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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 8 December 2016 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Verein für Konsumenteninformation v INKO, Inkasso GmbH

(Case C-127/15) ([1])

(Reference for a preliminary ruling — Directive 2008/48/EC — Consumer protection — Consumer credit — Article 2(2)(j) — Rescheduling agreements — Deferred payment, free of charge — Article 3(f) — Credit intermediaries — Debt recovery companies acting on behalf of lenders)

(2017/C 038/02)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: INKO, Inkasso GmbH

Operative part of the judgment

1. *Article 2(2)(j) and 3(f) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as meaning that a credit rescheduling agreement, which is concluded, following the consumer's default, between that consumer and the lender through a debt collection agency, is not agreed to 'free of charge', within the meaning of that article, where, by that agreement, the consumer undertakes to repay the total amount of that credit and to pay interest and costs that were not provided for by the initial contract under which that credit was granted;*

2. *Article 3(f) and Article 7 of Directive 2008/48 must be interpreted as meaning that a debt collection agency which concludes, on behalf of a lender, a rescheduling agreement for an unpaid credit, but which acts as a credit intermediary only in an ancillary capacity, which is for the referring court to determine, must be regarded as being a 'credit intermediary' within the meaning of Article 3(f) and is not subject to the obligation to provide the consumer with pre-contractual information under Articles 5 and 6 of that directive.*

([1]) OJ C 205, 22.6.2015.

Judgment of the Court (Fifth Chamber) of 8 December 2016 (request for a preliminary ruling from the Kúria — Hungary) — Stock '94 Szolgáltató Zrt. v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

(Case C-208/15) ([1])

(Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Integrated cooperation — Grant of financing and supplies of current assets necessary for agricultural production — Single, complex supply — Distinct and independent supplies — Ancillary supply and principal supply)

(2017/C 038/03)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Stock '94 Szolgáltató Zrt.

Defendant: Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that:

— *an integrated agricultural cooperation providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of that directive, in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers;*

— *the fact that an integrator may provide the farmers with additional services or buy their agricultural production has no bearing on the categorisation of the transaction at issue as a single transaction, for the purposes of Directive 2006/112.*

([1]) OJ C 236, 20.7.2015.

Judgment of the Court (Second Chamber) of 8 December 2016 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Criminal proceedings against A, B

(Case C-453/15) ([1])

(Reference for a preliminary ruling — Taxation — VAT — Directive 2006/112/EC — Article 56 — Place where services are supplied — Concept of 'similar rights' — Transfer of greenhouse gas emission allowances)

(2017/C 038/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

A, B

Intervener: Generalbundesanwalt beim Bundesgerichtshof

Operative part of the judgment

Article 56(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the 'similar rights' mentioned in that provision include the greenhouse gas emission allowances defined in Article 3(a) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

([1]) OJ C 363, 3.11.2015.

Judgment of the Court (First Chamber) of 8 December 2016 (requests for a preliminary ruling from the Audiencia Provincial de Zaragoza, Juzgado de Primera Instancia de Olot — Spain) — Eurosaneamientos SL, Entidad Urbanística Conservación Parque Tecnológico de Reciclado López Soriano, UTE PTR Acciona Infraestructuras SA v ArcelorMittal Zaragoza, SA (C-532/15), Francesc de Bolós Pi v Urbaser SA (C-538/15)

(Joined Cases C-532/15 and C-538/15) ([1])

(Reference for a preliminary ruling — Services provided by Procuradores de los Tribunales — Tariff — Jurisdictions — Derogation impossible)

(2017/C 038/05)

Language of the case: Spanish

Referring courts

Audiencia Provincial de Zaragoza, Juzgado de Primera Instancia de Olot

Parties to the main proceedings

Applicants: Eurosaneamientos SL, Entidad Urbanística Conservación Parque Tecnológico de Reciclado López Soriano, UTE PTR Acciona Infraestructuras SA (C-532/15), Francesc de Bolós Pi (C-538/15)

Defendants: ArcelorMittal Zaragoza, SA (C-532/15), Urbaser SA (C-538/15)

Intervener: Consejo General de Procuradores de España (C-532/15)

Operative part of the judgment

1. *Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which makes the fees of procuradores subject to a tariff which may be increased or decreased only by 12 %, in respect of which the national courts merely check its strict application without being in a position, in exceptional circumstances, to derogate from the limits set by that tariff.*

2. *The Court of Justice of the European Union does not have jurisdiction to answer the second and third questions in Case C-532/15 and the third to fifth questions in Case C-538/15 referred by the Audiencia Provincial de Zaragoza (Provincial Court, Zaragoza, Spain) and the Juzgado de Primera Instancia de Olot (Court of First Instance, Olot, Spain) respectively.*

([1]) OJ C 429, 21.12.2015.

Judgment of the Court (Fourth Chamber) of 8 December 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Undis Servizi Srl v Comune di Sulmona

(Case C-553/15) ([1])

(Reference for a preliminary ruling — Public service contracts — Award of the contract without initiating a tendering procedure — So-called 'in-house' award — Conditions — Similar control — Performance of the essential activity — Successful public capital tendering company owned by several local authorities — Activity also carried out for the benefit of local authorities which are not shareholders — Activity imposed by a public authority which is not a shareholder)

(2017/C 038/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Undis Servizi Srl

Defendant: Comune di Sulmona

Other party to the proceedings: Cogesa SpA

Operative part of the judgment

1. *In the context of the application of the Court's case-law on direct awards of so-called 'in-house' public contracts, in order to determine whether the contractor carries out the essential part of its activity for the contracting authority, including local authorities which are its controlling shareholders, an activity imposed on that contractor by a non-shareholder public authority for the benefit of local authorities which are also not shareholders of that contractor and do not exercise any control over it must not be taken into account, since that activity must be regarded as being carried out for third parties.*

2. *For the purpose of determining whether the contractor carries out the essential part of its activity for the shareholder local authorities which jointly exercise over it control similar to that which they exercise over their own departments, account must be taken of all the circumstances of the case, which may include activity carried out by that contractor for those local authorities before such joint control took effect.*

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Tenth Chamber) of 8 December 2016 (request for a preliminary ruling from the Hoge Raad der Nederlanden — the Netherlands) — Staatssecretaris van Financiën v Lemnis Lighting BV

(Case C-600/15) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 8539, 8541, 8543, 8548 and 9405 — Light-emitting diode bulbs (LED))

(2017/C 038/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Lemnis Lighting BV

Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1214/2007 of 20 September 2007, must be interpreted as meaning that goods such as the LED bulbs at issue in the main proceedings fall, subject to the referring court's assessment of all the facts before it, under heading 8543 of that nomenclature.

([1]) OJ C 48, 8.2.2016.

Judgment of the Court (Sixth Chamber) of 7 December 2016 (request for a preliminary ruling from the Općinski sud u Velikoj Gorici — Croatia) — Vodoopskrba i odvodnja d.o.o. v Željka Klafurić

(Case C-686/15) ([1])

(Reference for a preliminary ruling — Environment — Directive 2000/60/EC — Framework for an EU water policy — Recovery of the costs of services connected with water use — Calculation of the amount due from the consumer — Variable component related to actual consumption and fixed component independent of that consumption)

(2017/C 038/08)

Language of the case: Croatian

Referring court

Općinski sud u Velikoj Gorici

Parties to the main proceedings

Applicant: Vodoopskrba i odvodnja d.o.o.

Defendant: Željka Klafurić

Operative part of the judgment

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides that the price of water services invoiced to the consumer includes not only a variable component calculated according to the volume of water actually consumed by the person concerned, but also a fixed component which is not connected with that volume.

([1]) OJ C 111, 29.3.2016.

Request for a preliminary ruling from the Tribunalul Specializat Mureș (Romania) lodged on 21 October 2016 — Michael Tibor Bachman v FAER IFN SA

(Case C-535/16)

(2017/C 038/09)

Language of the case: Romanian

Referring court

Tribunalul Specializat Mureș

Parties to the main proceedings

Applicant: Michael Tibor Bachman

Defendant: FAER IFN SA

Question referred

Must Article 2([b]) of Directive 93/13/EEC, ([1]) which defines the term 'consumer', be interpreted as covering also a natural person who, by means of a novation agreement, has undertaken to repay to a commercial operator, which is a professional lending institution, loans originally granted to a company for purposes inherent in that company's business activity, that is to say, for investment in the business of the carriage of goods by road, in the case where [that] natural person has no evident link with that company but acted in that way on the basis of links, outside his trade, business or profession, with the person who controlled the company which received the original loans and also with the persons who signed contracts ancillary to the original loan contracts (contracts of guarantee, contracts providing immovable property as security/ mortgages)?

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

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Amsterdam (Netherlands) lodged on 31 October 2016 — A, S v Staatssecretaris van Veiligheid en Justitie

(Case C-550/16)

(2017/C 038/10)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Amsterdam

Parties to the main proceedings

Applicants: A, S

Defendant: Staatssecretaris van Veiligheid en Justitie

Question referred

In matters relating to family reunification for refugees, must the term 'unaccompanied minor', within the meaning of Article 2(f) of Council Directive 2003/86/EC ([1]) of 22 September 2003 on the right to family reunification, also cover a third-country national or stateless person below the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible by law or custom and who:

— applies for asylum,

— during the asylum procedure, attains the age of 18 on the territory of the Member State,

— is granted asylum with retroactive effect to the date of the application, and

— subsequently applies for family reunification?

(1) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 3 November 2016 — Lutz GmbH v Hauptzollamt Hannover

(Case C-556/16)

(2017/C 038/11)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Lutz GmbH

Defendant: Hauptzollamt Hannover

Questions referred

1. (a) Are the European Commission Explanatory Notes to the Combined Nomenclature of the European Union (1) on subheading 6212 2000 (OJ 2015 C 76, p. 1, at p. 255) to be interpreted as meaning that a panty girdle has 'restricted horizontal' elasticity where the horizontal elasticity is less than the vertical elasticity?

   (b) If the answer to Question 1(a) is in the affirmative:

   On the basis of which objective criteria is this comparison between vertical and horizontal elasticity to be made?

2. If the answer to Question 1(a) is in the negative:

   (a) Are the European Commission Explanatory Notes to the Combined Nomenclature of the European Union on subheading 6212 2000 (OJ 2015 C 76, p. 1, at p. 255) to be interpreted as meaning that a panty girdle has 'restricted horizontal' elasticity only where the horizontal elasticity is clearly less than the vertical elasticity?

   (b) If the answer to Question 2(a) is in the affirmative:

   On the basis of which objective criteria is this comparison between vertical and horizontal elasticity to be made and which assessment criterion should be applied in that respect?

3. If the answer to Question 2(a) is in the negative:

   (a) Are the European Commission Explanatory Notes to the Combined Nomenclature of the European Union on subheading 6212 2000 (OJ 2015 C 76, p. 1, at p. 255) to be interpreted as meaning that the restriction of horizontal elasticity in panty girdles is not defined by a comparison between vertical and horizontal elasticity but refers rather to an absolute restriction of horizontal elasticity?

   (b) If the answer to Question 3(a) is in the affirmative:

   On the basis of which objective criteria is it necessary to examine whether the elasticity of a panty girdle is restricted horizontally within the meaning referred to under 3(a)?

(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 14 November 2016 — Nikolay Kantarev v Balgarska narodna banka

(Case C-571/16)

(2017/C 038/12)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Nikolay Kantarev

Defendant: Balgarska narodna banka

Questions referred

1. Are Article 4(3) TEU and the principles of equivalence and effectiveness to be interpreted as permitting, in the absence of national rules, the courts having jurisdiction and the procedure for hearing actions for damages based on an infringement of EU law to be determined by reference to the authority which committed the infringement and by reference to the nature of the act/failure to act through which the infringement was committed if, as a result of the application of those criteria, the actions are heard by different courts, general and administrative courts, on the basis of different codes of procedure, the Code of civil procedure [Grazhdansko-protsesualen kodeks, GPK] and the Code of administrative procedure [Administrativnoprotsesualen kodeks, APK], which require payment of different fees, namely proportionate and flat-rate, and proof of satisfaction of different conditions, including fault?

2. Are Article 4(3) TEU and the requirements laid down by the Court in *Frankovich* to be interpreted as precluding [the possibility of] actions for damages based on an infringement of EU law being heard in a procedure such as that under Article 45 and Article 49 of the Law on obligations and contracts [Zakon za zadalzheniata i dogovorite, ZZD], which requires payment of a proportionate fee and proof of fault, and also in a procedure such as that under Article 1 of the Law on liability of the State and of municipalities for damage [Zakon za otgovornostta na darzhavata i obshtinite za vredi, ZODOV], which provides for objective liability and includes special rules to facilitate access to the courts, but which is nevertheless applicable only to damage arising from annulled unlawful legal acts and unlawful acts/failures to act by the administration and does not cover infringements of EU law committed by other State authorities through legal acts/failures to act not annulled under the procedure in question?

3. Are Article 1(3)(i) and Article 10(1) of Directive 94/19 ([1]) to be interpreted as permitting a legislative approach such as that taken in Article 36(3) of the Law on credit institutions [Zakon za kreditnite institutsii, ZKI] and Article 23(5) of the Law on guarantees for bank deposits [Zakon za garantirane na vlogovete v bankite, ZGVB], under which '*the condition that the credit institution concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and to have no current prospect of being able to do so*' is a synonymous with the declaration of the insolvency of the institution and the withdrawal of its authorisation and the deposit-guarantee scheme takes action from the time of withdrawal of the banking licence?

4. Is Article 1(3) of Directive 94/19 to be interpreted as meaning that in order for a deposit to be classified as 'unavailable', its unavailability must be expressly determined by the 'relevant competent authorities' after completing the assessment pursuant to point i of that provision or does it permit, where there is a gap in national law, the assessment and the intention of the 'relevant competent authority' to be inferred by way of an interpretation of other legal acts of that authority — in the present case, for example, Decision No 73 of 20 June 2014 of the Management Board (upravitelen savet, US) of the BNB, by which 'KTB' AD was placed under special supervision — or to be presumed in the light of circumstances like those in the main proceedings?

5. Under circumstances like those in the main proceedings, where, by Decision No 73 of 20 June 2014 of the Management Board of the BNB, all payments and transactions were suspended and in the period from 20 June 2014 to 6 November 2014 depositors were neither able to make requests for payment nor had access to their deposits, are all secured indefinite deposits (which may be disposed of without prior notice and which are to be paid out immediately upon request) to be considered as unavailable within the meaning of Article 1(3)(i) of Directive 94/19 or does the condition that a deposit 'is due and payable but has not been paid by a credit institution' mean that depositors with the credit institution must have made a claim for payment (by application or request) which was not granted?

6. Are Article 1(3)(i), Article 10(1) of Directive 94/19 and recital 8 of Directive 2009/14 ([2]) to be interpreted as meaning that the discretion enjoyed by the 'relevant competent authorities' in respect of the assessment under Article 1(3)(i) is in any case limited by the time-limit laid down in the second sentence of point i or do they permit, for the purposes of special supervision, as under Article 115 of the ZKI, deposits to remain unavailable for longer periods than provided for in the directive?

7. Do Article 1(3)(i) and Article 10(1) of Directive 94/19 have direct effect and do they confer on holders of deposits in a bank which is a member of a deposit-guarantee scheme, in addition to their right to compensation under that scheme up to the amount specified in Article 7(1) of Directive 94/19, the right to hold the State liable for an infringement of EU law by bringing an action against the authority required to determine the unavailability of deposits, seeking compensation for the damage which has arisen as a result of the late payment of the guaranteed deposit, if the decision under Article 1 (3)(i) was taken after the expiry of the time-limit of five days laid down in the directive and that lateness is due to the effect of a reorganisation measure which was intended to protect the bank from insolvency and was adopted by that authority, or, in circumstances like those in the main proceedings, do they permit a national provision such as Article 79 (8) of the ZKI, under which the BNB, its organs and persons authorised by them are liable for damage arising in the performance of their supervisory activity only if it was caused intentionally?

8. Does an infringement of EU law where 'the relevant competent authority' has not taken a decision pursuant to Article 1 (3)(i) of Directive 94/19 constitute a 'sufficiently serious breach' which can trigger the liability of a Member State for damage by way of an action brought against the supervisory authority, under what conditions is this the case and, in this connection, are the following circumstances relevant: (a) that the Bank Deposit Guarantee Fund [Fond za garantirane na vlogovete v bankite, FGVB] did not have sufficient funds to cover all the guaranteed deposits; (b) that in the period in which payments were suspended the credit institution was placed under special supervision in order to protect it against insolvency; (c) that the applicant's deposit was paid out after the BNB had established that the reorganisation measures had been unsuccessful; [(d)] that the applicant's deposit was paid out together with income from interest, calculated for the period from 20 June 2014 to 6 November 2014 inclusive?

([1]) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5).

([2]) Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ 2009 L 68, p. 3).

Request for a preliminary ruling from the Cour d'appel de Versailles (France) lodged on 17 November 2016 — Green Yellow Canet en Roussillon SNC v Enedis, SA

(Case C-583/16)

(2017/C 038/13)

Language of the case: French

Referring court

Cour d'appel de Versailles

Parties to the main proceedings

Applicant: Green Yellow Canet en Roussillon SNC

Defendant: Enedis, SA

Questions referred

1. Must Article 107(1) TFEU be interpreted as meaning that the obligation to purchase the electricity generated by plants which use solar radiation energy at a price higher than the market price, that is financed by all final consumers of electricity, as it results from the Ministerial Orders of 10 July 2006 (JORF No 171 of 26 July 2006, p. 11133) and 12 January 2010 (JORF No 0011 of 14 January 2010, p. 727) fixing the conditions for purchasing that electricity, read in conjunction with Law No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, Decree No 2000-1196 of 6 December 2000 and Decree No 2001-410 of 10 May 2001, constitutes State aid?

2. If so, must Article 108(3) TFEU be interpreted as meaning that the failure to notify the European Commission of that mechanism beforehand affects the validity of the abovementioned Orders giving effect to the aid at issue?

Request for a preliminary ruling from the Cour d'appel de Versailles (France) lodged on 17 November 2016 — Green Yellow Hyères Sup SNC v Enedis, SA

(Case C-584/16)

(2017/C 038/14)

Language of the case: French

Referring court

Cour d'appel de Versailles

Parties to the main proceedings

Applicant: Green Yellow Hyères Sup SNC

Defendant: Enedis, SA

Questions referred

1. Must Article 107(1) TFEU be interpreted as meaning that the obligation to purchase the electricity generated by plants which use solar radiation energy at a price higher than the market price, that is financed by all final consumers of electricity, as it results from the Ministerial Orders of 10 July 2006 (JORF No 171 of 26 July 2006, p. 11133) and 12 January 2010 (JORF No 0011 of 14 January 2010, p. 727) fixing the conditions for purchasing that electricity, read in conjunction with Law No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, Decree No 2000-1196 of 6 December 2000 and Decree No 2001-410 of 10 May 2001, constitutes State aid?

2. If so, must Article 108(3) TFEU be interpreted as meaning that the failure to notify the European Commission of that mechanism beforehand affects the validity of the abovementioned Orders giving effect to the aid at issue?

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 21 November 2016 — Mario Alexander Filippi and Others

(Case C-589/16)

(2017/C 038/15)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: Mario Alexander Filippi, Martin Manigatterer, Play For Me GmbH, ATG GmbH, Christian Vöcklinger, Gmalieva s. r.o., PBW GmbH, Felicitas GmbH, Celik KG, Christian Guzy, Martin Klein, Shopping Center Wels Einkaufszentrum GmbH, Game Zone Entertainment AG, Fortuna Advisory Kft., Finanzamt Linz, Klara Matyiko

Defendants: Landespolizeidirektion Oberösterreich, Bezirkshauptmann Eferding, Bezirkshauptmann Ried im Innkreis, Bezirkshauptmann Linz-Land

Question referred

Is Article 47 of the Charter ([1]) in conjunction with Article 56 et seq. TFEU to be interpreted as meaning that, in cases in which it is necessary to make an assessment of consistency, national provisions (such as Paragraph 86a(4) of the Verfassungsgerichtshofgesetz (VfGG), Paragraph 38a(4) of the Verwaltungsgerichtsgesetz (VwGG), Paragraph 87(2) of the VfGG or Paragraph 63(1) of the VwGG) are incompatible with those provisions of EU law where — as part of an overall system which in practice has the effect that supreme courts do not carry out any autonomous assessment of the facts or weighing of evidence, and in numerous cases which are in the same position in terms of the question of law raised make only a single decision on the facts in one of those cases and on that basis dismiss all the other appeals in limine — they permit, or do not reliably exclude, that judicial (within the meaning of Article 6(1) of the European Convention on Human Rights (ECHR) or Article 47 of the Charter) decisions — in particular those made in relation to core areas of EU law, such as for example access to markets or free trade — can then be precluded by decisions of institutions of higher instance which for their part do not comply with the requirements of Article 6(1) of the ECHR or Article 47 of the Charter, without a prior reference to the Court of Justice for a preliminary ruling?

([1]) Charter of Fundamental Rights of the European Union.

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 23 November 2016 — Cabinet d'Orthopédie Stainier SPRL v État belge

(Case C-592/16)

(2017/C 038/16)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Cabinet d'Orthopédie Stainier SPRL

Defendant: État belge

Questions 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 L 222, 14.08.1978, 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 assessed, 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);

…?'

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 28 November 2016 — C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs

(Case C-612/16)

(2017/C 038/17)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: C & J Clark International Ltd

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Does a statute of limitations apply to the collection of the anti-dumping duty imposed by Commission Implementing Regulation (EU) 2016/1395 ([1]) of 18 August 2016 and Commission Implementing Regulation (EU) 2016/1647 ([2]) of 13 September 2016 (together referred to as 'Contested Regulations"), and, if so, on the basis of which legal provision?

2. Are the Contested Regulations invalid because they lack a valid legal basis, and as such violate Articles 5(1) and 5(2) TEU?

3. Are the Contested Regulations invalid because they violate Article 266 TFEU by failing to take the necessary measures to comply with the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 C&J Clark International?

4. Are the Contested Regulations invalid because they violate Article 10(1) of Regulation (EU) 2016/1036 ([3]) or the principle of legal certainty (non-retroactivity) by imposing an anti-dumping duty on import of certain leather footwear originating in the People's Republic of China and Vietnam which took place during the period of application of Council Regulation (EC) 1472/2006 ([4]) and Council Regulation (EU) 1294/2009 ([5])?

5. Are the Contested Regulations invalid because they violate Article 21 of Regulation (EU) 2016/1036 by re-imposing an anti-dumping duty without conducting a fresh Union interest assessment?

(1) Commission Implementing Regulation (EU) 2016/1395 of 18 August 2016 reimposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckinghan Shoe Mfg Co. Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co. Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 OJ L 225, p. 52

(2) Commission Implementing Regulation (EU) 2016/1647 of 13 September 2016 Re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co, Ltd, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 OJ L 245, p. 16

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

(4) Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam OJ L 275, p. 1

(5) Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 OJ L 352, p. 1

Reference for a preliminary ruling from Upper Tribunal (United Kingdom) made on 29 November 2016 — Rafal Prefeta v Secretary of State for Work and Pensions

(Case C-618/16)

(2017/C 038/18)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Applicant: Rafal Prefeta

Defendant: Secretary of State for Work and Pensions

Questions referred

1. Did Annex XII of the Treaty of Accession permit Member States to exclude Polish nationals from the benefits of Article 7 (2) of the Workers Regulation (1) and Article 7(3) of the Citizenship Directive (2) where the worker, though he had belatedly complied with the national requirement that his employment be registered, had not yet worked for an uninterrupted registered twelve month period?

2. If the answer to the first question is 'no,' may a Polish national worker in the circumstances in question 1 rely on Article 7(3) of the Citizenship Directive which concerns retention of worker status?

(1) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (Text with EEA relevance)
OJ 2011 L 141, p. 1

(2) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)
OJ 2004 L 158, p. 77

Request for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 29 November 2016 — Sebastian W. Kreuziger v Land Berlin

(Case C-619/16)

(2017/C 038/19)

Language of the case: German

Referring court

Oberverwaltungsgericht Berlin-Brandenburg

Parties to the main proceedings

Appellant: Sebastian W. Kreuziger

Respondent: Land Berlin

Questions referred

1. Is Article 7(2) of Directive 2003/88/EC ([1]) to be interpreted as meaning that it precludes national legislation or practice in accordance with which the entitlement to an allowance in lieu on termination of the employment relationship is excluded where the worker did not apply for paid annual leave even though he could have?

2. Is Article 7(2) of Directive 2003/88/EC to be interpreted as meaning that it precludes national legislation or practice in accordance with which the entitlement to an allowance in lieu on termination of the employment relationship presupposes that, for reasons beyond his control, the worker was unable to exercise his right to paid annual leave before the end of the employment relationship?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Action brought on 29 November 2016 — European Commission v Federal Republic of Germany

(Case C-620/16)

(2017/C 038/20)

Language of the case: Germany

Parties

Applicant: European Commission (represented by: W. Mölls, L. Havas and J. Hottiaux, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that the Federal Republic of Germany infringed Council Decision 2014/699/EU ([1]) and Article 4(3) TEU, in so far as, at the 25th meeting of the OTIF Revision Committee, it voted against the common position laid down in that decision and expressed open opposition both to that common position and to the exercise of voting rights by the EU provided for therein.

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law:

The Intergovernmental Organisation for International Carriage by Rail (OTIF), of which the EU alongside 26 Member States is a member, administers the Convention concerning International Carriage by Rail (COTIF).

At the 25th meeting of the OTIF Revision Committee a vote was held with respect to certain changes to the convention and its annexes. The Council laid down the EU common position with regard to several of those points in Decision 2014/699/EU.

At the meeting, the Federal Republic of Germany voted in two points against the common position laid down in that decision, expressed open opposition to that common position and in one case also to exercise of voting rights by the EU provided for in the decision.

That conduct is incompatible with Decision 2014/699/EU and with Article 4(3) TEU.

(1) Council Decision 2014/699/EU of 24 June 2014 establishing the position to be adopted on behalf of the European Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto (OJ L 293, p. 26).

Appeal brought on 25 November 2016 by Scuola Elementare Maria Montessori Srl against the judgment delivered by the General Court (Eighth Chamber) on 15 September 2016 in Case T-220/13 Scuola Elementare Maria Montessori v Commission

(Case C-622/16 P)

(2017/C 038/21)

Language of the case: Italian

Parties

Appellant: Scuola Elementare Maria Montessori Srl (represented by: E. Gambaro, F. Mazzocchi, lawyers)

Other parties to the proceedings: European Commission, Italian Republic

Form of order sought

— Set aside the judgment dismissing the action brought by Scuola Elementare Maria Montessori and, consequently, annul Commission Decision 2013/284/EU (1) in so far as it considered that the recovery of the aid in the form of the exemption from the imposta comunale sugli immobili (ICI) (municipal tax on real estate) should not be ordered and that the measures relating to the exemption from IMU (imposta municipale propria) (the Municipality's own property tax) did not fall within the scope of Article 107(1) TFEU;

— in any event set aside those parts of the judgment covered by such pleas in the appeal as the Court may find valid and well founded;

— order the Commission to pay the costs at first instance and on appeal.

Pleas in law and main arguments

1) By its first plea in law, divided into four parts, Scuola Elementare Maria Montessori claims infringement and misapplication of Article 108 TFEU, Article 14(1) of Regulation (EC) No 659/1999 (2) and the duty of sincere cooperation in Article 4(3) TEU, misinterpretation of the concept of absolute impossibility, incorrect legal characterisation of the facts, distortion of certain evidence and contradictory reasoning, in that the General Court found that the Commission did not err in failing to order the Italian Republic to recover the sums relating to the tax exemptions which non-commercial entities for specific purposes benefitted from under the ICI rules, which the Commission considered unlawful and incompatible with the internal market.

2) By its second plea in law, Scuola Elementare Maria Montessori claims that Article 107(1) TFEU was infringed and misapplied in that the General Court found that the IMU exemption, which replaced the ICI rules as of 2012, did not constitute State aid for the purposes of Article 107(1) TFEU.

(1) Commission Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ 2013 L 166, p. 24).

(2) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 25 November 2016 by the European Commission against the judgment of the General Court (Eighth Chamber) of 15 September 2016 in Case T-220/13, Scuola Elementare Maria Montessori v Commission

(Case C-623/16 P)

(2017/C 038/22)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Stancanelli, D. Grespan, F. Tomat, acting as agents)

Other parties to the proceedings: Scuola Elementare Maria Montessori Srl, Italian Republic

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal to the extent that it declares the proceedings at first instance admissible for the purpose of the final limb of the fourth paragraph of Article 263 TFEU;

— declare the action at first instance inadmissible for the purpose of the second and last limb of the fourth paragraph of Article 263 TFEU and consequently dismiss it in its entirety;

— order Scuola Elementare Maria Montessori to pay the costs incurred by the Commission in the proceedings before the General Court and in the present proceedings.

Pleas in law and main arguments

By a single plea in law, divided into three parts, the Commission claims that the last limb of the fourth paragraph of Article 263 TFEU was misinterpreted and misapplied, in that the General Court ruled that the applicant's action at first instance was admissible on the basis of that provision. In particular, the General Court erred in law by finding that the contested act amounted to a regulatory act which was of direct concern to the applicant at first instance and did not entail implementing measures in respect of the applicant itself.

Appeal brought on 25 November 2016 by the European Commission against the judgment of the General Court (Eighth Chamber) of 15 September 2016 in Case T-219/13, Ferracci v Commission

(Case C-624/16 P)

(2017/C 038/23)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Stancanelli, D. Grespan, F. Tomat, acting as agents)

Other parties to the proceedings: Pietro Ferracci, Italian Republic

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal to the extent that it declares the proceedings at first instance admissible for the purpose of the final limb of the fourth paragraph of Article 263 TFEU;

— declare the action at first instance inadmissible under the second and last limb of the fourth paragraph of Article 263 TFEU and consequently dismiss it in its entirety;

— order Mr Ferracci to pay the costs incurred by the Commission in the proceedings before the General Court and in the present proceedings.

Pleas in law and main arguments

By a single plea in law, divided into three parts, the Commission claims that the last limb of the fourth paragraph of Article 263 TFEU was misinterpreted and misapplied in that the General Court ruled that the action of the applicant at first instance was admissible on the basis of that provision. In particular, the General Court erred in law by finding that the contested act amounted to a regulatory act which was of direct concern to the applicant at first instance and did not entail implementing measures in respect of the applicant himself.

Request for a preliminary ruling from the Conseil du contentieux des étrangers (Belgium) lodged on 12 December 2016 — X, X v État belge

(Case C-638/16)

(2017/C 038/24)

Language of the case: French

Referring court

Conseil du contentieux des étrangers

Parties to the main proceedings

Applicants: X, X

Defendant: État belge

Questions referred

1. Do the 'international obligations', referred to in Article 25(1)(a) of Regulation No 810/2009 ([1]) of 13 July 2009 establishing a Community Code on Visas cover all the rights guaranteed by the Charter of Fundamental Rights of the European Union, including, in particular, those guaranteed by Articles 4 and 18, and do they also cover obligations which bind the Member States, in the light of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 33 of the Geneva Convention Relating to the Status of Refugees?

2. A. In view of the answer given to the first question, must Article 25(1)(a) of Regulation No 810/2009 of 13 July 2009 establishing a Community Code on Visas be interpreted as meaning that, subject to its discretion with regard to the circumstances of the case, a Member State to which an application for a visa with limited territorial validity has been made is required to issue the visa applied for, where a risk of infringement of Article 4 and/or Article 18 of the Charter of Fundamental Rights of the European Union or another international obligation by which it is bound is detected?

   B. Does the existence of links between the applicant and the Member State to which the visa application has been made (for example, family connections, host families, guarantors and sponsors) affect the answer to that question?

([1]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

Appeal brought on 9 December 2016 by Greenpeace Energy eG against the order of the General Court (Fifth Chamber) of 26 September 2016 in Case T-382/15, *Greenpeace Energy eG* v *European Commission*

(Case C-640/16 P)

(2017/C 038/25)

Language of the case: German

Parties

Appellant: Greenpeace Energy eG (represented by: D. Fouquet, S. Michaels and J. Nysten, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of 26 September 2016 in Case T-382/15, *Greenpeace Energy eG*, in regard to the appellant,

— refer the case back to the General Court for the purposes of a decision,

— order the respondent to pay the full costs of the proceedings, including legal and travel costs.

Grounds of appeal and main arguments

The appellant raises the following five grounds of appeal in support of its appeal:

1. The General Court evidently took the view that the third variation in the fourth paragraph of Article 263 TFEU requires that regulatory acts that are challengeable pursuant to that provision must have general application. Such a legal position must, however, be regarded as erroneous in law, especially in view of the wording as well as the origin of the provision, including the intention of the European Union legislature.

2. The General Court appears to assume that the requirement of direct concern in the case of legal acts which entail no implementing measures involves two separate criteria that are subject to separate examination. In the present case, however, that assumption must be refuted since, on the one hand, no further implementing measures within the meaning of that provision, neither through the United Kingdom nor through the European Commission, are necessary and, on the other hand, immediate effects on the market occur with the granting of aid, that is to say, immediate effects on competition are felt by the appellant.

3. The General Court criticises the inadequacy of the appellant's submission that it is directly and individually concerned. However, it thereby misjudges the information submitted or, at the very least, fails to take it sufficiently into account.

4. The General Court appears to take the view that a possibility of individualisation under the second variation in the fourth paragraph of Article 263 TFEU following the *Plaumann* case-law must already be rejected if there may be other undertakings that are affected by the effects on competition of the granting of aid in the same way as the appellant. In view of the case-law, however, in particular in Case C-309/89 *Codorniu*, this appears to be a legally incorrect, and, moreover, a restrictive, interpretation. Furthermore, the appellant refers to its submissions concerning the facts in the application, which make clear a sufficient possibility of individualisation but which clearly were not, or were not adequately, taken into account by the General Court.

5. The General Court appears to assume that effective legal protection against a Commission decision authorising aid can be provided through national courts. This would mean that the EU legislature, by imposing an obligation on the Member States to provide sufficient remedies (Article 19(1), second subparagraph, TEU), wishes to leave the review of individual acts of the EU institutions, such as the European Commission, to the courts of the Member States. This view cannot, however, be followed, whether by reason of the case-law of the Court of Justice on EU acts and the existing remedies or, in particular, by reason of the division of powers between national courts and the European Commission in State-aid law, and must accordingly be treated as constituting an error of law.

Action brought on 20 December 2016 — European Commission v Council of the European Union

(Case C-659/16)

(2017/C 038/26)

Language of the case: French

Parties

Applicant: European Commission (represented by: A. Bouquet, E. Paasivirta and Ch. Hermes, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul in part the Council's Decision of 10 October 2016, adopted by Note point 'I/A', concerning the establishment of the European Union's position for the 35th annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) (Hobart, Australia, from 17 to 28 October 2016), in so far as concerns the creation of three marine protected areas and the creation of special study areas (Documents 12523/16 and 12445/16);

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

Pleas in law and main arguments

The Commission requests the Court to annul the Council's decision of 10 October 2016 in so far as the Council required that proposals to the Commission for the conservation of Antarctic marine living resources with a view to the creation of three marine protected areas in the Weddell Sea, the Ross Sea and the East Antarctic and a system of special study areas be submitted or supported on behalf of the European Union and its Member States, rather than being submitted or supported on behalf of the European Union alone.

The Commission maintains that, by taking the view that competence in the matter is shared and that, as a result, the discussion document should be decided by consensus and submitted on behalf of the European Union and its Member States, the contested decision is unlawful, in so far as it thus precludes the Commission from submitting that document on behalf of the European Union alone, in breach of the European Union's exclusive competence in the matter (and of the Commission's prerogatives to represent the European Union).

The Commission relies on two pleas in law in support of its action for annulment of the contested decision.

In the first place, the Commission submits that by adopting the contested act, the Council acted in breach of the European Union's exclusive competence in the matter of the conservation of marine biological resources, as laid down in Article 3(1)(d) TFEU (first plea in law). First, the Commission argues that the Council disregarded the legal context of the measure concerned by the contested act, both in connection with the Convention for the Conservation of Antarctic Marine Living Resources and with the European Union. Second, the Commission maintains that the Council disregarded the purpose and the content of that measure.

In the second place (in the alternative), the Commission submits that even if the measure did not have to be regarded as a measure for the conservation of marine biological resources within the meaning of Article 3(1)(d) TFEU, by adopting the contested act the Council infringed, in any event, the European Union's exclusive competence inasmuch as the European Union has exclusive external competence in the matter because the measure envisaged may affect rules of the European Union or alter their scope for the purpose of Article 3(2) TFEU (second plea in law). First, the Commission argues that the Council disregarded the fact that the measure envisaged may affect or alter two regulations of secondary law (Regulation (EC) No 600/2004 and Regulation (EC) No 601/2004). Second, the Commission maintains that the Council did not take account of the effect on, or alteration of, the framework position of the European Union of June 2014.

GENERAL COURT

Judgment of the General Court of 15 December 2016 — Gul Ahmed Textile Mills v Council

(Case T-199/04 RENV) ([1])

(Dumping — Imports of cotton-type bed linen originating in Pakistan — Interest in bringing proceedings — Initiation of the investigation — Constructed normal value — Manifest error of assessment — Rights of the defence — Obligation to state reasons — Right to be heard at a hearing — Comparison between the normal value and the export price — Drawback of import duties — Adjustment — Injury — Causal link — WTO law)

(2017/C 038/27)

Language of the case: English

Parties

Applicant: Gul Ahmed Textile Mills Ltd (Karachi, Pakistan) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: Council of the European Union (represented by: J.-P. Hix, Agent, and by R. Bierwagen and C. Hipp, lawyers)

Intervener in support of the defendant: European Commission (represented by: J.-F. Brakeland and A. Stobiecka Kuik)

Re:

Action pursuant to Article 263 TFEU for annulment of Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive antidumping duty on imports of cotton-type bed linen originating in Pakistan (OJ 2004 L 66, p. 1), in so far as it concerns the applicant

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Gul Ahmed Textile Mills Ltd to pay the costs of the Council of the European Union;*

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

([1]) OJ C 217, 28.8.2004.

Judgment of the General Court of 15 December 2016 — DEI v Commission

(Case T-169/08 RENV) ([1])

(Competition — Abuse of a dominant position — Greek market for the supply of lignite and Greek wholesale electricity market — Decision finding an infringement of Article 86(1) EC, read in combination with Article 82 EC — Grant or maintenance of exploitation rights for public deposits of lignite in favour of a public undertaking — Definition of the markets at issue — Existence of unequal opportunities — Obligation to state reasons — Legitimate expectations — Misuse of powers — Proportionality)

(2017/C 038/28)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: P. Anestis, lawyer)

Intervener in support of the applicant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, Agents)

Defendant: European Commission (represented by: T. Christoforou, Agent, and A. Oikonomou, lawyer)

Interveners in support of the defendant: Elpedison Paragogi Ilektrikis Energeias AE (Elpedison Energeiaki), formerly Energeiaki Thessalonikis AE (Marousi, Greece) and Elliniki Energeia kai Anaptyxi AE (HE & D SA) (Kifisia, Greece) (represented by: P. Skouris and E. Trova, lawyers) and Mytilinaios AE (Athens), Protergia AE (Athens) et Alouminion tis Ellados VEAE, formerly Alouminion AE (Athens) (represented by: N. Korogiannakis, I. Zarzoura, D. Diakopoulos and E. Chrisafis, lawyers)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission decision C(2008) 824 final of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of DEI for the extraction of lignite.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dimosia Epicheirisi Ilektrismou AE (DEI), in addition to bearing its own costs, to pay those incurred by the European Commission, by Elpedison Paragogi Ilektrikis Energeias AE (Elpedison Energeiaki), by Elliniki Energeia kai Anaptyxi AE (HE & D SA), by Mytilinaios AE, by Protergia AE and by Alouminion tis Ellados VEAE;*

3. *Declares that the Hellenic Republic is to bear its own costs.*

([1]) OJ C 183, 19.7.2008.

Judgment of the General Court of 15 December 2016 — DEI v Commission

(Case T-421/09 RENV) ([1])

(Competition — Abuse of dominant position — Greek market for the supply of lignite and Greek wholesale electricity market — Decision establishing specific measures to correct the anti-competitive effects of an infringement of Article 86(1) EC, in conjunction with Article 82 EC — Article 86(3) EC — Obligation to state reasons — Proportionality — Freedom of contract)

(2017/C 038/29)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: P. Anestis, lawyer)

Intervener in support of the applicant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, Agents)

Defendant: European Commission (represented by: T. Christoforou, Agent, and A. Oikonomou, lawyer)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission decision C(2009) 6244 final of 4 August 2009 establishing specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of DEI for the extraction of lignite.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dimosia Epicheirisi Ilektrismou AE (DEI), in addition to bearing its own costs, to pay those incurred by the European Commission;*

3. *Declares that the Hellenic Republic is to bear its own costs.*

([1]) OJ C 11, 16.1.2010.

Judgment of the General Court of 15 December 2016 — Mondelez UK Holdings & Services v EUIPO — Société des produits Nestlé (Shape of a chocolate bar)

(Case T-112/13) ([1])

(EU trade mark — Invalidity proceedings — Three-dimensional mark — Shape of a chocolate bar — Absolute ground for refusal — No distinctive character — Distinctive character acquired through use — Article 7(1)(b) and (3) of Regulation (EC) No 207/2009 — Article 52(1) and (2) of Regulation No 207/2009)

(2017/C 038/30)

Language of the case: English

Parties

Applicant: Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd (Uxbridge, United Kingdom) (represented by: T. Mitcheson QC, P. Walsh, J. Blum, and S. Dunstan, Solicitors, and D. Byrne, Barrister)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Société des produits Nestlé SA (Vevey, Switzerland) (represented initially by G. Vos, M. Bakker and J. van den Berg, lawyers, and subsequently by G. Vos, S. Malynicz QC, T. Scourfield and T. Reid, Solicitors)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 December 2012 (Case R 513/2011-2), relating to invalidity proceedings between Cadbury Holdings and Société des produits Nestlé.

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 11 December 2012 (Case R 513/2011-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Mondelez UK Holdings & Services Ltd;*

3. *Orders Société des produits Nestlé SA to bear its own costs.*

([1]) OJ C 123, 27.4.2013.

Judgment of the General Court of 15 December 2016 — TestBioTech and Others v Commission

(Case T-177/13) ([1])

(Environment — Genetically modified products — Genetically modified soybean MON 87701 x MON 89788 — Request for internal review of the decision on marketing authorisation dismissed as unfounded — Obligation to state reasons — Manifest error of assessment)

(2017/C 038/31)

Language of the case: English

Parties

Applicants: TestBioTech eV (Munich, Germany), European Network of Scientists for Social and Environmental Responsibility eV (Braunschweig, Germany), Sambucus eV (Vahlde, Germany) (represented by: K. Smith, QC, and J. Stevenson, Barrister)

Defendant: European Commission (represented initially by C. Cattabriga and P. Oliver, and subsequently by P. Cattabriga and L. Flynn and, lastly, by C. Cattabriga, L. Flynn and C. Valero, acting as Agents)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by E. Jenkinson and L. Christie, and subsequently by L. Christie and, lastly, by S. Brandon, acting as Agents, and by J. Holmes, Barrister), European Food Safety Authority (EFSA) (represented by D. Detken and S. Gabbi, acting as Agents) and Monsanto Europe (Antwerp, Belgium) and Monsanto Company (Wilmington, United States) (represented by: M. Pittie, lawyer)

Re:

Application pursuant to Article 263 TFEU for annulment of the decision of the European Commission of 8 January 2013, concerning the review of Commission Implementing Decision 2012/347/EU of 28 June 2012 authorising the placing on the market of products containing, consisting of, or produced from genetically modified soybean MON 87701 x MON 89788 (MON-877Ø1-2 x MON-89788-1), pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2012 L 171, p. 13).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TestBioTech eV, European Network of Scientists for Social and Environmental Responsibility eV and Sambucus eV to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland, the European Food Safety Authority (EFSA) and Monsanto Europe and Monsanto Company to bear their own costs.*

([1]) OJ C 178, 22.6.2013.

Judgment of the General Court of 15 December 2016 — Spain v Commission

(Case T-466/14) ([1])

(Customs Union — Importation of tuna products from El Salvador — Post-clearance recovery of import or export duties — Application for non-recovery of import duties — Article 220(2)(b) and Article 236 of Regulation (EEC) No 2913/92 — Right to good administration under Article 872a of Regulation (EEC) No 2454/93 — Error of the competent authorities not reasonably capable of being detected)

(2017/C 038/32)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented initially by A. Rubio González, and subsequently by V. Ester Casas, abogados del Estado)

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

Re:

Action based on Article 263 TFEU and seeking annulment of Commission Decision C(2014) 2363 final of 14 April 2014 which found, in a particular case, that the remission of import duties is justified for a certain amount, but not for another amount (REM 02/2013), inasmuch as it concludes that the remission of the import duties of EUR 14 417 193,41 is not justified.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 261, 11.8.2014.

Judgment of the General Court of 15 December 2016 — Spain v Commission

(Case T-548/14) ([1])

(Customs Union — Imports of tuna products originating in Ecuador — Post-clearance recovery of import duties — Request for waiver of recovery of import duties — Article 220(2)(b) and Article 236 of Regulation (EEC) No 2913/92 — Notice to importers published in the Official Journal — Good faith — Application for the remission of import duties — Article 239 of Regulation (EEC) No 2913/92)

(2017/C 038/33)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González, abogado del Estado)

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

Re:

Application based on Article 263 TFEU and seeking annulment of Article 2 of Decision C(2014) 3007 final of the Commission of 15 May 2014 finding that the remission of import duties is justified for a certain amount and that remission of import duties is not justified for another amount in a particular case (REM 03/2013).

Operative part of the judgment

The Court:

1. *annuls Article 2 of Decision C(2014) 3007 final of the Commission of 15 May 2014 finding that the remission of import duties is justified for a certain amount and that remission of import duties is not justified for another amount in a particular case (REM 03/2013);*

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

([1]) OJ C 315, 15.9.2014.

Judgment of the General Court of 15 December 2016 — Infineon Technologies v Commission

(Case T-758/14) ([1])

(Competition — Agreements, decisions and concerted practices — Smart card chips — Decision finding an infringement of Article 101 TFEU — Exchanges of commercially sensitive information — Rights of defence — Infringement by object — Proof — Limitation period — Single and continuous infringement — 2006 Guidelines on the method of setting fines — Value of sales)

(2017/C 038/34)

Language of the case: English

Parties

Applicant: Infineon Technologies AG (Neubiberg, Germany) (represented by: I. Brinker, U. Soltész and P. Linsmeier, lawyers)

Defendant: European Commission (represented by: A. Biolan, A. Dawes, J. Norris-Usher and P. Van Nuffel, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Commission Decision C(2014) 6250 final of 3 September 2014 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39574 — Smart Card Chips) or, in the alternative, for a reduction in the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Infineon Technologies AG to bear its own costs and to pay those of the European Commission.*

([1]) OJ C 107, 30.3.2015.

Judgment of the General Court of 15 December 2016 – Philips and Philips France v Commission

(Case T-762/14) ([1])

(Competition — Agreements, decisions and concerted practices — Smart card chips — Decision finding an infringement of Article 101 TFEU — Exchange of commercially sensitive information — Infringement by object — Single and continuous infringement — Principle of sound administration — Duty of care — Proof — 2006 Leniency Notice — Settlement Notice — Limitation period — 2006 Guidelines on the method of setting fines — Value of sales)

(2017/C 038/35)

Language of the case: English

Parties

Applicants: Koninklijke Philips NV (Eindhoven, Netherlands), Philips France, (Suresnes, France) (represented by: J. de Pree, S. Molin, A. ter Haar and T.M. Snoep, lawyers)

Defendant: European Commission (represented by: A. Biolan, A. Dawes, J. Norris-Usher and P. Van Nuffel, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Commission Decision C(2014) 6250 final of 3 September 2014 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39574 — Smart Card Chips) or, in the alternative, for the cancellation of or a reduction in the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Koninklijke Philips NV and Philips France to bear their own costs and to pay those of the European Commission.*

([1]) OJ C 73, 2.3.2015.

Judgment of the General Court of 15 December 2016 — Spain v Commission

(Case T-808/14) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas of Castilla-La Mancha — Decision declaring the aid incompatible with the internal market — Concept of 'undertaking' — Economic activity — Advantage — Service of general economic interest — Distortion of competition — Article 107(3)(c) TFEU — Duty of diligence — Reasonable period — Legal certainty — Equal treatment — Proportionality — Subsidiarity — Right to information)

(2017/C 038/36)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González, and subsequently by A. Gavela Llopis, abogados del Estado)

Defendant: European Commission (represented by: É. Gippini Fournier, P. Němečková and B. Stromsky, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission Decision C(2014) 6846 final of 1 October 2014 on State aid SA.27408 ((C 24/2010) (ex NN 37/2010, ex CP 19/2009)) implemented by the authorities of Castilla-La Mancha for the deployment of digital terrestrial television in remote and less urbanised areas of Castilla-La Mancha, as amended by Decision C(2015) 7193 final of 20 October 2015 correcting certain errors contained in Decision C(2014) 6846 final.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 34, 2.2.2015.

Judgment of the General Court of 15 December 2016 — Abertis Telecom Terrestre and Telecom Castilla-La Mancha v Commission

(Joined Cases T-37/15 and T-38/15) ([1])

(State aid — Digital television — Aid for the deployment of digital terrestrial television in remote and less-urbanised areas of Castilla-La Mancha — Decision declaring the aid incompatible with the internal market — Concept of an undertaking — Economic activity — Advantage — Service of general economic interest — Distortion of competition — Article 107(3)(c) TFEU — New aid)

(2017/C 038/37)

Language of the case: Spanish

Parties

Applicants: Abertis Telecom Terrestre, SA (Barcelona, Spain), Telecom Castilla-La Mancha, SA (Toledo, Spain) (represented by: initially, J. Buendía Sierra, A. Lamadrid de Pablo, A. Balcells Cartagena and M. Bolsa Ferruz, and subsequently J. Buendía Sierra, A. Lamadrid de Pablo and M. Bolsa Ferruz, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, P. Němečková and B. Stromsky, acting as Agents)

Intervener in support of the defendant: SES Astra (Betzdorf, Luxembourg) (represented by: F. González Díaz, F. Salerno and V. Romero Algarra, lawyers)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission Decision C(2014) 6846 final of 1 October 2014 on State aid SA.27408 ((C 24/2010) (ex NN 37/2010, ex CP 19/2009)) implemented by the authorities of Castilla-La Mancha for the deployment of digital terrestrial television in remote and less urbanised areas of Castilla-La Mancha, as amended by Decision C(2015) 7193 final of 20 October 2015 correcting certain errors contained in Decision C(2014) 6846 final.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Abertis Telecom Terrestre, SA and Telecom Castilla-La Mancha, SA to bear their own costs and to pay those incurred by the European Commission and by SES Astra.*

([1]) OJ C 89, 16.3.2015.

Judgment of the General Court of 15 December 2016 — Aldi v EUIPO — Miquel Alimentació Grup (Gourmet)

(Case T-212/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark Gourmet — Earlier national word and figurative marks GOURMET and Gourmet — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 038/38)

Language of the case: German

Parties

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

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Miquel Alimentació Grup, SA (Vilamalla, Spain) (represented by: C. Duch Fonoll and R. Niebel, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 February 2015 (Case R 0314/2014-4), relating to opposition proceedings between Miquel Alimentació Grup and Aldi.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 198, 15.6.2015.

Judgment of the General Court of 15 December 2016 — Redpur v EUIPO — Redwell Manufaktur (Redpur)

(Case T-227/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark Redpur — Earlier EU figurative mark redwell INFRAROT HEIZUNGEN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2017/C 038/39)

Language of the case: German

Parties

Applicant: Redpur GmbH (Hayingen, Germany) (represented by: S. Schiller, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Redwell Manufaktur GmbH (Rotenturm an der Pinka, Austria) (represented by C. Gassauer-Fleissner, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 February 2015 (Case R 678/2014-1), relating to opposition proceedings between Redpur and Redwell Manufaktur.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Redpur GmbH to pay the costs.*

([1]) OJ C 236, 20.7.2015.

Judgment of the General Court of 15 December 2016 — Keil v EUIPO — NaturaFit Diätetische Lebensmittelproduktion (BasenCitrate)

(Case T-330/15) ([1])

(EU trade mark — Invalidity proceedings — EU word mark BasenCitrate — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 038/40)

Language of the case: German

Parties

Applicant: Rudolf Keil (Grevenbroich, Germany) (represented by: J. Sachs, lawyer)

Defendant: European Union Intellectual Property Office (represented by: S. Hanne, D. Walicka and A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: NaturaFit Diätetische Lebensmittelproduktions GmbH (Röttenbach, Germany) (represented by N. Reber, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 April 2015 (Case R 1541/2014-1), relating to invalidity proceedings between NaturaFit Diätetische Lebensmittelproduktions GmbH and Mr Keil.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Rudolf Keil to pay the costs.*

([1]) OJ C 279, 24.8.2015.

Judgment of the General Court of 14 December 2016 — Todorova Androva v Council and Others

(Case T-366/15 P) ([1])

(Appeal — Civil Service — Officials — Promotion — 2011 promotion procedure — Non-inclusion on the list of officials eligible for promotion — Action at first instance dismissed — Article 45 of the Staff Regulations — Clause 4 of the Framework Agreement on fixed- term work concluded by ETUC, UNICE and CEEP — Equal treatment — Obligation to state reasons — Burden of proof — Obligation on the court hearing the substantive application to investigate — Plea of illegality — Rule of correspondence between the complaint and the action before the EU Courts)

(2017/C 038/41)

Language of the case: French

Parties

Appellant: Viara Todorova Androva (Rhode-Saint-Genèse, Belgium) (represented by: M. Velardo, lawyer)

Other parties to the proceedings: Council of the European Union (represented by: M. Bauer and M. Veiga, acting as Agents); European Commission (represented by: initially, J. Currall, G. Gattinara and A.-C. Simon, and subsequently G. Gattinara and A.-C. Simon, acting as Agents) and Court of Auditors (represented by: N. Scarfato, acting as Agent)

Intervener in support of the Council of the European Union: European Parliament (represented by: D. Nessaf and M. Dean, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 29 April 2015, *Todorova Androva* v *Council* (F-78/12, EU:F:2015:37), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Viara Todorova Androva to bear her own costs and to pay those incurred by the Council of the European Union and the European Commission;*

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

([1]) OJ C 337, 12.10.2015.

Judgment of the General Court of 15 December 2016 — Aldi v EUIPO — Cantina Tollo (ALDIANO)

(Case T-391/15) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark ALDIANO — Earlier EU word mark ALDI — Genuine use of the earlier mark — Article 42(2) of Regulation (EC) No 207/2009 — Rule 22(3) of Regulation (EC) No 2868/95)

(2017/C 038/42)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Cantina Tollo SCA (Tollo, Italy) (represented by: F. Celluprica and F. Fischetti, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 13 May 2015 (Case R 1612/2014-4), concerning opposition proceedings between Aldi and Cantina Tollo.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *orders Aldi GmbH & Co. KG to pay the costs.*

([1]) OJ C 302, 14.9.2015.

Judgment of the General Court of 15 December 2016 — Intesa Sanpaolo v EUIPO (START UP INITIATIVE)

(Case T-529/15) ([1])

(EU trade mark — Application for EU figurative mark START UP INITIATIVE — Absolute ground for refusal — No distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2017/C 038/43)

Language of the case: Italian

Parties

Applicant: Intesa Sanpaolo SpA (Turin, Italy) (represented by: P. Pozzi and F. Braga, lawyers)

Defendant: European Union Intellectual Property Office (represented initially by P. Bullock, and subsequently by L. Rampini, acting Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 29 June 2015 (Case R 2777/2014-1), concerning an application for registration of the figurative sign START UP INITIATIVE as a European Union trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Intesa Sanpaolo SpA to pay the costs.*

([1]) OJ C 371, 9.11.2015.

Judgment of the General Court of 15 December 2016 — Novartis v EUIPO (Representation of a grey curve and representation of a green curve)

(Joined Cases T-678/15 and T-679/15) ([1])

(EU trade mark — Applications for EU figurative trade marks representing a grey curve and representing a green curve — Absolute ground for refusal — Distinctive character — Simplicity of the sign — Article 7 (1)(b) of Regulation (EC) No 207/2009)

(2017/C 038/44)

Language of the case: English

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by: M. Zintler, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. Kunz and S. Hanne, Agents)

Re:

Two actions brought against the decisions of the Fifth Board of Appeal of EUIPO of 23 September 2015 (Cases R 78/2015-5 and R 89/2015-5), concerning applications for registration of two figurative signs, representing a grey curve and representing a green curve, as EU trade marks.

Operative part of the judgment

The Court:

1. *Annuls the decisions of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 September 2015 (Cases R 78/2015-5 and R 89/2015-5);*

2. *Allows the appeals brought by Novartis AG before that Board of Appeal;*

3. *Orders EUIPO to pay the costs.*

(1) OJ C 90, 7.3.2016.

Judgment of the General Court of 9 November 2016 — Gallardo Blanco v EUIPO — Expasa Agricultura y Ganadería (Representation of a branding iron (shape of an H-shaped horse bit))

(Case T-716/15) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark consisting of the representation of a branding iron (shape of an H-shaped horse bit) — Earlier EU and Spanish figurative marks — Relative grounds for refusal — Genuine use of the earlier marks — Article 42(2) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2017/C 038/45)

Language of the case: Spanish

Parties

Applicant: Juan Gallardo Blanco (Los Barrios, Spain) (represented by: E. Estella Garbayo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Expasa Agricultura y Ganadería, SA (Jerez de la Frontera, Spain) (represented by: A. Bosch Döffert, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 29 September 2015 (Case R 1502/2014-2) relating to opposition proceedings between Expasa Agricultura y Ganadería and Mr Juan Gallardo Blanco.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Juan Gallardo Blanco to pay the costs.*

(1) OJ C 59, 15.2.2016.

Order of the Vice-President of the General Court of 16 December 2016 — Casasnovas Bernad v Commission

(Case T-826/16 R)

(Application for interim measures — Civil service — Contract staff — Termination of a contract of indefinite duration — Application for suspension of operation — No urgency)

(2017/C 038/46)

Language of the case: French

Parties

Applicant: Luis Javier Casasnovas Bernad (Santo Domingo, Dominican Republic) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU and seeking suspension of operation of the Commission's decision of 27 September 2016 terminating the applicant's contract.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 28 October 2016 — Andreassons Åkeri and Others v Commission

(Case T-746/16)

(2017/C 038/47)

Language of the case: Swedish

Parties

Applicants: Andreassons Åkeri i Veddige AB (Veddige, Sweden), Luke Transport AB (Laholm, Sweden), Zimit Transportförmedling AB i konkurs (Veddige) (represented by: A. Broch and C.M. von Quitzow)

Defendant: European Commission

Form of order sought

— Annul Commission Decision (Ares (2016) 4309876 of 10 August 2016 to close down EU-Pilot 7504/15/EMPL

Pleas in law and main arguments

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

1. First plea in law: The applicants have, by means of civil law contracts, hired Polish self-employed workers with businesses registered in Poland, which then provided services to the applicants. After the contracted services were performed, the workers returned to Poland where they are resident under social security law. Subsequently, following special assessment (tax assessment), the Swedish Skatteverket (Tax Board) required the applicants to pay Swedish employer social security contributions in respect of the Polish self-employed workers and imposed special financial penalties on the applicants. That runs counter to Council Regulation (EEC) No 574/72, which has now been replaced by Council Regulation (EC) No 987/2009.

2. Second plea in law: On the basis of Article 4 of Regulation No 574/72, which was applicable at the time of Sweden's accession to the EU, the Swedish Government designated the Försäkringskassan (Social Security Fund) as the competent authority for Sweden for social security law questions as regards the implementation of the rules of EU law relevant here. Under Swedish national law, however, it is the Skatteverket which ensures the collection of employer social security contributions.

3. Third plea in law: The social security contributions have been deducted twice, which is precisely what the regulations in question are intended to prevent.

4. Fourth plea in law: There is a requirement that the individual must be registered with the Swedish Försäkringskassan so that Swedish employer contributions may be levied with regard to the Polish self-employed workers. There has been no examination by the Skatteverket of whether that was the case. The fact that, in accordance with the above, social security contributions are deducted without their having been deposited in respect of a particular person, as is the case in a number of Member States, must be regarded as contrary to EU law.

Action brought on 9 November 2016 — Ireland v Commission

(Case T-778/16)

(2017/C 038/48)

Language of the case: English

Parties

Applicant: Ireland (represented by: E. Creedon, K. Duggan and A. Joyce, agents, P. Baker, QC, S. Kingston, C. Donnelly, B. Doherty and A. Goodman, barristers, P. Gallagher, D. McDonald and M. Collins, SC)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission's decision C(2016) 5605 final of 30 August 2016, addressed to Ireland, on State Aid case SA.38373 (2014/C) implemented by Ireland to Apple;

— order the Commission to bear Ireland's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has made manifest errors of assessment in misunderstanding Irish law and the relevant facts.

   — The decision wrongly asserts that two Opinions given in 1991 and 2007 by the Irish Revenue Commissioners 'renounced' tax revenue that Ireland would have otherwise been entitled to collect from the Irish branches of Apple Sales International (ASI) and Apple Operations Europe (AOE). The Opinions involved no departure from Irish law. The ordinary tax rules applicable to branches in Ireland of non-resident companies are in Section 25 of the Taxes Consolidation Act 1997. The Opinions simply applied Section 25, which in accordance with the territoriality principle, taxes only the profits attributable to the branch, not the non-Irish profits of the company. The decision also mischaracterizes the activities and responsibilities of the Irish branches of ASI and AOE. These branches carried out routine functions, but all important decisions within ASI and AOE were made in the USA, and the profits deriving from these decisions were not properly attributable to the Irish branches of ASI and AOE. The Commission's attribution of Apple's intellectual property licences to the Irish branches of AOE and ASI is not consistent with Irish law and, moreover, is inconsistent with the principles it claims to apply, as is its stated refusal to take into account the activities of Apple Inc.

2. Second plea in law, alleging that the Commission has made manifest errors in its State aid assessment.

   — The Commission's assertion that ASI and AOE were granted an 'advantage' is incorrect. The Opinions did not depart from 'normal' taxation, because ASI and AOE did not pay any less tax than was properly due under Section 25. The Commission also wrongly claims that the Opinions were selective. The Commission's reference system wrongly ignores the distinction between resident and non-resident companies. The Commission attempts to re-write the Irish corporation tax rules so that, in respect of Opinions, the Revenue Commissioners should have applied the Commission's version of the arm's length principle ('ALP'). This principle is not part of EU law or the relevant Irish law in relation to branch profit attribution, and the Commission's claim is inconsistent with Member State sovereignty in the area of direct taxation.

3. Third plea in law, alleging that the Commission's application of the arm's length principle is inconsistent and manifestly erroneous.

   — Even if ALP were legally relevant (which Ireland does not accept) the Commission has failed to apply it consistently or to examine the overall situation of the Apple group.

4. Fourth plea in law, alleging that the Commission's subsidiary line of reasoning is erroneous.

   — The Commission wrongly rejected expert evidence submitted by Ireland showing that, even if ALP applied (which Ireland does not accept), the tax treatment of ASI and AOE was consistent with that principle.

5. Fifth plea in law, alleging that the Commission's alternative line of reasoning is erroneous.

   — The Commission is wrong to maintain that ALP is inherent in Irish law, that Section 25 was applied inconsistently or that Section 25 confers any impermissible discretion. Section 25 confers no such discretion on the Revenue Commissioners.

6. Sixth plea in law, alleging that the Commission has breached essential procedural requirements.

   — The Commission never clearly explained its State aid theory during the Investigation, and the Decision contains factual findings on which Ireland never had the chance to comment. The Commission breached the duty of good administration by failing to act impartially and in accordance with its duty of care.

7. Seventh plea in law, alleging that the Commission has breached the principles of legal certainty and legitimate expectations.

   — The Commission infringed the principles of legal certainty and legitimate expectations by invoking alleged rules of EU law never previously identified. These are novel and their scope and effect are wholly uncertain. The Commission invokes OECD documents from 2010, but (even if they were binding) these could not have been foreseen in 1991 or 2007.

8. Eighth plea in law, alleging that the Commission lacked competence to take the decision, and has breached Articles 4 and 5 TEU and the principle of fiscal autonomy of Member States.

   — The Commission has no competence, under State aid rules, unilaterally to substitute its own view of the geographic scope and extent of the Member State's tax jurisdiction for those of the Member State itself. The purpose of the State aid rules is to tackle State interventions which confer a selective advantage. The State aid rules by their nature cannot remedy mismatches between tax systems on a global level.

9. Ninth plea in law, alleging that the Commission has manifestly breached Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

   — The Commission has manifestly breached its duty to provide a clear and unequivocal statement of reasons in its Decision, in relying simultaneously on grossly divergent factual scenarios, in contradicting itself as to the source of the rule that Ireland is said to have breached, and in suggesting that Ireland granted aid in relation to profits taxable in other jurisdictions.

Action brought on 29 November 2016 — QC v European Council

(Case T-834/16)

(2017/C 038/49)

Language of the case: Greek

Parties

Applicant: QC (Lesbos, Greece) (represented by: X. Ladis, lawyer)

Defendant: European Council

Form of order sought

The applicant claims that the General Court should:

— Annul the 'EU — Turkey Statement' of 18 March 2016 which was made public on the same date by means of Press Release 144/16;

— to declare invalid all its conclusions;

— apply the expedited procedure;·

— declare the immediate suspension of the Agreement.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law:

1. The first plea in law is based on the argument that that Agreement constitutes an infringement of essential procedural requirements and substantive law, and also an abuse of power.

2. The second plea in law is based on the official and reliable reports of Amnesty International, which confirm the abovementioned infringement and the humanitarian crisis that the Agreement has brought about.

   — The implementation of the Agreement, which the applicant considers to be in reality an international treaty, has caused a systematic failure to apply rules relating to refuges and the direct infringement of the Geneva Convention.

3. The third plea in law is based on the information provided by the Members of the European Parliament constituting the Confederal Group of the European United Left.

   — The Agreement commits and continues to commit a 'serious and continuing infringement' of the values of the European Union.

4. The fourth plea in law is based on the case-law of the European Court of Human Rights.

   — The action relies further on the internationally recognised fact that Turkey is not a 'safe country', given the use of torture and mass trials that are in breach of human rights.

5. The fifth plea in law is based on the FEU Treaty.

   — It is submitted in the action that what is improperly called a Statement is a manifest infringement of Part Five, Title V of the FEU Treaty on 'International Agreements'.

6. The sixth plea in law is based on the Charter of Fundamental Rights of the European Union.

   — The Agreement is also contrary to international human rights law, including the provisions of the Charter of Fundamental Rights of the European Union, having regard to human dignity and the expressly forbidden 'mass returns'. Specifically, the action draws attention to the unconscious infringement of or conscious failure to implement the directives, expressly mentioned, on the required response of the EU in the face of the 'mass influx' of people to its borders, in particular when those people are vulnerable, and of the directives that regulate the procedure for ensuring international protection and the right of asylum.

7. The seventh plea in law is based on documents from professional and other credible bodies.

   — The action also draws attention to the fact that the EU, by means of the agreement at issue, has caused, both in Greece and in Turkey, the formation of an enormous mass of people, who live in conditions of degradation and are completely without rights, where they have not already suffered mistreatment from the security forces.

   — Last, the action is based on the claim that that the EU, faced with a human and social catastrophe, has manifestly failed to fulfil its legal, social and international obligations.

Action brought on 28 November 2016 — Sweden v Commission

(Case T-837/16)

(2017/C 038/50)

Language of the case: Swedish

Parties

Applicant: Kingdom of Sweden (represented by: A. Falk and F. Bergius, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Implementing Decision C(2016) 5644 of 7 September 2016 granting an authorisation for some uses of lead sulfochromate yellow and of lead chromate molybdate sulphate red under 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 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (the contested decision), and

— Order the 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 that the Commission has exceeded its implementing powers under Article 291(2) TFEU and Regulation (EC) No 1907/2006.

   — The Commission has exceeded its implementing powers by disregarding Articles 55 and 60(4) of Regulation No 1907/2006 and granting the authorisation applied for without the conditions laid down in the regulation for such a grant being satisfied and contrary to the aim of the regulation.

   — The Commission has disregarded Article 60(4) of Regulation No 1907/2006 by granting authorisation without carrying out its own assessment of the conditions for that grant in accordance with that article and without sufficiently investigating whether the conditions for granting the authorisation under that article are satisfied.

   — The Commission has also disregarded Article 55 of Regulation No 1907/2006 by granting the authorisation contrary to the aim of the authorisation system, inter alia, to ensure a well-functioning internal market and gradually replace substances of very high concern with suitable alternative substances or techniques, where that is economically and technically feasible.

2. Second plea in law, alleging that the Commission has made a manifestly incorrect assessment and an incorrect application of the law.

   — The same facts as those stated with regard to the first plea in law are also relied on in respect of this plea in law. The Commission's disregard of Articles 55 and 60(4) of Regulation No 1907/2006, as described above, thus also means that, in the contested decision, the Commission has made a clearly incorrect assessment and incorrect application of the law.

3. Third plea in law, alleging that the Commission failed to have regard to the precautionary principle and the obligation to state reasons.

   — The Commission failed to have regard to the precautionary principle by granting authorisation without carrying out its own assessment of the conditions therefor under Article 60(4) of Regulation No 1907/2006 and without sufficiently investigating whether the conditions for grant of authorisation under that article are satisfied.

   — In any event, the Commission has failed to have regard to its obligation to state reasons which flows from Article 296 TFEU, Article 130 of Regulation No 1907/2006 and the principle of sound administration, since it is not possible to discern from the contested decision how the Commission assessed whether the conditions for the grant of authorisation in accordance with Article 60(4) of the regulation are satisfied.

Action brought on 30 November 2016 — BP v FRA

(Case T-838/16)

(2017/C 038/51)

Language of the case: English

Parties

Applicant: BP (Vienna, Austria) (represented by: E. Lazar, lawyer)

Defendant: European Union Agency for Fundamental Rights (FRA)

Form of order sought

The applicant claims that the Court should:

— order the defendant to compensate the material and non-material damage suffered by the applicant as a result of mishandling and leakage of his/her personal data and other several irregularities occurred during the defendant's proceedings for dealing with his/her requests to access documents under Regulation no 1049/2001 and his/her requests to access information under article 13 of Regulation 45/2001;

— order the defendant to compensate the material and non-material damage suffered by the applicant as a result of violations of several rules intended to confer rights on individuals;

— order the defendant to compensate the material and non-material damage suffered by the applicant due to the defendant's irregular actions during the execution of the judgment in case T-658/13P;

— order the defendant to compensate the applicant's moral prejudice;

— order the defendant to pay material damages;

— order the defendant to reimburse the legal costs paid by the applicant for seeking legal advice in pre-litigation phase;

— order the defendant to pay default interest on the amount eventually awarded;

— order the defendant to pay the entire costs, even in the case the application is rejected.

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 breaches of rules intended to confer rights on individuals, including, amongst others, a breach of data protection rules envisaged in article 4(1) (b) of the Regulation no 1049/2001 read in conjunction with article 4 (4) of the same regulation and with implementing rules of Regulation 1049/2001, a violation of Article 8 of the European Convention on Human Rights (ECHR), a breach of data protection rules envisaged in various articles of the Regulation no 45/2001 and in implementing rules of Regulation 45/2001, and a breach of the duty of care.

2. Second plea in law, alleging a breach of the duty of confidentiality which led to the leak of the applicant's personal data to third parties and to the press, and alleging a misuse of powers and manifest and grave lack of due diligence and care during processing operations of applicant's personal data

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Action brought on 30 November 2016 — Repower v EUIPO — repowermap (REPOWER)

(Case T-842/16)

(2017/C 038/52)

Language in which the application was lodged: German

Parties

Applicant: Repower AG (Brusio, Switzerland) (represented by: R. Kunz-Hallstein and H. Kunz-Hallstein, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: repowermap.org (Bern, Switzerland)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the mark 'REPOWER' — International registration designating the European Union No 1 020 351

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision 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;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of Article 75 of Regulation No 207/2009.

Action brought on 29 November 2016 — dm-drogerie markt v EUIPO — Digital Print Group O. Schimek (Foto Paradies)

(Case T-843/16)

(2017/C 038/53)

Language in which the application was lodged: German

Parties

Applicant: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany) (represented by: T. Strack and O. Bludovsky, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Digital Print Group O. Schimek GmbH (Nürnberg, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union word mark 'Foto Paradies' — European Union trade mark No 10 707 933

Procedure before EUIPO: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 15 September 2016 in Case R 1194/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 52(1)(a), in conjunction with Article 7(1)(b), of Regulation No 207/2009.

Action brought on 29 November 2016 — Alpirsbacher Klosterbräu Glauner v EUIPO (Klosterstoff)

(Case T-844/16)

(2017/C 038/54)

Language of the case: German

Parties

Applicant: Alpirsbacher Klosterbräu Glauner GmbH & Co. KG (Alpirsbach, Germany) (represented by: W. Göpfert, lawyer and S. Hofmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union word mark 'Klosterstoff'– Application for registration No 13 945 944

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 October 2016 in Case R 2064/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b),(c) and (g) of Regulation No 207/2009;

— Infringement of Article 7(2) of Regulation No 207/2009.

Action brought on 1 December 2016 — Deichmann v EUIPO — Vans (V)

(Case T-848/16)

(2017/C 038/55)

Language in which the application was lodged: German

Parties

Applicant: Deichmann SE (Essen, Germany) (represented by: C. Onken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Vans, Inc. (Cypress, California, United States of America)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark (representation 'V') — Application No 10 345 403

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 20 September 2016 in Case R 2129/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 151(2) of Regulation (EC) No 207/2009 in conjunction with Rule 19(2)(a) of Regulation (EC) No 2868/95;

— Infringement of Rule 19(2)(a)(ii) and (3) and Rule 20(1) of Regulation No 2868/95;

— Infringement of the principles of legal security, of sound administration, of equal treatment and of non-retroactivity.

Action brought on 4 December 2016 — PGNiG Supply & Trading v Commission

(Case T-849/16)

(2017/C 038/56)

Language of the case: Polish

Parties

Applicant: PGNiG Supply & Trading GmbH (Munich, Germany) (represented by: M. Jeżewski, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the European Commission of 28 October 2016 concerning amendments to the conditions of the exemption from the requirement to apply certain requirements of EU law to the OPAL gas pipeline;

— 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 14 pleas in law.

1. First plea in law, alleging infringement of fundamental rights and incorrect assessment of the act initiating the procedure concerning the amendment of the previous exemption of the OPAL gas pipeline from the requirement to apply certain requirements of EU law, granted in 2009 by a decision of the German energy regulator, the Bundesnetzagentur.

2. Second plea in law, alleging lack of competence to take a decision amending the exemption of the OPAL gas pipeline from the requirement to apply certain requirements of EU law.

3. Third plea in law, alleging incorrect interpretation of the condition of eligibility for exemption of the gas infrastructure in Article 36(1) in conjunction with Article 2(17) of Directive 2009/73/EC.

   — In accordance with Article 36(1) of Directive 2009/73/EC, an exemption may be granted only in the case of interconnectors, LNG facilities and storage facilities. However, an 'interconnector' is a transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of those Member States.

   — The OPAL gas pipeline is not an 'interconnector' because it connects with the Gazelle pipeline that runs through Czech territory and is therefore a gas transit pipeline, transporting gas collected from OPAL back to Germany.

4. Fourth plea in law, alleging incorrect interpretation of the condition of eligibility for exemption of the gas infrastructure in Article 36(1)(b) in conjunction with Article 2(33) of Directive 2009/73/EC.

   — The condition for the grant of a regulatory exemption for major new gas infrastructure is that the level of risk attached to the investment in that infrastructure is such that the investment would not take place unless the regulatory exemption is granted.

   — The investment in the construction of the OPAL gas pipeline was finally realised and completed on 13 July 2011, therefore, it cannot be said that any further such risk exists.

5. Fifth plea in law, alleging incorrect interpretation of the condition of eligibility for exemption of the gas infrastructure in Article 36(1)(a) and (e) of Directive 2009/73/EC and, as a consequence, finding that the amendment of the regulatory exemption of the OPAL gas pipeline does not adversely affect competition on the gas market.

6. Sixth plea in law, alleging incorrect interpretation of the condition of eligibility for exemption of the gas infrastructure in Article 36(1)(a) of Directive 2009/73/EC and, as a consequence, finding that the amendment of the regulatory exemption of the OPAL gas pipeline enhances the security of the supply of gas in the internal market.

7. Seventh plea in law, alleging failure on the part of the Bundesnetzagentur to have regard to the provisions of Article 102 TFEU in relation to deciding on the exemption under Article 36 of Directive 2009/73/EC.

8. Eighth plea in law, alleging breach of the principles of legal certainty and protection of legitimate expectations.

9. Ninth plea in law alleging breach of the principle of proportionality.

10. Tenth plea in law, alleging favourable treatment of the infrastructure that is the subject of the exemption, the status of which is incompatible with EU law.

11. Eleventh and twelfth pleas in law, alleging infringement of, respectively, Article 274 and Article 254 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.

12. Thirteenth plea in law, alleging infringement of Article 7 TFEU by the adoption of a decision which is contrary to other policies of the European Union.

13. Fourteenth plea in law, under Article 277 TFEU, alleging invalidity of Article 2(33) in conjunction with Article 36(1) of Directive 2009/73/EC, by the arbitrary introduction of a discriminatory distinction between infrastructure covered by the regulatory exemption and remaining infrastructure that is not eligible for such exemption.

Action brought on 30 November 2016 — QE v Eurojust

(Case T-850/16)

(2017/C 038/57)

Language of the case: French

Parties

Applicant: QE (Gouvy, Belgium) (represented by: T. Bontinck and S. Cherif, lawyers)

Defendant: Eurojust

Form of order sought

The applicant claims that the Court should:

— order, as a preliminary matter, that the minutes of the meeting of 17 March 2016 be produced to the Court;

— annul the contested decisions of 22 April 2016 and of 18 May 2016;

— order Eurojust to pay damages for the harm suffered by QE, estimated, subject to upward or downward revision in the course of the proceedings, at EUR 20 000 (twenty thousand euros), plus interest from 8 July 2016 when the complaint was lodged, as calculated on the basis of the rate applicable during the relevant period set by the European Central Bank for its main refinancing operations, increased by two points;

— order Eurojust to pay all of the costs.

Pleas in law and main arguments

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

1. First plea: absence of a legal basis, infringement of the right to be heard and infringement of the principle of proportionality such as to vitiate the decision of 22 April 2016.

2. Second plea: infringement of Article 23(2) of Annex IX to the Staff Regulations of Officials of the European Union, a manifest error of assessment and infringements of the principle of proportionality and of the duty to have regard to the welfare of officials such as to vitiate the decision of 18 May 2016.

3. Third plea: misuse of powers and conflict of interest such as to vitiate the two contested decisions.

Action brought on 05 December 2016 — Barata v Parliament

(Case T-854/16)

(2017/C 038/58)

Language of the case: English

Parties

Applicant: Joao Miguel Barata (Evere, Belgium) (represented by: G. Pandey, D. Rovetta, lawyers, and J. Grayston, solicitor)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— as a preliminary matter, where appropriate, declare Article 90 of the Staff Regulations invalid and inapplicable in the present proceedings under Article 277 of the Treaty on the Functioning of the European Union;

— annul the collectively contested decision, namely the decision of the Directorate for Human Resources Development of 29 January 2016, not to insert the applicant's name among the list of the selected candidates and the decision of 25 August 2016 rejecting the Article 90 Staff Regulations appeal;

— annul the internal notice of competition 2015/023 circulated among the staff on 18 September 2015;

— annul in its entirety the draft list of officials selected to take part in the aforesaid training program;

— order the defendant to bear the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law concerning infringement of the Staff Regulations, essential procedural requirements, as well infringement of the EU Treaties and of general principles of EU Law:

1. First plea in law, alleging manifest error of assessment.

2. Second plea in law, alleging breach of the effective judicial protection principle, breach of Article 41 of the Charter of Fundamental Rights of the European Union and plea of illegality and inapplicability under Article 277 of the Treaty on the Functioning of the European Union related to the illegality and inapplicability of Article 90 of the Staff Regulations.

3. Third plea in law, alleging breach of the duty of sound and good administration.

4. Fourth plea in law, alleging breach of the proportionality principle and discrimination.

5. Fifth plea in law, alleging breach of the applicant's legitimate expectations and of the principle of equality.

Action brought on 5 December 2016 — Erdinger Weißbräu Werner Brombach v EUIPO (Shape of a large glass)

(Case T-857/16)

(2017/C 038/59)

Language of the case: German

Parties

Applicant: Erdinger Weißbräu Werner Brombach GmbH & Co. KG (Erding, Germany) (represented by: A. Hayn, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the three-dimensional mark 'Shape of a large glass' — Application for registration No 1 242 704

Contested decision: Decision of the Second Board of Appeal of EUIPO of 20 September 2016 in Case R 659/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred in the appeal proceedings;

— hold a hearing.

Plea in law

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

Action brought on 7 December 2016 — Damm v EUIPO — Schlossbrauerei Au-Hallertau Willibald Beck Freiherr von Peccoz (EISKELLER)

(Case T-859/16)

(2017/C 038/60)

Language in which the application was lodged: English

Parties

Applicant: Sociedad Anónima Damm (Barcelona, Spain) (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: Schlossbrauerei Au-Hallertau Willibald Beck Freiherr von Peccoz GmbH & Co. KG (Au-Hallertau, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: figurative mark containing the word element 'EISKELLER' –EU trade mark application No 12 204 426

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 5 September 2016 in Case R 2428/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and Schlossbrauerei Au-Hallertau Willibald Beck Freiherr von Peccoz GmbH & Co. KG to pay the costs of the proceedings.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 6 December 2016 — Wirecard v EUIPO (mycard2go)

(Case T-860/16)

(2017/C 038/61)

Language of the case: German

Parties

Applicant: Wirecard AG (Aschheim, Germany) (represented by: A. Bayer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word element 'mycard2go'– Application for registration No 14 303 465

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 October 2016 in Case R 281/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and refer the case to the defendant to take further steps in the registration proceedings for EU trade mark 014303465;

— order EUIPO to pay the costs, including those incurred during the proceedings before the Board of Appeal of EUIPO.

Pleas in law

— Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 and of Article 7(2) of Regulation No 207/2009.

Action brought on 7 December 2016 — C & J Clark International v Commission

(Case T-861/16)

(2017/C 038/62)

Language of the case: English

Parties

Applicant: C & J Clark International Ltd (Somerset, United Kingdom) (represented by: A. Willems and S. De Knop, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2016/1647 of 13 September 2016 Re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its related company Freetrend Industrial A (Vietnam) Co, Ltd, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 (OJ L 245, p. 16);

— order the European Commission to pay the 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 by proceeding without a valid legal basis, the Commission violated the principle of conferral under Articles 5(1) and 5(2) TEU;

2. Second plea in law, alleging that by failing to take the necessary measures to comply with the judgment of the Court of Justice of 4 February 2016, *C & J Clark International,* C-659/13 and C-34/14, EU:C:2016:74, the Commission violated Article 266 TFEU;

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of Footwear 'which took place during the period of application of the [Invalidated Regulations]', the Commission violated Article 1(1) and 10(1) of the Basic Regulation ([1]) and the principle of legal certainty (non-retroactivity);

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, the Commission violated Article 21 of the Basic Regulation, and that, in any event, it would have been manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest;

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective, the Commission violated Articles 5(1) and 5(4) TEU.

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

Action brought on 7 December 2016 — fritz-kulturgüter v EUIPO — Sumol + Compal Marcas (fritz-wasser)

(Case T-862/16)

(2017/C 038/63)

Language in which the application was lodged: German

Parties

Applicant: fritz-kulturgüter GmbH (Hamburg, Germany) (represented by: G. Schindler, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Sumol + Compal Marcas, SA (Oeiras Carnaxide, Portugal)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'fritz-wasser' — Application No 12 314 753

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 October 2016 in Case R 1510/2015-5

Form of order sought

The applicant claims that the Court should:

— alter the contested decision to the effect that the appeal is dismissed in its entirety;

— allow application No 012 314 753 to proceeding to registration;

— order the opponent to pay the costs of the appeal proceedings and order the defendant to pay the remainder of the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 5 December 2016 — Le Pen v Parliament

(Case T-863/16)

(2017/C 038/64)

Language of the case: French

Parties

Applicant: Jean-Marie Le Pen (Saint-Cloud, France) (represented by: M. Ceccaldi and J.-P. Le Moigne, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Quaestors of the European Parliament of 4 October 2016 inasmuch as it maintains only the decision to recover the sum of EUR 320 026,23 from Mr Jean-Marie Le Pen;

— annul the decision of the Secretary-General of the European Parliament of 29 January 2016;

— annul Debit Note No 2016-195 of 4 February 2016;

— order the European Parliament to pay the costs of the proceedings in their entirety;

— order the European Parliament to pay to Mr Jean-Marie Le Pen the sum of EUR 50 000 by way of reimbursement of recoverable 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 defects affecting the formal legality of the contested measures. This plea is divided into three parts.

   — First part, according to which competence in respect of financial decisions concerning political parties and, therefore, Members of Parliament rests with the Bureau of the European Parliament and not with the Secretary-General or the Quaestors.

   — Second part, according to which the Bureau of the European Parliament cannot alter the nature and scope of its competence. The Secretary-General, however, has not produced any proper authorisation from the President of the Bureau of the Parliament giving the Secretary-General the power to adopt and notify the decision of 29 January 2016 as regards settling financial issues concerning a Member of Parliament. Nor were the Quaestors competent to take the decision of 4 October 2016, where a 'decision' taken by an equally incompetent administrative authority, namely the Secretary-General of the European Parliament, had been brought before them.

   — Third part, alleging that the decision of the Quaestors of the European Parliament contains no statement of reasons.

2. Second plea in law, alleging defects affecting the substantive legality of the contested measures. This plea is divided into eight parts.

   — First part, according to which the Quaestors' decision does not seek to establish the supposedly unwarranted nature of the sums paid. It follows that the decision is incomplete, in that it concerns only the recovery of those sums. At the present stage, no decision exists concerning a finding that the sums paid to the applicant were in fact unwarranted, and the Secretary-General's measure should therefore be withdrawn, as should the decision ordering the recovery of the sums in dispute.

   — Second part, according to which the contested measures are vitiated by a manifest error of assessment.

   — Third part, alleging infringement of the principle of proportionality.

   — Fourth part, regarding the burden of proof, inasmuch as it is not for the applicant to demonstrate that the assistant in question was in fact working for him and that the work carried out by that assistant was necessary and directly related to the exercise of the applicant's parliamentary mandate.

   — Fifth part, according to which the contested measures undermine the political rights of local assistants.

   — Sixth part, according to which the contested measures are vitiated by a misuse of powers and abuse of process.

— Seventh part, according to which the contested measures are discriminatory. In addition, the sole purpose of the contested decisions is to damage the applicant's political activity.

— Eighth part, alleging that the applicant's independence as a Member of the European Parliament has been undermined.

Action brought on 7 December 2016 — Wenger v. EUIPO — Swissgear (SWISSGEAR)

(Case T-869/16)

(2017/C 038/65)

Language in which the application was lodged: English

Parties

Applicant: Wenger SA (Delémont, Switzerland) (represented by: K. Ikas and A. Sulovsky, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Swissgear Sàrl (Baar, Switzerland)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'SWISSGEAR'– EU trade mark No 7 197 783

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 20 September 2016 in Case R 2098/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and (c) EUTMR.

Action brought on 8 December 2016 — Groupe Canal + v European Commission

(Case T-873/16)

(2017/C 038/66)

Language of the case: French

Parties

Applicant: Groupe Canal + (Issy-les-Moulineaux, France) (represented by: P. Wilhelm, P. Gassenbach and O. de Juvigny, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— in the main,

— declare Decision No AT.40023 of 26 July 2016 (Article 264 TFEU) null and void;

— in the alternative,

— annul the contested Decision No AT.40023 of 26 July 2016, as concerns the French market and the existing and future contracts of GROUPE CANAL +;

— make any Order that the Court deems appropriate;

— order the Commission to pay all the costs incurred by the company GROUPE CANAL +.

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 that the Commission made a manifest error of assessment when it treated the contract concluded between GROUPE CANAL + and Pictures International Limited ('Paramount') as being incompatible, by object, with Article 101(1) TFEU and when it found that the undertakings offered by Paramount did not affect cultural diversity and more generally the financing and operation of films in the EEA. That plea in law is divided into two parts.

— First part, alleging the compatibility of the prohibited clauses with antitrust law. First, the contested decision was adopted only on the basis of a broad and legally erroneous interpretation of the concept of an anti-competitive object, which resulted in the European Commission failing to examine, or at least to show, the effects of the territoriality clauses. Secondly, the assessment of the allegedly anti-competitive nature of the territoriality clauses results solely from an incorrect interpretation of the functioning of the pay-TV market. Third, the clauses of territorial exclusivity which the Commission considers to be anti-competitive are on the contrary necessary for effective competition on the merits on the pay-TV market.

— Second part, alleging prejudice to cultural diversity, to the financing and operation of films following the contested decision. First, the contested decision has the effect of limiting the financing of the audiovisual offer originally produced in French, distorting competition on the pay-TV market. Secondly, by restricting the financing of the audiovisual offer, the contested decision has the effect of restricting the quality and diversity of the offer made to consumers.

2. Second plea in law, alleging that the Commission exceeded the limits of its power of appreciation when it accepted undertakings such as to respond to competition concerns which it had not expressed in its preliminary assessment. This plea in law is divided into two parts.

— First part, according to which the contested decision applies to undertakings relating to all of its contracts concluded with television broadcasters in the EEA whereas the preliminary assessment related only to contracts concerning exclusive rights in the United Kingdom and in Ireland.

— Second part, according to which the drafting of commitments results in their application in the United Kingdom being excluded once the latter has left the European Union although those commitments continue to apply on the other markets which are not referred to in the Statement of Objections and were not analysed by the Commission.

3. Third plea in law, alleging a manifest infringement by the Commission of the principle of proportionality. This plea in law is divided into three parts.

— First, the commitments made binding by the contested decision are incompatible with the competition concerns raised beforehand by the Commission.

— Secondly, the commitments made compulsory by the contested decision violate the interests of third parties, which infringes the proportionality of those measures and justifies their annulment.

— Third, the General Court should recognise the need for the Commission to ensure the proportionality of commitments vis-à-vis interested third parties.

4. Fourth plea in law, alleging that the Commission misused its powers, since the commitments which it made compulsory interfere in the ongoing legislative process before the European Parliament, which expressed reservation and concern at the abolition of the territoriality of licences in the audiovisual sector and its impact on the financing of cinema, concentration in the sector and cultural diversity. The Commission did not take the above into account, pre-empting by negotiating with a single non-European undertaking, namely Paramount, the outcome of important legislative debates. This plea in law is divided into two parts.

— First part, according to which the contested decision fulfils an aim which falls within the competences and objectives of the legislature and not of the Commission which took the place of the EU legislature.

— Second part, according to which the set of indicia noted by GROUPE CANAL + constitutes sufficient prima facie evidence to give rise to a serious doubt concerning the Commission's responsibility in the contested decision.

Action brought on 9 December 2016 — Karelia v EUIPO (KARELIA)

(Case T-878/16)

(2017/C 038/67)

Language of the case: English

Parties

Applicant: Ino Karelia (Kalamata, Greece) (represented by: M. Karpathakis, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'KARELIA' — Application for registration No 964 502

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 19 September 2016 in Case R 1562/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(c) and (b) of Regulation No 207/2009.

Action brought on 16 December 2016 — Republic of Poland v Commission

(Case T-883/16)

(2017/C 038/68)

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 28 October 2016 concerning amendments to the conditions of the exemption of the Opal gas pipeline from the requirements on third-party access (TPA) and tariff regulation granted under Directive 2003/55/EC;

— 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 five pleas in law.

1. The first plea in law alleges infringement of Article 36(1)(a) of Directive 2009/73/EC, in conjunction with Article 194(1)(b) TFEU, and of the principle of solidarity through the granting of a new regulatory exemption for the Opal gas pipeline, even though that exemption undermines the security of gas supplies.

2. The second plea in law alleges lack of competence on the part of the Commission and infringement of Article 36(1), in conjunction with Article 2(17), of Directive 2009/73/EC through the granting of a new regulatory exemption for the Opal gas pipeline, even though that pipeline is not an 'interconnector'.

3. The third plea in law alleges infringement of Article 36(1)(b) of Directive 2009/73/EC through the granting of a new regulatory exemption for the Opal gas pipeline despite the fact that there was no risk that the investment would not take place if that exemption were not granted.

4. The fourth plea in law alleges infringement of Article 36(1)(a) and (e) of Directive 2009/73/EC through the granting of a new regulatory exemption for the Opal gas pipeline despite the negative impact of that exemption on competition.

5. The fifth plea in law alleges infringement of international agreements binding the European Union, namely the Energy Charter Treaty, the Energy Community Treaty and the Association Agreement with Ukraine.

Action brought on 15 December 2016 — Multiconnect v Commission

(Case T-884/16)

(2017/C 038/69)

Language of the case: German

Parties

Applicant: Multiconnect GmbH (Munich, Germany) (represented by: J.-M. Schultze, S. Pautke and C. Ehlenz, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the measures of the Commission through the merger control unit of the Directorate General for competition in the course of the implementation of the third requirement ('non-MNO remedy') of Decision M.7018, in particular its view expressed in the emails of 11 October 2016 and of 29 October 2016 that the non-MNO remedy is limited to pure service providers, excluding MVNOs (mobile virtual network operators) such as the applicant;

— in the alternative, annul Decision C(2014) 4443 final in Case M.7018;

— 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 two pleas in law.

1. First plea: infringement of the Treaties or of any rule of law relating to [their] implementation

   The applicant claims that the defendant erred in law in its interpretation and application of Decision C(2014) 4443 final in Case M.7018 together with commitments, inasmuch as it limited, in the case, the so-called 'non-MNO remedy' to which Telefónica had committed itself to grant third parties access to 4G services in the wholesale mobile communications market, to third parties with a service provider business model and did not allow Telefónica to grant third parties access to 4G services within the framework of an MVNO business model in accordance with the 'non-MNO remedy'.

2. Second plea, put forward in the alternative: infringement of the Treaties or of any rule of law relating to [their] implementation, as well as manifest errors of assessment and failure to state reasons, inasmuch as Decision C(2014) 4443 final wrongly concluded that the commitments made by Telefónica could remove any competition concerns.

Action brought on 15 December 2016 — Mass Response Service v Commission

(Case T-885/16)

(2017/C 038/70)

Language of the case: German

Parties

Applicant: Mass Response Service GmbH (Vienna, Austria) (represented by: J.-M. Schultze, S. Pautke and C. Ehlenz, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the measures of the Commission through the merger control unit of the Directorate General for competition in the course of the implementation of the third requirement ('non-MNO remedy') of Decision M.7018, in particular its view expressed in the emails of 24 October 2016 and of 29 October 2016 that the non-MNO remedy is limited to pure service providers, excluding MVNOs (mobile virtual network operators) such as the applicant;

— in the alternative, annul Decision C(2014) 4443 final in Case M.7018;

— 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 two pleas in law which are essentially identical or similar to those relied on in Case T-884/16, *Multiconnect* v *Commission*.

Order of the General Court of 26 October 2016 — Poland v Commission

(Case T-167/16) [1]

(2017/C 038/71)

Language of the case: Polish

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

[1] OJ C 243, 4.7.2016.

Order of the General Court of 5 December 2016 — McGillivray v Commission

(Case T-535/16) ([1])

(2017/C 038/72)

Language of the case: French

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

([1]) OJ C 89, 16.3.2015 (case initially registered before the Civil Service Tribunal of the European Union under number F 12/15 and transferred to the General Court of the European Union on 1.9.2016).

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