade mark — Three-dimensional mark representing the form of an oven — Article 51(1)(a) — Application for revocation of an EU trade mark — Point (a) of the second subparagraph of Article 15(1) — Genuine use of the mark — Rejection of the application for a declaration of invalidity)

(2017/C 030/13)

Language of the case: German

Parties

Appellant: Toni Klement (represented by: J. Weiser, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: A. Schifko, acting as Agent), Bullerjan GmbH

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 24 September 2015, Klement v OHIM — Bullerjan (Form of an oven) (T-211/14, not published, EU:T:2015:688);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

(1) OJ C 68, 22.2.2016.

Judgment of the Court (Sixth Chamber) of 24 November 2016 (request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof — Germany) — Bund Naturschutz in Bayern e.V., Harald Wilde v Freistaat Bayern

(Case C-645/15) (1)

(Reference for a preliminary ruling — Environment — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Project subject to assessment — Annex I, point 7 — European Agreement on Main International Traffic Arteries (AGR) — Widening of a road with four lanes over a length of less than 10 km)

(2017/C 030/14)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Bund Naturschutz in Bayern e.V., Harald Wilde

Defendant: Freistaat Bayern

Joined party: Stadt Nürnberg

Operative part of the judgment

1. *Point 7(c) of Annex I to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment cannot be interpreted to the effect that it covers a road development project which, whilst it concerns, as in the case before the referring court, a stretch of road that is under 10 km in length, consists in the widening or development of an existing road with four or more lanes.*

2. *Point 7(b) of Annex I to Directive 2011/92 must be interpreted as meaning that 'express roads' for the purposes of that provision are roads whose technical characteristics are those set out in the definition in point II.3 of Annex II to the European Agreement on Main International Traffic Arteries (AGR), signed in Geneva on 15 November 1975, even if those roads do not form part of the network of main international traffic arteries or are located in urban areas.*

3. *The concept of 'construction' for the purposes of point 7(b) of Annex I to Directive 2011/92 must be interpreted as referring to the carrying-out of works not previously existing or to the physical alteration of existing installations. In order to determine whether such an alteration may be regarded as equivalent, because of its scale and the manner in which it is carried out, to such construction, the referring court must take account of all the characteristics of the work concerned and not only of its length or of the fact that its initial route is retained.*

([1]) OJ C 90, 7.3.2016.

Judgment of the Court (Sixth Chamber) of 24 November 2016 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Lohmann & Rauscher International GmbH & Co. KG v BIOS Medical Services GmbH, formerly BIOS Naturprodukte GmbH

(Case C-662/15) ([1])

(Reference for a preliminary ruling — Approximation of laws — Directive 93/42/EEC — Medical devices — Class I device (sterile wound dressings) which has been the subject of a conformity assessment procedure by the manufacturer — Parallel imports — Addition to the labelling of information relating to the importer — Supplementary conformity assessment procedure)

(2017/C 030/15)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Lohmann & Rauscher International GmbH & Co. KG

Defendant: BIOS Medical Services GmbH, formerly BIOS Naturprodukte GmbH

Operative part of the judgment

Article 1(2)(f) and Article 11 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007, must be interpreted as not requiring a parallel importer of a medical device, such as that at issue in the main proceedings, which bears a CE marking and which has been subjected to a conformity assessment within the meaning of that Article 11, to carry out a further assessment designed to certify the conformity of the information allowing its identification which that parallel importer adds to the labelling of that device with a view to that device being placed on the market of the Member State of importation.

([1]) OJ C 118, 4.4.2016.

Judgment of the Court (Tenth Chamber) of 1st December 2016 — European Commission v Grand Duchy of Luxembourg

(Case C-152/16) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EC) No 1071/2009 — Common rules concerning the conditions to be complied with to pursue the occupation of road transport operator — Article 16(1) and (5) — National electronic register of road transport undertakings — No interconnection with the national electronic registers of other Member States)

(2017/C 030/16)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Hottiaux, Agent)

Defendant: Grand Duchy of Luxembourg (represented by: D. Holderer, Agent)

Operative part of the judgment

The Court:

(1) *Declares that, by failing to have established a national electronic register of road transport undertakings which complies fully and which is interconnected with the national electronic registers of the other Member States, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.*

(2) *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 191, 30.5.2016.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 5 October 2016 — Andrea Witzel, Jannis Witzel, Jazz Witzel v Germanwings GmbH

(Case C-520/16)

(2017/C 030/17)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Andrea Witzel, Jannis Witzel, Jazz Witzel

Defendant: Germanwings GmbH

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council to be interpreted as meaning that avoidability relates only to the occurrence of the extraordinary circumstances or also to the consequences of the extraordinary circumstances, namely cancellation or major delay?

2. If the Court answers question 1 to the effect that avoidability relates to the delay: if the aircraft on the preceding flight is affected by the extraordinary circumstances, must the operating air carrier attempt to find a replacement aircraft already upon the occurrence of the extraordinary circumstances in the preceding flight, or can it wait until it is certain that the extraordinary circumstances lead to a considerable delay to the following flight?

3. If the Court answers question 1 to the effect that avoidability relates to the delay: is booking a sub-charter flight unreasonable if the cost is approximately three times higher than the original flight?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement (OJ L 46, 17.2.2004, p. 1).

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 5 October 2016 — Ralf-Achim Vetter, Susanne Glang-Vetter, Anna Louisa Vetter, Carolin Marie Vetter v Germanwings GmbH

(Case C-521/16)

(2017/C 030/18)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Ralf-Achim Vetter, Susanne Glang-Vetter, Anna Louisa Vetter, Carolin Marie Vetter

Defendant: Germanwings GmbH

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council to be interpreted as meaning that avoidability relates only to the occurrence of the extraordinary circumstances or also to the consequences of the extraordinary circumstances, namely cancellation or major delay?

2. If the Court answers question 1 to the effect that avoidability relates to the delay: if the aircraft on the preceding flight is affected by the extraordinary circumstances, must the operating air carrier attempt to find a replacement aircraft already upon the occurrence of the extraordinary circumstances in the preceding flight, or can it wait until it is certain that the extraordinary circumstances lead to a considerable delay to the following flight?

3. If the Court answers question 1 to the effect that avoidability relates to the delay: is booking a sub-charter flight unreasonable if the cost is approximately three times higher than the original flight?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement (OJ L 46, 17.2.2004, p. 1).

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 17 October 2016 — Hamamatsu Photonics Deutschland GmbH v Hauptzollamt München

(Case C-529/16)

(2017/C 030/19)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Hamamatsu Photonics Deutschland GmbH

Defendant: Hauptzollamt München

Questions referred

1. Do the provisions of Article 28 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, ([1]) as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, ([2]) permit an agreed transfer price, which is composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, using an allocation key, regardless of whether a subsequent debit charge or credit is made to the declarant at the end of the accounting period?

2. If so:

   May the customs value be reviewed and/or determined using simplified approaches where the effects of subsequent transfer pricing adjustments (both upward and downward) can be recognised?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 2000 L 311, p. 17.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 25 October 2016 — Kevin Joseph Devine v Air Nostrum, Líneas Aéreas del Mediterráneo SA

(Case C-538/16)

(2017/C 030/20)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Kevin Joseph Devine

Defendants: Air Nostrum, Líneas Aéreas del Mediterráneo SA

Questions referred

1. Is Article 7(1)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) to be interpreted as meaning that the concept of 'matters relating to a contract' also covers a claim for compensation made under Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, ([2]) brought against an operating air carrier which is not a party to the contract with the passenger concerned?

2. Insofar as Article 7(1) of Regulation (EU) No 1215/2012 is applicable:

When passengers are transported on two flights without any significant stopover at the connecting airport, is the final destination of the passengers to be regarded as being the place where the services were provided under the second indent of Article 7(1)(b) of Regulation (EU) No 1215/2012, even if the claim advanced in the application for compensation under Article 7 of Regulation (EC) No 261/2004 is based on the disruption of the first leg of the journey and the claim has been brought against the air carrier which operated the first flight, which is not a party to the contract of carriage?

(1) OJ 2012 L 351, p. 1.
(2) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 25 October 2016 — Richard Rodriguez Serin v HOP!-Regional

(Case C-539/16)

(2017/C 030/21)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Richard Rodriguez Serin

Defendant: HOP!-Regional

Questions referred

1. Is Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (1) to be interpreted as meaning that the concept of 'matters relating to a contract' also covers a claim for compensation made under Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No [295/91] (2) brought against an operating air carrier which is not a party to the contract with the passengers concerned?

2. Insofar as Article 5(1) of Regulation (EC) No 44/2001 is applicable:

When passengers are transported on two flights without any significant stopover at the connecting airport, is the final destination of the passengers to be regarded as being the place where the services were provided under the second indent of Article 5(1)(b) of Regulation (EC) No 44/2001, even if the claim advanced in the application for compensation under Article 7 of Regulation (EC) No 261/2004 is based on the disruption of the first leg of the journey and the claim has been brought against the air carrier which operated the first flight, which is not a party to the contract of carriage?

(1) OJ 2001 L 12, p. 1.
(2) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 28 October 2016 — État belge v Biologie Dr Antoine SPRL

(Case C-548/16)

(2017/C 030/22)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Appellant: État belge

Respondent: Biologie Dr Antoine SPRL

Question referred

Is the fact that a company issuing a share option may record as income the purchase price of that option in the course of the financial year in which that option is taken up or at the end of its period of validity, in order to take into account the risk borne by the option issuer which results from the commitment he makes, rather than in the course of the tax year in which the option is purchased and its final price set — the risk borne by the issuer being valued separately by the recording of a provision — compatible with the accounting rules concerning balance sheets laid down by the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11), according to which:

— the annual accounts are to give a true and fair view of the company's assets, liabilities, financial position and profit or loss (Article 2(3) of the Directive);

— provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise (Article 20(1) of the Directive);

— the principle of prudence must in all circumstances be observed, and in particular:

  — only profits made at the balance sheet date may be included;

  — account must be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up (Article 31(1)(c), (aa) and (bb) of the Directive);

— account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges (Article 31(1)(d) of the Directive);

— the components of asset and liability items are to be valued separately (Article 31(1)(e) of the Directive)?

Request for a preliminary ruling from the Commissione tributaria di Secondo Grado di Bolzano (Italia) lodged on 31 October 2016 — Agenzia delle Entrate — Direzione provinciale Ufficio controlli di Bolzano v Palais Kaiserkron Srl

(Case C-549/16)

(2017/C 030/23)

Language of the case: Italian

Referring court

Commissione tributaria di Secondo Grado di Bolzano

Parties to the main proceedings

Appellant: Agenzia delle Entrate — Direzione provinciale Ufficio controlli di Bolzano

Respondent: Palais Kaiserkron Srl

Question referred

Must Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted as meaning that the value added tax and registration duty (payable on lease agreements for commercial property under Articles 40 and 5(1)(a-bis) of the first part of the schedule of charges of Presidential Decree No 131 of 26 April 1986) may be levied cumulatively, or rather as meaning that registration duty is in the nature of a turnover tax?

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

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 31 October 2016 — J. Klein Schiphorst v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-551/16)

(2017/C 030/24)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: J. Klein Schiphorst

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Questions referred

1. May the power conferred by Article 64(1)(c) of Regulation No 883/2004, ([1]) having regard to Article 63 and Article 7 of Regulation No 883/2004, the objective and scope of Regulation No 883/2004 and the free movement of persons and workers, be applied in such a way that a request for the extension of the export of an unemployment benefit can in principle be refused unless, in the view of the Uwv [Uitvoeringsinstituut werknemersverzekeringen: Management Board of the Employee Insurance Agency], given the particular circumstances of the case, for example, where there is a concrete and demonstrable prospect of work, it would be unreasonable to refuse the extension of the export?

   If not,

2. How should Member States apply the power conferred by Article 64(1)(c) of Regulation No 883/2004?

([1]) Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Kammergericht (Germany) lodged on 3 November 2016 — Doris Margret Lisette Mahnkopf

(Case C-558/16)

(2017/C 030/25)

Language of the case: German

Referring court

Kammergericht Berlin

Parties to the main proceedings

Applicant: Doris Margret Lisette Mahnkopf

Defendant: Sven Mahnkopf

Questions referred

1. Is Article 1(1) of the EU Succession Regulation ([1]) to be interpreted as meaning that the scope of the regulation ('succession') also covers provisions of national law which, like Paragraph 1371(1) of the German Bürgerliches Gesetzbuch (BGB, Civil Code), govern questions relating to matrimonial property regimes after the death of one spouse by increasing the share of the estate on intestacy of the other spouse?

2. If the first question is answered in the negative, are Articles 68(l) and 67(1) of the EU Succession Regulation in any case to be interpreted as meaning that the share of the surviving spouse may be recorded in full in the European Certificate of Succession, even if a portion of it stems from an increase pursuant to a rule governing matrimonial property regimes like Paragraph 1371(1) of the Civil Code?

   If this question is to be answered in the negative in principle, can it nevertheless be answered in the affirmative exceptionally for situations where

   (a) the purpose of the Certificate of Succession is limited to asserting rights of the heirs in a certain other Member States to property of the deceased located there, and

   (b) the ruling on succession (Articles 4 and 21 of the EU Succession Regulation) and — irrespective of which conflict-of-law rules are applied — the questions relating to matrimonial property regimes are to be assessed on the basis of the same national legal system.

3. If the first and second questions are answered in the negative in their entirety, is Article 68(l) of the EU Succession Regulation to be interpreted as meaning that the share of the surviving spouse increased pursuant to a rule governing matrimonial property regimes may be recorded in full in the European Certificate of Succession, but for information purposes only on account of the increase?

([1]) Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession; OJ 2012 L 201, p. 107.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 14 November 2016 — Grupo Norte Facility, S.A. v Angel Manuel Moreira Gómez

(Case C-574/16)

(2017/C 030/26)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Grupo Norte Facility, S.A. (formerly Limpiezas Pisuerga Grupo Norte Limpisa, S.A.)

Respondent: Angel Manuel Moreira Gómez

Questions referred

1. For the purposes of the principle of equivalence between workers with fixed-term contracts and those with contracts of indefinite duration, must ending of the employment contract due to 'objective circumstances' under Article 49(1)(c) ET [Estatuto de los Trabajadores: Workers' Statute] and its ending on 'objective grounds' under Article 52 ET be regarded as 'comparable situations' and does, therefore, the difference between the compensation payable in either case constitute unequal treatment of between workers with fixed-term contracts and those with contracts of indefinite duration, prohibited by Council Directive 1999/70/EC ([1]) of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?

2. If so, must the social-policy objectives legitimising the creation of the 'contrato de relevo' model of contract also be deemed to justify, under clause 4.1 of the abovementioned framework agreement, the difference in treatment relating to the lower amount of compensation for termination of the employment relationship when the employer freely decides that such a 'contrato de relevo' should be for a fixed term?

3. For the purposes of guaranteeing the practical effect of Directive 1999/70 EC, if there should be found to be no reasonable justification under clause 4.1, is the unequal treatment of temporary and permanent employees with regard to compensation for termination of their contracts, laid down in the Spanish legislation referred to above, to be interpreted as constituting discrimination of the kind prohibited by Article 21 of the Charter, and therefore as contrary to the principles of equal treatment and non-discrimination that are part of the general principles of EU law?

(1) OJ 1999 L 175, p. 43.

Appeal brought on 17 November 2016 by Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-460/13: Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd v European Commission

(Case C-586/16 P)

(2017/C 030/27)

Language of the case: English

Parties

Appellants: Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd, Ranbaxy (UK) Ltd (represented by: R. Vidal, A. Penny, Solicitors, B. Kennelly QC, Barrister)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— Set aside the General Court's Judgment in Case T-460/13 insofar as it dismisses their application to annul the decision of the European Commission of 19 June 2013 in Case COMP/39226 — Lundbeck (citalopram), which found an infringement by object of Article 101(1) TFEU and Article 53 EEA, insofar as it concerns the Appellants;

— Annul Article 1(4) of the Decision insofar as it concern the Appellants;

— Annul Article 2(4) of the Decision insofar as it imposes fines on the Appellants or, in the alternative, reduce the amount of the fine; and

— Order the Commission to pay the Appellants' legal and other costs and expenses in relation to this matter and any other measures that this Court considers appropriate.

Pleas in law and main arguments

1. The General Court misapplied the test for demonstrating an infringement of Article 101(1) 'by object' established by the Court of Justice of the European Union ('CJEU') in Cartes Bancaires v Commission C-67/13 P, ECLI: EU:C:2014:2204 ('Cartes Bancaires'). The agreement between the Appellants and H. Lundbeck A/S ('Lundbeck') which took effect on 16 June 2002 (the 'Agreement'2) was not by its very nature harmful to competition. Its purpose was prima facie to settle a patent dispute between the Appellants and Lundbeck. Whether the Agreement was in fact harmful to competition required the Commission to examine its effects.

2. In finding that there was material 'potential competition' in existence between the Appellants and Lundbeck at the time of the Agreement, the General Court manifestly distorted the evidence in the Court's file. The Commission was required to demonstrate objectively that the Appellants had a real concrete possibility of entering the market in an economically viable manner. The evidence demonstrated that (a) such entry was not a real or concrete possibility, either objectively or in terms of economic viability, prior to the expiry of the Agreement; and (b) in the negotiations leading to the Agreement, the Appellants had no incentive to be truthful regarding their readiness to enter the market and tricked Lundbeck into agreeing both to supply its own product to the Appellants at a discounted price and making a payment to the Appellants. This in fact allowed the Appellants to enter the market immediately which crucially they could not otherwise have done. The General Court failed to take account of the key distinction between the Appellants and the other generic manufacturers who entered into agreements with Lundbeck, which is the Appellants had no realistic and concrete possibility of obtaining an marketing authorization within the timeframe of the Agreement.

3. In any event, no penalty should have been imposed on the Appellants. At the time of the Agreement, the Commission's Guidelines did not treat such an agreement as constituting an infringement 'by object'. It was a novel case in which Lundbeck had prima facie protection from competition in the form of its patents and regulatory barriers where the Appellants in fact improved their ability to compete with Lundbeck on the relevant market, by obtaining discounted supplies of Lundbeck's product which the Appellants could label as their own. The Appellants' penalty ignored the novelty of the infringement and the Commission's unreasonable delay: notice of the investigation could easily have been provided to the Appellants more than five years prior to the actual notice.

Appeal brought on 18 November 2016 by Generics (UK) Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-469/13: Generics (UK) v Commission

(Case C-588/16 P)

(2017/C 030/28)

Language of the case: English

Parties

Appellant: Generics (UK) Ltd (represented by: I. Vandenborre, advocaat, T. Goetz, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— annul the judgment or take such other action as justice may require.

Pleas in law and main arguments

1. **First plea-in-law**. The Court has failed to demonstrate that the Settlement Agreements constitute infringements 'by object', within the meaning of the Cartes Bancaires judgment. In particular, the Court does not explain how the Settlement Agreements reveal in themselves a sufficient degree of harm to competition without the need to assess their actual and potential effects. Instead, the Court expresses doubt and uncertainty in relation to critical points of the analysis of the Settlement Agreements.

2. **Second plea-in-law**. The evidence supporting the Court's findings does not meet the requirement of accurate, reliable, consistent and comprehensive evidence, which this Court has identified as necessary to meet the burden of proving a 'by object' infringement.

3. **Third plea-in-law**. The Court reverses the burden of proof when it imposes a requirement on Generics (UK) to demonstrate that litigation certainly would have ensued in case of a launch at risk, and that Generics (UK) would certainly have lost in litigation, to support the legality of the Settlement Agreements.

4. **Fourth plea-in-law**. The Court failed to exercise a full review of the rejection of the applicability of Article 101(3) TFEU by the Commission.

5. **Fifth plea-in-law**. The Court erred in law by applying its powers of judicial review ultra vires in establishing a new infringement of Article 101(1) TFEU that was not formulated in the Decision and substituting its own findings for those of the Commission.

6. **Sixth plea-in-law**. The Court failed to identify clear, precise and consistent evidence to support a finding that Generics (UK) committed the alleged infringement intentionally or negligently as required pursuant to Article 23(2) of Council Regulation (EC) No 1/2003 ([1]) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

([1]) OJ 2003, L 1, p. 1.

Action brought on 21 November 2016 — European Commission v Hellenic Republic

(Case C-590/16)

(2017/C 030/29)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: Flavia Tomat and Aikaterini Kyratsou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

— declare that, as provided for in Article 258 of the Treaty on the Functioning of the European Union, by enacting and retaining in force legislation which permits petroleum products to be made available without excise duty being charged by the filling stations of the company Katastimata Aforologiton Eidon A.E. at the border posts located at Kipoi in Evros, at Kakavia and at Evzonoi, all of which are in areas bordering on third countries, specifically Turkey, Albania and the Former Yugoslav Republic of Macedonia respectively, the Hellenic Republic has failed to fulfil its obligations under Article 7(1) of Directive 2008/118/EC; ([1])

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. According to the reasoned opinion of 1 September 2014 which the Commission sent to the Greek authorities, by its approval of the fact that the filling stations held by the company Katastimata Aforologiton Eidon A.E. at the border posts located at Kipoi in Evros, at Kakavia and at Evzonoi make petroleum products available on which excise duty is not charged, Greece has failed to fulfil its obligations under Directive 2008/118 concerning the general arrangements for excise duty, as Greece does not consider that making those products available constitutes actual release for consumption. The direct supply of vehicles with fuel at those filling stations constitutes release for consumption and is subject to excise duty.

2. The deviations from the basic rule that duty is due in the Member State where consumption occurs are expressly laid down by the EU legislature. The application, when petroleum products subject to excise duty are made available, of simplified procedures for export to a third country is contrary to Directive 2008/118, since it does not fall within the scope of any of the relevant provisions of the directive.

([1]) OJ 2009 L 9, p. 12.

Appeal brought on 18 November 2016 by H. Lundbeck A/S, Lundbeck Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-472/13: H. Lundbeck A/S, Lundbeck Ltd v European Commission

(Case C-591/16 P)

(2017/C 030/30)

Language of the case: English

Parties

Appellants: H. Lundbeck A/S, Lundbeck Ltd (represented by: R. Subiotto QC, Barrister, T. Kuhn, Rechtsanwalt)

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

Form of order sought

The appellants claim that the Court should:

— Set aside the Judgment, in whole or in part

— Annul the Decision in so far as it applies to the Appellants or, in the alternative, annul the fines imposed on the Appellants pursuant to the Decision or, in the further alternative, substantially reduce the fines imposed on the Appellants pursuant to the Decision;

— Order the Commission to pay the Appellants' legal and other costs of these proceedings and of the proceedings before the General Court ('GC');

— If necessary, remand the case to the GC for reconsideration in accordance with the Court's judgment;

— Take any other measures that this Court considers appropriate;

Pleas in law and main arguments

By their first plea, the Appellants submit that the GC erred in law in upholding the Commission's conclusion that the Agreements had the object of restricting competition. The GC erred in law in finding that an Agreement restricts competition by object even if it falls within the scope of Lundbeck's patents. Such agreement cannot be considered by its very nature harmful to competition, as it contains restrictions comparable to those that the patent holder could have obtained through court rulings enforcing its patents. A mere payment cannot turn an otherwise legitimate and unproblematic agreement, such as an in-scope patent settlement agreement, into a restriction of competition by object. As a result, the GUK UK Agreement, which the GC found to fall within the scope of Lundbeck's patents, should not have been held to restrict competition by object. The same conclusion applies to the other five Agreements, because the GC erred in law in qualifying them as exceeding the scope of Lundbeck's patents.

By their second plea, the Appellants submit that the GC erred in law in failing to apply the correct legal test to assess whether five of the six Agreements contained restrictions that exceeded the scope of Lundbeck's patents. The GC should have assessed whether there was a 'meeting of minds' within the meaning of Article 101 TFEU between Lundbeck and each of the Generics that the relevant Agreement(s), with the exception of the GUK UK Agreement, imposed restrictions that exceeded the scope of Lundbeck's patents. Applying this test leads to the inevitable legal conclusion that the Agreements fell within the subject-matter of Lundbeck's patents.

By their third plea, the Appellants submit that even if the GC's legal qualification that five, or less, of the six Agreements fell outside the scope of Lundbeck's patents was correct, the GC erred in law in concluding that the out-of-scope Agreements restricted competition by object. In their economic and legal context, the Agreements were not by their very nature harmful to competition and are not comparable to market sharing agreements, and the GC erred in law as it failed to assess the counterfactual.

By their fourth plea, the Appellants submit that the GC erred in law, committed a manifest error of assessment of the evidence, and gave contradictory reasons in upholding the Commission's conclusion that Lundbeck and the Generics were actual or potential competitors at the time of the Agreements, regardless of whether the Generics' products violated Lundbeck's patents. First, the GC erred in law as it disregarded the existence of legal barriers, namely Lundbeck's patents, that prevented the Generics' entry with infringing citalopram products. Second, the GC's conclusion that Lundbeck doubted the validity of its patents is vitiated by an error in law, a manifest error in the assessment of the evidence and contradictory reasoning. Third, the GC erred in law by holding that evidence dated from after the conclusion of the Agreements, but which still in many cases pre-dated the expiry of the Agreements, cannot be decisive in assessing whether the Generics were potential competitors to Lundbeck. These documents include scientific evidence that the Generics or their API producers infringed Lundbeck's patents, national courts' orders granting preliminary injunctions or other forms of relief to Lundbeck against citalopram products based on the API that some of the Generics used, and the European Patent Office ('EPO')'s confirmation of the validity of Lundbeck's Crystallization Patent on all relevant aspects, whose strength the Commission questioned. Lastly, the GC erred in law and failed to state reasons by finding that each of the Generics had real and concrete possibilities of entering the market without properly assessing whether they could do so with non-infringing citalopram.

By their fifth plea, the Appellants submit that the GC erred in law in upholding the Commission's imposition of fines on Lundbeck. First, the GC erred in law by misapplying the standard for culpability. Second, the GC erred in law in upholding the Commission's conclusion that Lundbeck could not be unaware of the anticompetitive nature of its conduct. Third, the GC violated the principle of legal certainty and non-retroactivity by upholding the imposition of more than a symbolic fine.

By their sixth plea, the Appellants submit, in the alternative, that the GC erred in law and failed to provide adequate reasoning in upholding the Commission's calculation of the fines imposed on the Appellants. The value of sales on which the fines are based includes Lundbeck's sales in certain EEA Member States in which the Generics were effectively barred from entering because they did not obtain a marketing authorization ('MA') until after the expiry of the Agreements or, with respect to Austria, because Lundbeck's citalopram compound patent was still in force during a significant part of the term of the Agreements. In addition, this case warrants the application of a lower gravity percentage, in particular since the Agreements are not comparable to cartels and their effective geographic scope was much more limited that their literal geographic scope.

Appeal brought on 23 November 2016 by Viktor Fedorovych Yanukovych against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 15 September 2016 in Case T-346/14: Yanukovych v Council

(Case C-598/16 P)

(2017/C 030/31)

Language of the case: English

Parties

Appellant: Viktor Fedorovych Yanukovych (represented by: T. Beazley QC)

Other parties to the proceedings: Council of the European Union, European Commission, Republic of Poland

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment of the General Court (Ninth Chamber, extended composition) of 15 September 2016 in Case T-346/14 to the extent particularised in the Appeal, namely paragraphs 2 and 4 of the operative part of that Judgment;

— grant the relief sought by the Appellant in the proceedings before the General Court to the extent particularised below namely:

  — to annul Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP ([1]) ('the Second Amending Decision');

— to annul Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP ([2]), and

— to annul Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 ([3]);

in so far as those measures concern the Appellant; and

— order the Council of the European Union to pay the costs of the appeal and the application for annulment in the statement of modification.

Pleas in law and main arguments

1. **First plea in law**, alleging that the General Court erred in law in concluding that the listing criterion in Article 1(1) of Council Decision 2014/119/CFSP, as amended by the Second Amending Decision, is compatible with the objectives of the Common Foreign and Security Policy as stated in Article 21 of the Treaty on European Union. The General Court failed to recognise that the alleged acts of misappropriation of state funds must, at the very least, be the subject of an ongoing prosecution or other judicial proceedings in the country concerned, in circumstances where, as in this case, there is credible evidence that the country concerned does not have a consistent and adequate record of respect for fundamental principles of human rights or compliance with the rule of law.

2. **Second plea in law**, alleging that the General Court erred in law in (1) failing to conclude that there was credible evidence that Ukraine does not have a consistent and adequate record of human rights compliance or compliance with the rule of law and (2) describing certain Ukrainian authorities upon whose evidence the Council of the European Union relied as being a 'high judicial authority'. The General Court further erred by not providing any reasons for its views regarding (1) and (2).

3. **Third plea in law**, alleging that the General Court erred in law (1) in concluding that the inclusion of the Appellant's name in the list, on the basis of a letter dated 10 October 2014 from the Ukrainian authorities, complies with the listing criterion and (2) in concluding that there was no manifest error of assessment by the Council regarding the Appellant's inclusion in the list.

([1]) Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 24, p. 16).
([2]) Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 62, p. 25).
([3]) Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 62, p. 1).

Appeal brought on 23 November 2016 by Oleksandr Viktorovych Yanukovych against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 15 September 2016 in Case T-348/14: Yanukovych v Council

(Case C-599/16 P)

(2017/C 030/32)

Language of the case: English

Parties

Appellant: Oleksandr Viktorovych Yanukovych (represented by: T. Beazley QC)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment of the General Court (Ninth Chamber, extended composition) of 15 September 2016 in Case T-348/14 to the extent particularised in the Appeal, namely paragraphs 2 and 4 of the operative part of that Judgment;

— grant the relief sought by the Appellant in the proceedings before the General Court to the extent particularised below namely:

  — to annul Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP ([1]) ('the Second Amending Decision');

  — to annul Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP ([2]), and

  — to annul Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 ([3]);

  in so far as those measures concern the Appellant; and

— order the Council of the European Union to pay the costs of the appeal and the application for annulment in the statement of modification.

Pleas in law and main arguments

1. **First plea in law**, alleging that the General Court erred in law in concluding that the listing criterion in Article 1(1) of Council Decision 2014/119/CFSP, as amended by the Second Amending Decision, is compatible with the objectives of the Common Foreign and Security Policy as stated in Article 21 of the Treaty on European Union. The General Court failed to recognise that the alleged acts of misappropriation of state funds must, at the very least, be the subject of an ongoing prosecution or other judicial proceedings in the country concerned, in circumstances where, as in this case, there is credible evidence that the country concerned does not have a consistent and adequate record of respect for fundamental principles of human rights or compliance with the rule of law.

2. **Second plea in law**, alleging that the General Court erred in law in (1) failing to conclude that there was credible evidence that Ukraine does not have a consistent and adequate record of human rights compliance or compliance with the rule of law and (2) describing certain Ukrainian authorities upon whose evidence the Council of the European Union relied as being a 'high judicial authority'. The General Court further erred by not providing any reasons for its views regarding (1) and (2).

3. **Third plea in law**, alleging that the General Court erred in law (1) in concluding that the inclusion of the Appellant's name in the list, on the basis of a letter dated 30 December 2014 from the Ukrainian authorities, complies with the listing criterion and (2) in concluding that there was no manifest error of assessment by the Council regarding the Appellant's inclusion in the list.

([1]) Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 24, p. 16).
([2]) Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 62, p. 25).
([3]) Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015, L 62, p. 1).

Appeal brought on 24 November 2016 by National Iranian Tanker Company against the judgment of the General Court (Seventh Chamber) delivered on 14 September 2016 in Case T-207/15: National Iranian Tanker Company v Council of the European Union

(Case C-600/16 P)

(2017/C 030/33)

Language of the case: English

Parties

Appellant: National Iranian Tanker Company (represented by: T. de la Mare QC, M. Lester QC, J. Pobjoy, Barristers, R. Chandrasekera, S. Ashley, C. Murphy, Solicitors)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment of the General Court of 14 September 2016 in National Iranian Tanker Company v Council of the European Union, (Case T-207/15);

— determine the case before the General Court and in particular to:

  — annul Council Decision (CFSP) 2015/236 of 12 February 2015 ([1]) and Council Implementing Regulation (EU) 2015/230 of 12 February 2015 ([2]), insofar as each applies to the Appellant;

  — alternatively, declare that (a) Article 20(1)(c) of Council Decision 2010/413/CFSP of 26 July 2010 ([3]) (as amended) and (b) Article 23(2)(d) of Council Regulation (EU) No 267/2012 of 23 March 2012 ([4]) (as amended), are inapplicable insofar as they apply to the Appellant by reason of illegality; and

— order that the Respondent pay the costs of the appeal and of the proceedings before the General Court.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging that the General Court erred in finding that Council Decision (CFSP) 2015/236 of 12 February 2015 and Council Implementing Regulation (EU) 2015/230 of 12 February 2015 did not infringe the principles of res judicata, legal certainty, legitimate expectations and finality, or the right to an effective remedy under Article 47 of the EU Charter.

2. Second plea in law, alleging that the General Court erred in finding that the criteria for designation were satisfied as regards the Appellant.

3. Third plea in law, alleging that the General Court erred in finding that the interference with the Appellant's fundamental rights was proportionate.

4. Fourth plea in law, alleging that the General Court erred in rejecting the Appellant's alternative argument that a broad interpretation of the designation criterion would render it disproportionate.

([1]) Council Decision (CFSP) 2015/236 of 12 February 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran
OJ L 39, p. 18

([2]) Council Implementing Regulation (EU) 2015/230 of 12 February 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran
OJ L 39, p. 3

([3]) 2010/413/CFSP: Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP
OJ L 195, p. 39

([4]) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010
OJ L 88, p. 1

Appeal brought on 24 November 2016 by Arrow Group ApS, Arrow Generics Ltd against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-467/13: Arrow Group ApS, Arrow Generics Ltd v European Commission

(Case C-601/16 P)

(2017/C 030/34)

Language of the case: English

Parties

Appellants: Arrow Group ApS, Arrow Generics Ltd (represented by: C. Firth, S. Kon, C. Humpe, Solicitors)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the Judgment of the General Court of 8 September 2016 in Case T-467/13 and/or annul Articles 1, 2 and 3 of Commission decision C(2013) 3803 final of 19 June 2013 in Case AT.39226-Lundbeck insofar as they pertain to Arrow; or

— in the further alternative, set aside the Judgment of the General Court of 8 September 2016 in Case T-467/13 and refer the case back to the General Court; or

— in the final alternative, set aside the Judgment of the General Court of 8 September 2016 in Case T-467/13 insofar as the Judgment upheld the fine imposed on Arrow pursuant to Article 2 of Commission decision C(2013) 3803 final in respect of the UK and Danish Agreements or reduce the amount of such fine; and

— order the Commission to pay Arrow's costs.

Pleas in law and main arguments

First Ground: The General Court misapplied the relevant test for potential competition:

1. First plea: the General Court shifted the burden of proof to Arrow and relieved the Commission of its obligation to establish the existence of potential competition.

2. Second plea: the General Court erred by deriving the existence of potential competition from a series of hypotheses contrary to the principle that potential competition necessitates the existence of a real and concrete possibility of entry.

3. Third plea: the General Court attached undue weight to Lundbeck's intention and wrongly assessed the evidential importance of facts occurring after the Agreements were signed.

4. Fourth plea: The General Court failed to consider the relevance and impact of the Paroxetine Judgment of the English Court.

5. Fifth plea: The General Court wrongly derived the existence of potential competition from the fact that Arrow had taken steps to prepare for market entry.

6. Sixth plea: the General Court erred by applying a presumption of provisional invalidity and non-infringement to Lundbeck's patents.

Second Ground: The General Court has erred in finding that the patent settlement agreements had the object of restricting competition:

1. First plea: the General Court has disregarded the fact that an agreement which is 'simply capable' of restricting competition is not an object infringement.

2. Second plea: the General Court has misdirected itself in categorising the Agreements as being in essence market exclusion agreements.

3. Third plea: the General Court has wrongly concluded that the Commission could establish the anticompetitive object of the Agreements without having to consider the situation that would have prevailed in the absence of the agreements.

Third Ground: The General Court erred in accepting the Commission's conclusions that Arrow acted intentionally or negligently in committing the alleged infringement and no fine should have been imposed.

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-111/14: Unitec Bio v Council

(Case C-602/16 P)

(2017/C 030/35)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: Unitec Bio SA, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-111/14, Unitec Bio SA v Council of the European Union;

— reject the application at first instance brought by the Applicant for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Argentinian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Argentina as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment considered by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's first plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-139/14: PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council

(Case C-603/16 P)

(2017/C 030/36)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: PT Wilmar Bioenergi Indonesia, PT Wilmar Nabati Indonesia, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-139/14, PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council of the European Union;

— reject the application at first instance for the annulment of the Contested Regulation; and

— order the Applicants to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Indonesian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Indonesia as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicants is disproportionate to the only ground for annulment admitted by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicants' sixth plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicants at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-121/14: PT Pelita Agung Agrindustri v Council

(Case C-604/16 P)

(2017/C 030/37)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: PT Pelita Agung Agrindustri, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-121/14, PT Pelita Agung Agrindustri v Council of the European Union;

— reject the application at first instance for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Indonesian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Indonesia as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment admitted by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's second plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-120/14: PT Ciliandra Perkasa v Council

(Case C-605/16 P)

(2017/C 030/38)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: PT Ciliandra Perkasa, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-120/14, PT Ciliandra Perkasa v Council of the European Union;

— reject the application at first instance for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Indonesian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Indonesia as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment admitted by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's third plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-80/14: PT Musim Mas v Council

(Case C-606/16 P)

(2017/C 030/39)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas), European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-80/14, PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union;

— reject the application at first instance for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Indonesian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Indonesia as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment admitted by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's second part of the second plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Cases T-112/14 to T-116/14 and T-119/14: Molinos Río de la Plata and others v Council

(Case C-607/16 P)

(2017/C 030/40)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: Molinos Río de la Plata SA, Oleaginosa Moreno Hermanos SACIFI y A, Vicentin SAIC, Aceitera General Deheza SA, Bunge Argentina SA, Cámara Argentina de Biocombustibles (Carbio), European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Cases T-112/14 to T-116/14 and T-119/14, Molinos Río de la Plata SA and Others v Council of the European Union;

— reject the applications at first instance for the annulment of the Contested Regulation; and

— order the Applicants to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Argentinian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Argentina as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as it concerns the Applicants is disproportionate to the only ground for annulment considered by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicants' first plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the applications.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the applications for annulment of the Contested Regulation by the Applicants at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-117/14: Cargill v Council

(Case C-608/16 P)

(2017/C 030/41)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: Cargill SACI, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-117/14, Cargill SACI v Council of the European Union;

— reject the application at first instance brought by the Applicant for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Argentinian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Argentina as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment considered by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's first plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-118/14: LDC Argentina v Council

(Case C-609/16 P)

(2017/C 030/42)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

Other parties to the proceedings: LDC Argentina SA, European Commission, European Biodiesel Board (EBB)

Form of order sought

The Appellant claims that the Court should:

— set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-118/14, LDC Argentina SA v Council of the European Union;

— reject the application at first instance brought by the Applicant for the annulment of the Contested Regulation; and

— order the Applicant to pay the Council's costs both at first instance and on appeal.

Alternatively,

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

— reserve costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Argentinian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation ([1]), second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.

2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Argentina as a result of the DET system lacks proper reasoning.

3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as it concerns the Applicant is disproportionate to the only ground for annulment considered by the General Court and gives undue effects to the finding of illegality.

4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's first plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.

5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').

Appeal brought on 25 November 2016 by Xellia Pharmaceuticals ApS, Alpharma, LLC, formerly Zoetis Products LLC against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-471/13: Xellia Pharmaceuticals ApS, Alpharma v European Commission

(Case C-611/16 P)

(2017/C 030/43)

Language of the case: English

Parties

Appellants: Xellia Pharmaceuticals ApS, Alpharma, LLC, formerly Zoetis Products LLC (represented by: D.W. Hull, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— Set aside in whole or in part the Judgment under appeal;

— Annul in whole or in part the Decision;

— Cancel or substantially reduce the fine;

— In the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice;

— Order the Commission to pay the costs of these proceedings and of the proceedings before the General Court.

Pleas in law and main arguments

The appellant relies on nine grounds of appeal based on errors of law by the General Court.

1) The General Court applied the wrong legal standard to evaluate whether Alpharma was a potential competitor in the context where its products infringed Lundbeck's patents. In the absence of evidence demonstrating that Lundbeck's patents were weak, the patents must be presumed to be valid and entry with infringing product to be illegal.

2) Despite acknowledging that Alpharma only discovered shortly before the settlement that Lundbeck's patent would be granted and that its products infringed Lundbeck's patents, the General Court failed to evaluate whether the Commission had proven that entry by Alpharma remained an economically-viable strategy in light of these additional barriers to entry. Instead, the General Court relied on evidence not cited in the Decision and incorrectly shifted the burden of proof onto the Appellants to disprove the Commission's allegation that Alpharma was a potential competitor.

3) The General Court applied the wrong legal standard to assessed whether the Settlement Agreement constituted a restriction of competition 'by object', as it failed to evaluate whether the Commission had demonstrated that the Settlement Agreement was sufficiently likely to have negative effects, and failed to take into account the fact that the Commission had no prior experience with this kind of patent settlement.

4) The General Court failed to assess whether the Commission had proven its allegation that the restriction in the Settlement Agreement exceeded the scope of Lundbeck's patents.

5) The General Court applied the wrong legal standard in assessing whether the duration of the Commission's investigation was excessive and violated the Appellants' rights of defence.

6) The General Court erred in upholding the Commission's decision to address the Decision to Zoetis (now Alpharma LLC), but not to Merck Generics Holding GmbH, despite the Commission's failure to provide any basis in the Decision for distinguishing between the situations of these two companies.

7) The General Court erred in law in finding that the state of the law was sufficiently clear at the time of the Settlement Agreement that the Appellants could ascertain unequivocally what their rights and obligations were and take steps accordingly.

8) The General Court erred in upholding the Decision despite the Commission's clear failure to take the gravity of the alleged infringement into account in setting the fine as required under Article 23(3) of Regulation 1/2003 ([1]).

9) The General Court applied the wrong legal standard in determining the relevant year for the calculation of the 10 % cap on the level of the fine imposed upon A.L. Industrier.

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

Appeal brought on 28 November 2016 by Merck KGaA against the judgment of the General Court (Ninth Chamber) delivered on 8 September 2016 in Case T-470/13: Merck KGaA v European Commission

(Case C-614/16 P)

(2017/C 030/44)

Language of the case: English

Parties

Appellant: Merck KGaA (represented by: B. Bär-Bouyssière, Rechtsanwalt, S. Smith, Solicitor, R. Kreisberger, Barrister, D. Mackersie, Advocate)

Other parties to the proceedings: European Commission, Generics (UK) Ltd

Form of order sought

The appellant claims that the Court should:

— Set aside paragraph 1 of the operative part of the Judgment;

— annul Articles 1(1), 2(1) of the Decision and Articles 3 and 4 insofar as these are addressed to Merck;

— in the alternative, annul or reduce the penalty imposed on Merck;

— set aside paragraph 2 of the operative part of the Judgment and order the Commission to bear their own costs and to pay the costs of Merck, relating to both the proceedings at first instance and to this appeal.

Pleas in law and main arguments

1. The Appellant's first ground of appeal is that the General Court erred in law by finding that the patent settlement agreements ('PSAs'), concluded between Generics (UK) ('GUK') and Lundbeck, were restrictions by object under Article 101(1) TFEU:

   i. By its first plea, the Appellant argues that the General Court misdirected itself as to the applicable legal standard and the correct approach to determining whether the PSAs could be characterised as restrictions by object, in particular in the light of the legal principles upheld in Case C-67/13 P Cartes Bancaires.

   ii. By its second plea, the Appellant argues that the General Court erred by failing to analyse whether the wording of the PSAs revealed a sufficient degree of harm.

   iii. By its third plea, the Appellant argues that the General Court erred by holding that the PSAs revealed a sufficient degree of harm on the basis that they were equivalent to market exclusion agreements.

   iv. By its fourth plea, the Appellant argues that the General Court erred by holding that the PSAs revealed a sufficient degree of harm by avoiding litigation whose outcome was uncertain.

v. By its fifth plea, the Appellant argues that the General Court erred by treating the payment to GUK under the PSAs as one of the principal elements of a restriction by object.

vi. By its sixth plea, the Appellant argues that the General Court erred by relying on factual considerations extraneous to the wording of the PSAs to support its finding of a restriction by object.

vii. By its seventh plea, the Appellant argues that the General Court erred by finding that the PSA relating to the EEA exceeded the scope of Lundbeck's patents.

2. The Appellant's second ground of appeal is that the General Court erred in law by concluding that GUK and Lundbeck were potential competitors at the time when the PSAs were concluded:

viii. By its eighth plea, the Appellant argues that the General Court erred by failing to consider whether the eight routes to market posited by the Commission were economically viable, or practically possible, for GUK within a sufficiently short time-frame.

ix. By its ninth plea, the Appellant argues that the General Court erred by reversing the burden of proof in relation to potential competition.

x. By its tenth plea, the Appellant argues that the General Court erred by finding that the fact that the parties had entered into the PSAs was relevant to the assessment of potential competition.

xi. By its eleventh plea, the Appellant argues that the General Court erred by failing to recognise that the assessment of potential competition was not apt for consideration in the context of a 'by object' assessment.

3. The Appellant's third ground of appeal is that the General Court erred in law by upholding the fine imposed by the Commission on the Appellant:

xii. By its twelfth plea, the Appellant argues that the General Court erred by finding that the Commission had jurisdiction to impose a fine on the Appellant or, alternatively, to impose a fine that was more than symbolic.

GENERAL COURT

Judgment of the General Court of 13 December 2016 — Al-Ghabra v Commission

(Case T-248/13) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Regulation (EC) No 881/2002 — Freezing of the funds and economic resources of a person included on a list drawn up by a United Nations body — Inclusion of that person's name on the list in Annex I to Regulation No 881/2002 — Action for annulment — Reasonable time — Obligation to verify and justify the merits of the grounds relied on — Judicial review)

(2017/C 030/45)

Language of the case: English

Parties

Applicant: Mohammed Al-Ghabra (London, United Kingdom) (represented by: E. Grieves, Barrister, and J. Carey, Solicitor)

Defendant: European Commission (represented initially by M. Konstantinidis, T. Scharf and F. Erlbacher, and subsequently by M. Konstantinidis and F. Erlbacher, acting as Agents)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by S. Behzadi-Spencer and V. Kaye, subsequently by V. Kaye, subsequently by S. Brandon, and finally by C. Crane, acting as Agents, and also by T. Eicke QC), and Council of the European Union, (represented by: J.-P. Hix and E. Finnegan, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment of (i) Commission Regulation (EC) No 14/2007 of 10 January 2007 amending for the 74th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2007 L 6, p. 6), in so far as it concerns the applicant, and (ii) Commission Decision Ares(2013) 188023 of 6 March 2013 confirming the retention of the applicant's name on the list of persons and entities to whom the provisions of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9) apply.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible in so far as it seeks annulment of Commission Regulation (EC) No 14/2007 of 10 January 2007 amending for the 74th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama Bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001, in so far as it concerns Mr Mohammed Al-Ghabra;*

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

3. *Orders Mr Al-Ghabra to bear his own costs and to pay those incurred by the European Commission;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland and the Council of the European Union to bear their own costs.*

([1]) OJ C 9, 11.1.2014.

Judgment of the General Court of 13 December 2016 — European Dynamics Luxembourg and Evropaïki Dynamiki v Commission

(Case T-764/14) ([1])

(Public service contracts — Call for tender procedure — Technical assistance, development and implementation of a computerised system for the ASEAN customs transit system (ACTS) — Rejection of a tenderer's bid — Award of the contract to another tenderer — Selection criteria — Award criteria — Obligation to state reasons — Manifest error of assessment — Equal treatment — Openness)

(2017/C 030/46)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg) and Evropaïki Dynamiki — Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented initially by: M. Sfyri and I. Ampazis, lawyers, and subsequently by: M. Sfyri)

Defendant: European Commission (represented initially by: S. Bartelt and A. Marcoulli, and subsequently by: S. Bartelt and M. Konstantinidis, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision of the Commission of 5 September 2014 rejecting the bid submitted by the applicants in restricted call for tenders procedure EuropeAid/135040/C/SER/MULTI concerning the development of a computerised management system for the ASEAN customs transit system and awarding that contract to another tenderer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders European Dynamics Luxembourg SA and Evropaïki Dynamiki — Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.*

([1]) OJ C 26, 26.1.2015.

Judgment of the General Court of 13 December 2016 — Printeos and Others v Commission

(Case T-95/15) ([1])

(Competition — Agreements, decisions and concerted practices — European stock/catalogue and special printed envelopes market — Decision establishing an infringement of Article 101 TFEU — Coordination of sales prices and allocation of customers — Settlement procedure — Fines — Basic amount — Exceptional adjustment — Maximum of 10 % of total turnover — Article 23(2) of Regulation (EC) No 1/2003 — Obligation to state reasons — Equal treatment)

(2017/C 030/47)

Language of the case: Spanish

Parties

Applicants: Printeos, SA (Alcalá de Henares, Spain), Tompla Sobre Exprés, SL (Alcalá de Henares), Tompla Scandinavia AB (Stockholm, Sweden), Tompla France SARL (Fleury-Mérogis, France), Tompla Druckerzeugnisse Vertriebs GmbH (Leonberg, Germany) (represented by: H. Brokelmann and P. Martínez-Lage Sobredo, lawyers)

Defendant: European Commission (represented by: F. Castilla Contreras, F. Jimeno Fernández and C. Urraca Caviedes, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment in part of Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes) or, in the alternative, a reduction of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Annuls Article 2(1)(e) of Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes).;*

2. *Orders the European Commission to pay the costs.*

([1]) OJ C 127, 20.4.2015.

Judgment of the General Court of 14 December 2016 — PAL-Bullermann v EUIPO — Symaga (PAL)

(Case T-397/15) ([1])

(EU trade mark — Revocation proceedings — EU figurative mark PAL — Partial revocation — Genuine use of the mark — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Form differing from the registered mark — Rule 22(3) and (4) of Regulation (EC) No 2868/95)

(2017/C 030/48)

Language of the case: English

Parties

Applicant: PAL-Bullermann GmbH (Friesoythe-Markhausen, Germany) (represented by: J. Eberhardt, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Symaga, SA (Villarta de San Juan, Spain) (represented by: A. Tarí Lázaro, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 7 May 2015 (Case R 1626/2014-1) relating to revocation proceedings between PAL-Bullermann and Symaga.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders PAL-Bullermann GmbH to pay the costs.*

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 13 December 2016 — Guiral Broto v EUIPO — Gastro & Soul (Café del Sol)

(Case T-548/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark Café del Sol — Earlier national figurative mark Café del Sol — Failure to submit evidence in the language of the opposition proceedings — Articles 75 and 76 of Regulation (EC) No 207/2009 — Rules 19 and 20 of Regulation (EC) No 2868/95 — Rights of the defence)

(2017/C 030/49)

Language of the case: English

Parties

Applicant: Ramón Guiral Broto (Marbella, Spain) (represented by: J.L. de Castro Hermida, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Gastro & Soul GmbH (Hildesheim, Germany)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 July 2015 (Case R 2755/2014-5), relating to opposition proceedings between Mr Guiral Broto and Gastro & Soul.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 July 2015 (Case R 2755/2014-5), relating to opposition proceedings between Mr Ramón Guiral Broto and Gastro & Soul GmbH;*

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

3. *Orders EUIPO and Mr Guiral Broto each to bear their own costs.*

([1]) OJ C 398, 30.11.2015.

Judgment of the General Court of 13 December 2016 — Guiral Broto v EUIPO — Gastro & Soul (CAFE DEL SOL)

(Case T-549/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark CAFE DEL SOL — Earlier national figurative mark Café del Sol — Failure to submit evidence in the language of the opposition proceedings — Articles 75 and 76 of Regulation (EC) No 207/2009 — Rules 19 and 20 of Regulation (EC) No 2868/95 — Rights of the defence)

(2017/C 030/50)

Language of the case: English

Parties

Applicant: Ramón Guiral Broto (Marbella, Spain) (represented by: J.L. de Castro Hermida, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Gastro & Soul GmbH (Hildesheim, Germany)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 July 2015 (Case R 1888/2014-5), relating to opposition proceedings between Mr Guiral Broto and Gastro & Soul.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 16 July 2015 (Case R 1888/2014-5), relating to opposition proceedings between Mr Ramón Guiral Broto and Gastro & Soul GmbH;*

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

3. *Orders EUIPO and Mr Guiral Broto each to bear their own costs.*

([1]) OJ C 381, 16.11.2015.

Judgment of the General Court of 13 December 2016 — Puro Italian Style v EUIPO (smartline)

(Case T-744/15) ([1])

(EU trade mark — Application for EU figurative mark smartline — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2017/C 030/51)

Language of the case: Italian

Parties

Applicant: Puro Italian Style SpA (Modena, Italy) (represented by: F. Terrano, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 7 October 2015 (Case R 2258/2014-1), concerning an application for registration of the figurative sign smartline as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Puro Italian Style SpA to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 78, 29.2.2016.

Judgment of the General Court of 14 December 2016 — Scorpio Poland v EUIPO — Eckes-Granini Group (YO!)

(Case T-745/15) ([1])

(European Union trade mark — Opposition proceedings — Application for EU figurative mark YO! — Prior national work mark YO — Relative ground for refusal — Likelihood of confusion — Article 81)(b) of Regulation (EC) No 207/2009)

(2017/C 030/52)

Language of the case: Polish

Parties

Applicant: Scorpio Poland, formerly FH Scorpio (Łódź, Poland) (represented by: R. Rumpel, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Schifko and E. Śliwińska, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Eckes-Granini Group GmbH (Nieder-Olm, Germany) (represented by: W. Berlit, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 October 2015 (Case R 1546/2014-2) concerning opposition proceedings between Eckes-Granini Group and FH Scorpio.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Scorpio Poland to pay the costs.*

([1]) OJ C 59, 15.2.2016.

Judgment of the General Court of 13 December 2016 — Sovena Portugal — Consumer Goods v EUIPO — Mueloliva (FONTOLIVA)

(Case T-24/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark FONTOLIVA — Earlier national word mark FUENOLIVA — Relative ground for refusal — Validity of the registration of the earlier mark — Submission of new facts and evidence before the General Court — Genuine use of the earlier mark — Power to alter — Article 8(1)(b), Article 42(2) and (3) and Articles 65 and 76 of Regulation (EC) No 207/2009)

(2017/C 030/53)

Language of the case: English

Parties

Applicant: Sovena Portugal — Consumer Goods, SA (Algés, Portugal) (represented by: D. Martins Pereira, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Mueloliva, SL (Córdoba, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 4 November 2015 (Case R 1813/2014-2), relating to opposition proceedings between Mueloliva and Sovena Portugal — Consumer Goods.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 November 2015 (Case R 1813/2014-2);*

2. *Rejects the opposition filed by Mueloliva, SL to the international registration designating the European Union in respect of the word mark FONTOLIVA applied for by Sovena Portugal — Consumer Goods, SA;*

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

4. *Orders EUIPO to bear its own costs and to pay those incurred by Sovena Portugal — Consumer Goods for the purposes of the proceedings before the Court;*

5. *Orders EUIPO and Mueloliva each to pay half of the costs necessarily incurred by Sovena Portugal — Consumer Goods for the purposes of the proceedings before the Board of Appeal of EUIPO.*

(1) OJ C 106, 21.3.2016.

Judgment of the General Court of 13 December 2016 — Apax Partners v EUIPO — Apax Partners Midmarket (APAX)

(Case T-58/16) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark APAX — Earlier international word mark APAX — Relative ground for refusal — Likelihood of confusion — Similarity of the goods and services — Article 8(1)(a) and (b) of Regulation (EC) No 207/2009)

(2017/C 030/54)

Language of the case: English

Parties

Applicant: Apax Partners LLP (London, United Kingdom) (represented by: D. Rose, J. Warner and J. Curry, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Apax Partners Midmarket (Paris, France) (represented by: C. Moyou Joly, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 26 November 2015 (Case R 1441/2014-2), relating to opposition proceedings between Apax Partners Midmarket and Apax Partners.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders APAX Partners LLP to pay the costs, including those necessarily incurred by APAX Partners Midmarket, for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).*

(1) OJ C 111, 29.3.2016.

Judgment of the General Court of 14 December 2016 — Grid applications v EUIPO (APlan)

(Case T-154/16) (1)

(European Union trade mark — Application for EU word mark APlan — Absolute ground for refusal — Descriptive nature — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 030/55)

Language of the case: German

Parties

Applicant: Grid applications GmbH (Vienna, Austria) (represented by: M. Meyenburg, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 February 2016 (Case R 1819/2015-4) concerning an application for registration of work sign APlan as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Grid applications GmbH to pay the costs.*

([1]) OJ C 200, 6.6.2016.

Action brought on 18 November 2016 — Vorarlberger Landes- und Hypothekenbank v SRB

(Case T-809/16)

(2017/C 030/56)

Language of the case: German

Parties

Applicant: Vorarlberger Landes- und Hypothekenbank AG (Bregenz, Austria) (represented by: G. Eisenberger, lawyer)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Single Resolution Board SRB/ES/SRF/2016/06 of 15 April 2016 ('Decision of the Executive Session of the Board of 15 April 2016 on the 2016 ex-ante contributions to the Single Resolution Fund (SRB/ES/SRF/2016/06)'), as well as the decision of the Single Resolution Board SRB/ES/SRF/2016/13 of 20 May 2016 ('Decision of the Executive Session of the Board of 20 May 2016 on the adjustment of the 2016 ex-ante contributions to the Single Resolution Fund supplementing the Decision of the Executive Session of the Board of 15 April 2016 on the 2016 ex-ante contributions to the Single Resolution Fund (SRB/ES/SRF/2016/13)'), at least in so far as those decisions concern the applicant;

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

Pleas in law and main arguments

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

— First plea in law: flagrant breach of essential procedural requirements by reason of a lack of (full) disclosure of the contested decisions.

— Second plea in law: flagrant breach of essential procedural requirements by reason of an inadequate statement of reasons for the contested decisions.

Action brought on 18 November 2016 — Di Bernardo v Commission

(Case T-811/16)

(2017/C 030/57)

Language of the case: French

Parties

Applicant: Danilo Di Bernardo (Brussels, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of 10 August 2016 by which the selection board in Open Competition EPSO/AST-SC/03/15 excluded the applicant from that competition;

— order the Commission to pay all of the costs in any event.

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 a number of manifest errors of assessment on the part of the selection board when evaluating the applicant's professional experience.

2. Second plea in law, raised in the alternative, alleging insufficient reasoning of the contested decision on the basis of the failure to inform the applicant of the selection criteria established by the selection board.

Action brought on 21 November 2016 — Abes v Commission

(Case T-813/16)

(2017/C 030/58)

Language of the case: Portuguese

Parties

Applicant: Abes — companhia de assistência, bem-estar e serviços para seniores, Lda (São Pedro de Tomar, Portugal) (represented by: N. Mimoso Ruiz, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Consider its action for annulment to have been brought in due form and to be admissible, in accordance with Article 263 TFEU and for the purposes of Article 264 TFEU.

— Annul Decision C(2016) 5054 of 9 August 2016, in accordance with Article 263 TFEU, in so far as it considers that the measure described in the complaint does not constitute State aid within the meaning of Article 107(1) TFEU.

— Annul Decision C(2016) 5054 of 9 August 2016, in accordance with Article 263 TFEU, in so far as it considers that, even if the measure described in the complaint does constitute State aid, it is compatible with the internal market within the meaning of Article 107(3)(c) TFEU.

— Order the European Commission to pay the costs of the proceedings and the costs incurred by the applicant.

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 failure to state reasons. The applicant considers that the decision is vitiated by a failure to state reasons because in that decision it states that even if the measure constituted aid within the meaning of Article 107(1) TFEU, it would be compatible with the internal market in accordance with Article 107(3)(c) TFEU, although no reasons are given for that conclusion.

2. Second plea in law, alleging manifest error of assessment. The applicant considers that the decision is vitiated by an error of assessment as regards the effects of the aid measure on competition and on trade between Member States since the reasons which lead the Commission to assert that the effect of the aid measure in question on trade between Member States is purely hypothetical or presumed and that, if such an effect actually exists, it is only marginal, are not robust and in practice guarantee the proliferation of similar ad hoc aid measures, not only in the Tomar region but throughout the country, with the inherent consequences in terms of deterring national investment and investment from other Member States.

3. Third plea in law, alleging infringement of Article 107(1) TFEU, in so far as the Commission (i) failed to examine with the necessary care and objectivity whether the aid in question was liable to affect trade between Member States; (ii) did not take account of the fact that there is no threshold or percentage below which it can be considered *a priori* that trade between Member States is not affected; (iii) did not take account of the fact that the effect on trade between Member States does not depend on the local or regional nature of the services provided or the importance of the area of activity concerned; (iv) did not sufficiently emphasise that where State aid strengthens an undertaking's position vis-à-vis other competing undertakings, it should be considered that the undertakings competing with the recipient undertaking will enjoy less favourable conditions for financing new investments in the State concerned.

Action brought on 22 November 2016 — Netflix International and Netflix v Commission

(Case T-818/16)

(2017/C 030/59)

Language of the case: English

Parties

Applicants: Netflix International BV (Amsterdam, Netherlands) and Netflix, Inc. (Los Gatos, California, United States) (represented by: C. Alberdingk Thijm, S. van Schaik and S. van Velze, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision of 1 September 2016 declaring an amendment to the German act on measures for the promotion of German cinema in its seventh version compatible with the internal market ([1]); and

— order the Commission to pay the costs of these 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, alleging a violation of the Audiovisual Media Services Directive ([2]).

   — The Commission violated Article 13 (1) AVMSD in deciding that the German measure is compatible with this article interpreted in light of the proposed amendment.

   — The Commission violated Articles 2 (1), 2 (2) and 3 AVMSD in deciding that the German measure does not impinge the Country of Origin Principle.

2. Second plea in law, alleging a violation of Article 110 TFEU.

   — The Commission violated Article 110 TFEU in finding that the German measure is not discriminatory to on-demand audiovisual media service providers ('VOD providers') established outside Germany but targeting German audiences.

3. Third plea in law, alleging a violation of Article 56 TFEU.

   — The Commission violated Article 56 TFEU in failing to assess whether the German measure infringes the freedom to provide services, which it does.

4. Fourth plea in law, alleging a violation of Article 49 TFEU.

   — The Commission violated Article 49 TFEU in failing to assess whether the German measure infringes the freedom of establishment, which it does.

5. Fifth plea in law, alleging a violation of Article 107 TFEU.

   — The Commission violated Article 107 TFEU in finding that the German measure is a form of State Aid that can be justified by a cultural aim and is compatible with the Internal Market.

6. Sixth plea in law, alleging a violation of essential procedural requirements.

   — The Commission violated essential procedural requirements in failing to meet the standards of motivation as laid down in Article 296(2) TFEU and of the right to good administration as set out in Article 41 of the European Union Charter of Fundamental Rights ('EUCFR').

([1]) Commission Decision (EU) 2016/2042 of 1 September 2016 on the aid scheme SA.38418 — 2014/C (ex 2014/N) which Germany is planning to implement for the funding of film production and distribution (notified under document C(2016) 5551) (OJ 2016, L 314, p. 63).

([2]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ('AVMSD') (OJ 2010, L 95, p. 1)

Action brought on 25 November 2016 — Celio International v Commission

(Case T-832/16)

(2017/C 030/60)

Language of the case: English

Parties

Applicant: Celio International SA (Brussels, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium ([1]);

— in the alternative, annul Articles 2-4 of the Decision;

— in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an 'excess profit ruling' as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary's tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration; and

— 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 four pleas in law.

1. First plea in law, alleging manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the decision alleges the existence of an aid scheme.

2. Second plea in law, alleging violation of Article 107 TFEU and of the duty to state reasons and manifest error of assessment in so far as the decision qualifies the purported scheme as granting a selective advantage.

3. Third plea in law, alleging violation of Article 107 TFEU and of the duty to state reasons and manifest error of assessment in so far as the decision asserts that the purported scheme gives rise to an advantage.

4. Fourth plea in law, in the alternative alleging violation of Article 107 TFEU, infringement of legitimate expectations and of the proportionality principle, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the decision orders Belgium to recover aid.

([1]) Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (notified under document C(2015) 9837) (OJ L 260, 2016, p. 61)

Action brought on 28 November 2016 — Louvers Belgium v Commission

(Case T-835/16)

(2017/C 030/61)

Language of the case: French

Parties

Applicant: Louvers Belgium Company (Zaventem, Belgium) (represented by: V. Lejeune, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the European Commission of 19 September 2016 by which it rejected the applicant's tender and awarded contract No OIB.02/PO/2016/012/703 to the RIDEAUPRESS ITLINE group;

— uphold the claim for damages made by the applicant and, accordingly, order the European Commission to pay to the applicant the principal sum of EUR 387 500 as compensation for the damage sustained as a result of losing the contract, to be increased by default interest and judicially-determined interest calculated at the statutory rate until full payment is made;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons, the right of the applicant to good administration and the principle of transparency in so far as, despite repeated and insistent requests from the applicant, the Commission failed to inform it of the technical specifications of the successful tenderer's products or of the results of the report analysing the bids and samples sent by it to the Commission.

2. Second plea in law, alleging infringement of the principle of transparency and the principle of equal treatment of tenderers by the Commission both when drafting the tender specifications and when evaluating the bids submitted by tenderers. In particular, the applicant claims that:

   — First, when drafting the tender specifications, the defendant reproduced the technical characteristics and product photos included in a tender submitted by a tenderer in a previous procurement procedure, which had a similar subject matter but was cancelled without any justification being given, thus creating unjustified obstacles to competitive tendering;

   — Secondly, the defendant infringed the fundamental rule of equality of tenderers by laying down technical requirements which were highly restrictive and unjustified from a technical point of view and were obviously intended to match the products of a particular economic operator;

— Thirdly, the defendant failed objectively and independently to assess the tender submitted by the applicant in the procurement procedure at issue and unjustifiably rejected it since the applicant's products complied fully with the minimum technical requirements set out in the tender specifications and therefore fulfilled all of the criteria required.

Accordingly, in the context of this second plea, the applicant claims that the tender which it had submitted was technically compliant and therefore admissible. The European Commission ought to have assessed the financial merits of that tender and it would consequently have been required to award the contract to the applicant given that it had proposed the lowest price.

Action brought on 30 November 2016 — Republic of Poland v Commission

(Case T-836/16)

(2017/C 030/62)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Commission of 19 September 2016 in the case relating to State Aid SA.44351 (2016/C) (ex 2016/NN) — Poland — Polish tax on the retail sector, notified under document C(2016) 5596, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an incorrect classification of the Polish retail sales tax as State aid within the meaning of Article 107(1) TFEU as the result of a manifestly incorrect assessment of the condition of selectivity.

   — The Polish retail sales tax cannot be held to be *prima facie* selective because, in its design, there are no derogations from the reference system applicable to that tax; the progressive tax rates constitute an inherent element of the reference system of that tax.

   — Even if the view were to be taken that the two progressive tax rates are not an element of the reference system applicable to the Polish retail sales tax, it would have to be held that at least the more frequently applied tax rate is an element of the reference system; furthermore, the progressive tax rates do not constitute, in any event, a derogation in favour of certain undertakings which, in the light of the intrinsic objective of that tax, are in a similar factual and legal situation to other undertakings.

   — The progressive tax rates and the threshold amounts for the taxable bases in the Polish retail sales tax are, in any event, consistent with the principle of proportionality.

2. Second plea in law, alleging infringement of Article 13(1) of 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 and of the principle of proportionality by the ordering of immediate suspension of the application of the progressive rates of the Polish retail sales tax.

   — It was not necessary to issue a suspension injunction given that there were serious doubts as to whether the Polish retail sales tax was selective.

— It was not necessary to issue a suspension injunction in view of the Commission's failure to demonstrate that the application of the Polish retail sales tax had sufficiently negative effects.

3. Third plea in law, alleging that the statement of reasons in the contested decision is defective and insufficient.

— The contested decision was not duly and sufficiently justified in so far as it contains an assessment of the condition of selectivity of the Polish retail sales tax.

— The contested decision was not duly and sufficiently justified in so far as it orders the immediate suspension of the application of the progressive rates of the Polish retail sales tax.

Action brought on 24 November 2016 — Alex v Commission

(Case T-841/16)

(2017/C 030/63)

Language of the case: French

Parties

Applicant: Alex SCI (Bayonne, France) (represented by: J. Fouchet, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 21 September 2016;

— declare and hold that the aid paid to the Côte-Basque-Adour Conurbation Authority (CABAB) by the European Regional Development Fund (ERDF), the French State, the Aquitaine Regional Council and the Pyrénées Atlantiques Departmental Council is unlawful and incompatible with the common market;

and consequently,

— order the French State, the Aquitaine Regional Council, the Pyrénées Atlantiques Departmental Council, as decentralised state bodies, and the ERDF to recover the aid unlawfully paid, together with interest at the statutory rate as from the date on which that aid was made available;

— order the European Commission to bear all the costs of the proceedings, including lawyers' fees of EUR 5 000.

Pleas in law and main arguments

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

1. First plea in law, alleging the substantive unlawfulness of the decision of the European Commission.

2. Second plea in law, alleging a failure to notify the financing allocated to the 'Technocité' project, granted by the ERDF, the French Republic, the Aquitaine Regional Council and the Pyrénées Atlantiques Departmental Council to the CABAB.

3. Third plea in law, alleging the incompatibility of the financing with the internal market.

4. Fourth plea in law, alleging the non-performance of conditions to which the grant of the financing was subject.

Action brought on 7 December 2016 — Fertisac v ECHA

(Case T-855/16)

(2017/C 030/64)

Language of the case: Spanish

Parties

Applicant: Fertisac, SL (Atarfe, Spain) (represented by: J. Gómez Rodríguez, lawyer)

Defendant: European Chemicals Agency

Form of order sought

The applicant claims that the Court should:

— Annul ECHA Decision No SME (2016) 5150 of 15 November 2016 declaring that FERTISAC SL did not fulfil the requirements for the fee reduction provided for medium-sized enterprises and requiring it to pay an administrative fee.

— Annul ECHA invoice No 10060160 of 15 November 2016, issued on the basis of ECHA Decision No SME (2016) 5150, in the amount corresponding to the difference between the fee paid by FERTISAC SL and the fee payable for a large enterprise.

— Annul ECHA invoice No 10060161 of 15 November 2016 which determines the administrative fee in accordance with ECHA Decision No SME (2016) 5150.

— Order the European Chemicals Agency (ECHA) to pay 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 an error in the classification of FERTISAC SL as a large enterprise.

   — The applicant claims in this regard that Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36) (EC) provides that the category of micro, small and medium-sized enterprises (SMEs) is constituted by enterprises that employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million or an annual balance sheet not exceeding EUR 43 million.

   There are two threshold criteria to be met for an undertaking to be classified as an SME. It is not just a question of meeting only one of those criteria (as follows from the decision of the ECHA, inasmuch as it applied only one of those criteria: the annual turnover), clearly overlooking the first requirement, namely, the number of persons, which is clearly differentiated by the conjunction 'and'. However, at no time has FERTISAC SL exceeded the threshold of employing more than 250 persons.

2. Second plea in law, alleging misinterpretation by the defendant of Recommendation 2003/361.

   — The applicant claims in this regard that in order to determine its size only the data of the applicant and its associates should be taken into account. The applicant is not part of a group of enterprises. The user guide on the definition of a SME published by the European Commission confirms that interpretation. Moreover, Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94, as well as Council Directive 76/796/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC and recital 9 and Article 2 of Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6), refer to Recommendation 2003/361 for the purposes of defining SMEs.

Action brought on 7 December 2016 — Fútbol Club Barcelona v Commission

(Case T-865/16)

(2017/C 030/65)

Language of the case: Spanish

Parties

Applicant: Fútbol Club Barcelona (Barcelona, Spain) (represented by: J. Roca Sagarra, J. del Saz Cordero, R. Vallina Hoset and A. Selles Marco, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul European Commission Decision of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs.

— In the alternative, annul Articles 4 and 5 of that decision.

— Order the Commission to pay costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision infringes Article 49 TFEU, read in conjunction with Articles 107 and 108 TFEU, and Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter'), in so far as all the reasoning in the contested decision is based on a national rule which restricts freedom of establishment.

2. Second plea in law, alleging that the contested decision infringes Article 107(1) TFEU, in so far as the Commission (i) does not analyse the applicable deductions by reference to the rate for each [type of organisation]; (ii) does not act impartially, looking for evidence both for and against, and therefore, (iii) concludes incorrectly that there was an advantage within the meaning of Article 107(1) TFEU.

3. Third plea in law, alleging that the contested decision infringes (i) the principle of the protection of legitimate expectations by ordering the recovery of the alleged aid, taking into account that, in the light of the action of the Spanish administration and the duration of the proceedings, FC Barcelona could entertain a legitimate expectation as to the legality of the tax system to which it was subject, and (ii) the fundamental requirement of legal certainty.

4. Fourth plea in law, alleging that the contested decision infringes Article 107(1) TFEU, in so far as the Commission does not take into account that the aid was justified by the internal logic of the tax system.

5. Fifth plea in law, alleging that the contested decision infringes Article 108(1) TFEU and Articles 21 and 23 of 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), in so far as it orders the recovery of an existing aid and does not comply with the procedure for that type of aid.

Action brought on 11 December 2016 — QI and Others v Commission and ECB

(Case T-868/16)

(2017/C 030/66)

Language of the case: English

Parties

Applicants: QI (Athens, Greece) and 15 other applicants (represented by: S. Pappas and I. Ioannidis, lawyers)

Defendants: European Commission, European Central Bank

Form of order sought

The applicants claim that the Court should:

— order the European Union and/or the European System of Central Banks (ESCB) to compensate for the amounts described in the application corresponding to the damage that the applicants suffered from their illegal participation in the restructuring of the Greek government debt, due to the activation of the retrofit Collective Action Clauses;

— alternatively, order the Union and/or the European Central Bank (ECB) to compensate the applicants for the amounts described in the application corresponding to the damage suffered from the illegal exclusion of Greece's official sector creditors from the restructuring of the Greek government debt;

— in any case, order the ECB to compensate the applicants for the damages described in the application for each applicant emanating from the illegal exclusion of the ESCB from the restructuring of the Greek government debt;

— order the ECB and/or the Union to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions were taken ultra vires and contrary to Articles 120-126, 127 and 352(1) TFEU.

2. Second plea in law, alleging that the ECB's and the ESCB's actions regarding in particular the ESCB's exclusion from the restructuring violate Article 123 TFEU.

3. Third plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate the applicants' right to property protected under Article 17 of the Charter of Fundamental Rights.

4. Fourth plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate free movement of capital protected under Article 63 TFEU.

5. Fifth plea in law, alleging that the Union's and/or the ECB's and the ESCB's actions violate the applicants' right to equal treatment protected under Article 20 of the Charter of Fundamental Rights.

Action brought on 9 December 2016 — repowermap v EUIPO — Repower (REPOWER)

(Case T-872/16)

(2017/C 030/67)

Language in which the application was lodged: French

Parties

Applicant: repowermap.org (Bern, Switzerland) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Repower AG (Brusio, Switzerland)

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: International registration designating the European Union word mark 'REPOWER' — International registration designating the European Union No 1 020 351

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Second decision (after revocation) of the Fifth Board of Appeal of EUIPO of 26 September 2016 in Case R 2311/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— alter the contested decision by declaring the mark at issue invalid in respect of all the goods and services not cancelled by the contested decision, with the exception of packaging and storage of goods (Class 39), arrangement of travel (Class 39) and fire extinguishers (Class 9);

— order EUIPO and Repower AG to pay the costs.

Pleas in law

— Infringement of Article 7(1)(c) Regulation No 207/2009;

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 75 of Regulation No 207/2009 in relation with Article 296 TFEU.

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