Official Journal of the European Union

C 53

English edition

Information and Notices

Volume 60

20 February 2017

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(2017/C 053/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 21 December 2016 — European Commission v Portuguese Republic

(Case C-503/14) ([1])

(Failure of a Member State to fulfil obligations — Articles 21, 45 and 49 TFEU — Articles 28 and 31 of the Agreement on the European Economic Area — Freedom of movement for persons — Freedom of movement for workers — Freedom of establishment — Taxation of natural persons on capital gains resulting from a share exchange — Taxation of natural persons on capital gains resulting from a transfer of all the assets used in the exercise of a business or professional activity — Exit taxation of individuals — Immediate recovery of taxation — Difference in treatment between natural persons who exchange shares and maintain their residence in the national territory and those who make such an exchange and transfer their residence to the territory of another Member State of the European Union or the European Economic Area — Difference in treatment between natural persons transferring all the assets related to an activity carried out on an individual basis to a company with its head office and effective management in Portugal and those who carry out such a transfer to a company with its head office or its effective management in the territory of another Member State of the European Union or of the European Economic Area — Proportionality)

(2017/C 053/02)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: G. Braga da Cruz and W. Roels, acting as Agents)

Defendant: Portugal (represented by: L. Inez Fernandes, M. Rebelo and J. Martins da Silva, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by T. Henze and K. Petersen, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force Article 10(9)(a) of the Código do Imposto sobre o Rendimento das Pessoas Singulares (Code on income tax of natural persons), according to which, for a taxable person who loses his status as a resident in Portugal, for taxation purposes for the year of such loss of residence status, the amount which, under Article 10(8) of that code, was not taxed when the shares were exchanged is to be reckoned as a capital gain, the Portuguese Republic has failed to fulfil its obligations under Articles 21, 45 and 49 TFEU and Articles 28 and 31 of the Agreement on the European Economic Area of 2 May 1992;*

2. *Declares that, by adopting and maintaining in force Article 38(1)(a) of the same code, which reserves entitlement to the tax deferral provided for by that provision to natural persons who transfer all the assets used in the exercise of a business or professional activity to a company which has its head office or effective management in Portugal, the Portuguese Republic has failed to fulfil its obligations under Article 49 TFEU and Article 31 of the Agreement on the European Economic Area;*

3. *Orders the Portuguese Republic to bear its own costs and to pay those incurred by the European Commission;*

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

(1) OJ C 16, 19.1.2015.

Judgment of the Court (Grand Chamber) of 21 December 2016 — European Commission v Hansestadt Lübeck, successor in law to Flughafen Lübeck GmbH

(Case C-524/14 P) (1)

(Appeal — State aid — Airport charges — Article 108(2) TFEU — Fourth paragraph of Article 263 TFEU — Decision to initiate the formal investigation procedure — Admissibility of an action for annulment — Person individually concerned — Legal interest in bringing proceedings — Article 107(1) TFEU — Condition relating to selectivity)

(2017/C 053/03)

Language of the case: German

Parties

Appellant: European Commission (represented by: T. Maxian Rusche, R. Sauer and V. Di Bucci, Agents)

Other party to the proceedings: Hansestadt Lübeck, successor in law to Flughafen Lübeck GmbH (represented by: M. Núñez Müller and I. Ruck, Rechtsanwälte)

Interveners in support of the defendant: Federal Republic of Germany (represented by: T. Henze and K. Petersen, Agents), Kingdom of Spain (represented by: M.A. Sampol Pucurull, Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Hansestadt Lübeck;*

3. *Orders the Federal Republic of Germany and the Kingdom of Spain to bear their own costs.*

(1) OJ 26, 26.1.2015.

Judgment of the Court (Fourth Chamber) of 21 December 2016 (request for a preliminary ruling from the Vestre Landsret — Denmark — Masco Denmark ApS, Damixa ApS v Skatteministeriet

(Case C-593/14) (1)

(Reference for a preliminary ruling — Freedom of establishment — Tax legislation concerning thin capitalisation of subsidiaries — Inclusion in the taxable income of a lending company of the loan interest paid by a non-resident borrowing subsidiary — Tax exemption for interest paid by a resident borrowing subsidiary — Balanced allocation between Member States of the power to impose taxes — Need to prevent the risk of tax avoidance)

(2017/C 053/04)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicants: Masco Denmark ApS, Damixa ApS

Defendant: Skatteministeriet

Operative part of the judgment

Article 49 TFEU, read in conjunction with Article 54 TFEU, must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which allows a resident company a tax exemption for interest paid by a resident subsidiary, in so far as that subsidiary is not entitled to a tax deduction for the corresponding interest expenditure by reason of the rules limiting the deduction of interest paid in cases of thin capitalisation, but which excludes the exemption that would result from the application of its own thin-capitalisation legislation in the case where the subsidiary is resident in another Member State.

([1]) OJ C 73, 2.3.2015.

Judgment of the Court (Grand Chamber) of 21 December 2016 — European Commission v World Duty Free Group SA, formerly Autogrill España SA (C-20/15 P), Banco Santander SA, Santusa Holding SL (C-21/15 P)

(Joined Cases C-20/15 P and C-21/15 P) ([1])

(Appeal — State aid — Article 107(1) TFEU — Tax system — Corporation tax — Deduction — Amortisation of goodwill resulting from acquisitions by undertakings resident for tax purposes in Spain of shareholdings of at least 5 % in undertakings resident for tax purposes outside Spain — Concept of 'State aid' — Condition relating to selectivity)

(2017/C 053/05)

Language of the case: Spanish

Parties

Appellant: European Commission (represented by: R. Lyal, B. Stromsky, C. Urraca Caviedes and P. Němečková, acting as Agents)

Other parties to the proceedings: World Duty Free Group SA, formerly Autogrill España SA (C-20/15 P), Banco Santander SA, Santusa Holding SL (C-21/15 P) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro and R. Calvo Salinero, abogados)

Interveners in support of the defendants: Federal Republic of Germany (represented by: T. Henze and K. Petersen, acting as Agents) Ireland (represented by: G. Hodge and E. Creedon, acting as Agents, and by B. Doherty, Barrister, and A. Goodman, Barrister), Kingdom of Spain (represented by: M.A. Sampol Pucurull, acting as Agent)

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the General Court of the European Union of 7 November 2014, Autogrill España v Commission (T-219/10, EU:T:2014:939), and of 7 November 2014, Banco Santander and Santusa v Commission (T-399/11, EU:T:2014:938);*

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

3. *Reserves the costs;*

4. *Orders the Federal Republic of Germany, Ireland and the Kingdom of Spain to bear their own costs.*

(1) OJ C 81, 9.3.2015.

Judgment of the Court (Third Chamber) of 21 December 2016 (request for a preliminary ruling from the Oberlandesgericht Celle — Germany) — Remondis GmbH & Co. KG Region Nord v Region Hannover

(Case C-51/15) (1)

(References for a preliminary ruling — Article 4(2) TEU — Respect for the national identity of Member States inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government — Internal organisation of the Member States — Regional authorities — Legal instrument creating a new public-law entity and organising the transfer of powers and responsibilities for the performance of public tasks — Public procurement — Directive 2004/18/EC — Article 1(2)(a) — Concept of 'public contract')

(2017/C 053/06)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Remondis GmbH & Co. KG Region Nord

Defendant: Region Hannover

Intervening parties: Zweckverband Abfallwirtschaft Region Hannover

Operative part of the judgment

Article 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that an agreement concluded by two regional authorities, such as that at issue in the main proceedings, on the basis of which they adopt constituent statutes forming a special-purpose association with legal personality governed by public law and transfer to that new public entity certain competences previously held by those authorities and henceforth belonging to that special-purpose association, does not constitute a 'public contract'.

However, such a transfer of competences concerning the performance of public tasks exists only if it concerns both the responsibilities associated with the transferred competence and the powers that are the corollary thereof, so that the newly competent public authority has decision-making and financial autonomy, which it is for the referring court to verify.

(1) OJ C 155, 11.5.2015.

Judgment of the Court (Second Chamber) of 21 December 2016 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — Paul Vervloet and Others v Ministerraad

(Case C-76/15) ([1])

(Reference for a preliminary ruling — State aid — Aid implemented by the Kingdom of Belgium in favour of ARCO Group financial cooperatives — Deposit guarantee schemes — Directive 94/19/EC — Scope — Guarantee scheme protecting the shares of individual members, being natural persons, of cooperatives operating in the financial sector — Not included — Articles 107 and 108 TFEU — Commission decision declaring the aid incompatible with the internal market)

(2017/C 053/07)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Paul Vervloet, Marc De Wit, Edgard Timperman, Godelieve Van Braekel, Patrick Beckx, Marc De Schryver, Guy Deneire, Steve Van Hoof, Organisme voor de financiering van pensioenen Ogeo Fund, Gemeente Schaarbeek, Frédéric Ensch Famenne

Defendant: Ministerraad

Intervening parties: Arcofin CVBA, Arcopar CVBA, Arcoplus CVBA

Operative part of the judgment

1. *Articles 2 and 3 of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005, must be interpreted as not requiring Member States to adopt a scheme to guarantee shares in recognised cooperatives operating in the financial sector, such as that at issue in the main proceedings, and as not precluding Member States from adopting such a scheme, in so far as that scheme does not undermine the practical effectiveness of the deposit-guarantee scheme that that directive requires Member States to establish, which is a matter to be determined by the referring court, and provided that it complies with the FEU Treaty, in particular with Articles 107 and 108 TFEU;*

2. *The examination of the questions referred for a preliminary ruling by the Grondwettelijk Hof (Constitutional Court, Belgium) has disclosed nothing capable of affecting the validity of Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives;*

3. *Article 108(3) TFEU must be interpreted as precluding a guarantee scheme such as that at issue in the main proceedings, in so far as the latter was put into effect in infringement of the obligations arising from that provision.*

([1]) OJ C 171, 26.5.2015.

Judgment of the Court (Fifth Chamber) of 21 December 2016 (request for a preliminary ruling from the Sąd Apelacyjny w Warszawie — Poland) — Biuro podróży 'Partner' sp. z o.o. sp.k. w Dąbrowie Górniczej v Prezes Urzędu Ochrony Konkurencji i Konsumentów

(Case C-119/15) ([1])

(References for a preliminary ruling — Directive 93/13/EEC — Directive 2009/22/EC — Consumer protection — Erga omnes effect of unfair terms entered in a public register — Financial penalty imposed on a seller or supplier having used a term held to be equivalent to a term in the register — Seller or supplier who was not a party to the proceedings giving rise to the declaration that the term in question was unfair — Article 47 of the Charter of Fundamental Rights of the European Union — Concept of 'court or tribunal against whose decisions there is no judicial remedy under national law')

(2017/C 053/08)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie

Parties to the main proceedings

Applicant: Biuro podróży 'Partner' sp. z o.o. sp.k. w Dąbrowie Górniczej

Defendant: Prezes Urzędu Ochrony Konkurencji i Konsumentów

Operative part of the judgment

1. *Article 6(1) and Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with Articles 1 and 2 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests and in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the use of standard contract terms with content identical to that of terms that have been declared unlawful by a judicial decision having the force of law and entered in a national register of unlawful standard contract terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided, which it is for the referring court to verify, that that seller or supplier has an effective judicial remedy against the decision declaring the terms compared to be equivalent in terms of the question whether, in the light of all relevant circumstances particular to each case, those terms are materially identical, having regard in particular to their harmful effects for consumers, and against the decision fixing the amount of the fine imposed, where applicable.*

2. *The third paragraph of Article 267 TFEU must be interpreted as meaning that a court such as the referring court, whose decisions in proceedings such as those in the main proceedings may be the subject matter of an appeal in cassation, cannot be categorised as a 'court or tribunal against whose decisions there is no judicial remedy under national law'.*

([1]) OJ C 198, 15.6.2015.

Judgment of the Court (First Chamber) of 21 December 2016 — Club Hotel Loutraki v European Commission, Hellenic Republic, Organismos Prognostikon Agonon Podosfairou AE (OPAP)

(Case C-131/15 P) ([1])

(Appeal — State aid — Operation of Video Lottery Terminals — Grant by a Member State of an exclusive licence — Decision finding no State aid — Article 108(3) TFEU — Regulation (EC) No 659/1999 — Articles 4, 7 and 13 — Failure to initiate the formal investigation procedure — Concept of 'serious difficulties' — Date of the assessment — Article 296 TFEU — Charter of Fundamental Rights of the European Union — Article 41 — Obligation to state reasons — Article 47 — Right to effective judicial protection — Article 107(1) TFEU — Concept of 'economic advantage' — Joint assessment of the measures notified)

(2017/C 053/09)

Language of the case: English

Parties

Appellants: Club Hotel Loutraki AE, Vivere Entertainment AE, Theros International Gaming, Inc., Elliniko Casino Kerkyras, Casino Rodos, Porto Carras AE, Kazino Aigaiou AE (represented by: I. Ioannidis, dikigoros, and S. Pappas, avocat)

Other parties to the proceedings: European Commission (represented by: A. Bouchagiar and P.-J. Loewenthal, acting as Agents), Hellenic Republic, Organismos Prognostikon Agonon Podosfairou AE (OPAP) (represented by: A. Tomtsis, dikigoros, and M. Petite, avocat)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Club Hotel Loutraki AE, Vivere Entertainment AE, Theros International Gaming, Inc., Elliniko Casino Kerkyras, Casino Rodos, Porto Carras AE and Kazino Aigaiou AE to pay the costs.*

([1]) OJ C 198, 15.6.2015.

Judgment of the Court (Grand Chamber) of 21 December 2016 (requests for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Granada, Audiencia Provincial de Alicante — Spain) — Francisco Gutiérrez Naranjo v Cajasur Banco SAU (C-154/15), Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria SA (BBVA) (C-307/15), Banco Popular Español, SA v Emilio Irles López, Teresa Torres Andreu (C-308/15)

(Joined Cases C-154/15, C-307/15 and C-308/15) ([1])

(References for a preliminary ruling — Directive 93/13/EEC — Consumer contracts — Mortgage loans — Unfair terms — Article 4(2) — Article 6(1) — Declaration of nullity — Limitation by the national court of the temporal effects of the declaration of nullity of an unfair term)

(2017/C 053/10)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Granada, Audiencia Provincial de Alicante

Parties to the main proceedings

Applicants: Francisco Gutiérrez Naranjo (C-154/15), Ana María Palacios Martínez (C-307/15), Banco Popular Español, SA (C-308/15)

Defendants: Cajasur Banco SAU (C-154/15), Banco Bilbao Vizcaya Argentaria SA (BBVA) (C-307/15), Emilio Irles López, Teresa Torres Andreu (C-308/15)

Operative part of the judgment

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national case-law that temporally limits the restitutory effects connected with a finding of unfairness by a court, in accordance with Article 3(1) of that directive, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made.

([1]) OJ C 228, 13.7.2015.
OJ C 279, 24.8.2015.

Judgment of the Court (Third Chamber) of 21 December 2016 — European Commission v Aer Lingus Ltd, Ryanair Designated Activity Company, Ireland

(Joined Cases C-164/15 P and C-165/15 P) ([1])

(Appeal — State aid — National tax on air transport — Application of differentiated rates — Lower rate for flights to destinations no more than 300 km from the national airport — Advantage — Selective nature — Assessment where the fiscal measure is likely to constitute a restriction on the freedom to provide services — Recovery — Excise duty)

(2017/C 053/11)

Language of the case: English

Parties

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

Other parties to the proceedings: Aer Lingus Ltd (represented by: K. Bacon and A. Robertson QC, and by D. Bailey, Barrister, instructed by A. Burnside, Solicitor), Ryanair Designated Activity Company, formerly Ryanair Ltd (represented by: B. Kennelly QC, I.-G. Metaxas-Maragkidis, dikigoros, and E. Vahida, avocat), Ireland (represented by E. Creedon, J. Quaney, and A. Joyce, acting as Agents, and by E. Regan, Senior Counsel, and B. Doherty, Barrister-at-Law)

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the General Court of the European Union of 5 February 2015, Aer Lingus v Commission (T-473/12, not published, EU:T:2015:78), and Ryanair v Commission (T-500/12, not published, EU:T:2015:73), in so far as they annul Article 4 of Commission Decision 2013/199/EU of 25 July 2012 on State aid Case SA.29064 (11/C, ex 11/NN) — Differentiated air travel rates implemented by Ireland, in so far as that article ordered that the aid be recovered from the beneficiaries in an amount which is set at EUR 8 per passenger in recital 70 of that decision;*

2. *Dismisses the cross-appeals;*

3. *Dismisses the actions brought by Aer Lingus Ltd and Ryanair Designated Activity Company for annulment of Decision 2013/199;*

4. *Orders Aer Lingus Ltd and Ryanair Designated Activity Company to bear their own costs and to pay the costs incurred by the European Commission both before the General Court of the European Union and in the proceedings before the Court of Justice of the European Union;*

5. *Orders Ireland to bear its own costs.*

([1]) OJ C 205, 22.6.2015.

Judgment of the Court (Grand Chamber) of 21 December 2016 (request for a preliminary ruling from the Symvoulio tis Epikrateias — Greece) — Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis

(Case C-201/15) ([1])

(Reference for a preliminary ruling — Directive 98/59/EC — Approximation of the laws of the Member States relating to collective redundancies — Article 49 TFEU — Freedom of establishment — Charter of Fundamental Rights of the European Union — Article 16 — Freedom to conduct a business — National legislation conferring upon an administrative authority the power to oppose collective redundancies after assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy — Acute economic crisis — Particularly high national unemployment rate)

(2017/C 053/12)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicant: Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis)

Defendant: Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis

Intervener: Enosi Ergazomenon Tsimenton Chalkidas

Operative part of the judgment

1. *Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority which must be notified of the projected collective redundancies does not adopt, within the period prescribed by that legislation and after examining the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, a reasoned decision not to authorise some or all of the projected redundancies. The position is different, however, if — a matter which is, as the case may be, for the referring court to ascertain — in the light of the three assessment criteria to which that legislation refers and of the specific application of them by the public authority, subject to review by the courts having jurisdiction, that legislation proves to have the consequence of depriving the provisions of that directive of their practical effect.*

   Article 49 TFEU must be interpreted as precluding, in a situation such as that at issue in the main proceedings, national legislation such as that referred to in the first sentence of the first paragraph of this point.

2. *The fact that the context in a Member State may be one of acute economic crisis and a particularly high unemployment rate is not such as to affect the answers set out in point 1 of this operative part.*

([1]) OJ C 221, 6.7.2015.

Judgment of the Court (Grand Chamber) of 21 December 2016 (requests for a preliminary ruling from the Kammarrätten i Stockholm and the Court of Appeal (England & Wales) (Civil Division) — Sweden, United Kingdom) — Tele2 Sverige AB v Post- och telestyrelsen (C-203/15), Secretary of State for the Home Department v Tom Watson, Peter Brice, Geoffrey Lewis (C-698/15)

(Joined Cases C-203/15 and C-698/15) ([1])

(Reference for a preliminary ruling — Electronic communications — Processing of personal data — Confidentiality of electronic communications — Protection — Directive 2002/58/EC — Articles 5, 6 and 9 and Article 15(1) — Charter of Fundamental Rights of the European Union — Articles 7, 8 and 11 and Article 52(1) — National legislation — Providers of electronic communications services — Obligation relating to the general and indiscriminate retention of traffic and location data — National authorities — Access to data — No prior review by a court or independent administrative authority — Compatibility with EU law)

(2017/C 053/13)

Languages of the case: Swedish and English

Referring courts

Kammarrätten i Stockholm, the Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Appellants: Tele2 Sverige AB (C-203/15), Secretary of State for the Home Department (C-698/15)

Respondents: Post- och telestyrelsen (C-203/15), Tom Watson, Peter Brice, Geoffrey Lewis (C-698/15)

Interveners: Open Rights Group, Privacy International, The Law Society of England and Wales

Operative part of the judgment

1. *Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, read in the light of Articles 7, 8 and 11 and Article 52(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which, for the purpose of fighting crime, provides for general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication.*

2. *Article 15(1) of Directive 2002/58, as amended by Directive 2009/136, read in the light of Articles 7, 8 and 11 and Article 52 (1) of the Charter of Fundamental Rights, must be interpreted as precluding national legislation governing the protection and security of traffic and location data and, in particular, access of the competent national authorities to the retained data, where the objective pursued by that access, in the context of fighting crime, is not restricted solely to fighting serious crime, where access is not subject to prior review by a court or an independent administrative authority, and where there is no requirement that the data concerned should be retained within the European Union.*

3. *The second question referred by the Court of Appeal (England & Wales) (Civil Division) is inadmissible.*

(1) OJ C 221, 6.7.2015
OJ C 98 14.3.2016.

Judgment of the Court (Fourth Chamber) of 21 December 2016 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Swiss International Air Lines AG v The Secretary of State for Energy and Climate Change, Environment Agency

(Case C-272/15) (1)

(Reference for a preliminary ruling — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Obligation to surrender emission allowances in respect of flights between EU Member States and most third countries — Decision No 377/2013/EU — Article 1 — Temporary derogation — Exclusion of flights to and from airports situated in Switzerland — Difference of treatment of third countries — General principle of equal treatment — Inapplicable)

(2017/C 053/14)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Appellant: Swiss International Air Lines AG

Respondents: The Secretary of State for Energy and Climate Change, Environment Agency

Operative part of the judgment

Examination in the light of the principle of equal treatment of Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community has disclosed nothing to affect the validity of that decision in so far as the temporary derogation provided for in Article 1 of that decision from the requirements laid down in Article 12(2a) and Article 16 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, as amended by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008, with respect to the surrender of greenhouse gas emission allowances in respect of flights operated in 2012 between Member States of the European Union and most third countries, does not apply to, inter alia, flights to and from airports situated in Switzerland.

(1) OJ C 279, 24.8.2015.

Judgment of the Court (Second Chamber) of 21 December 2016 (request for a preliminary ruling from the Østre Landsret) — TDC A/S v Teleklagenævnet, Erhvervs- og Vækstministeriet

(Case C-327/15) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/22/EC — Universal service — Articles 12 and 13 — Calculation of the cost of universal service obligations — Article 32 — Compensation for costs relating to additional mandatory services — Direct effect — Article 107(1) and Article 108(3) TFEU — Maritime radio safety and emergency services in Denmark and Greenland — National rules — Submission of an application for compensation for costs relating to additional mandatory services — Three-month time limit — Principles of equivalence and effectiveness)

(2017/C 053/15)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: TDC A/S

Defendants: Teleklagenævnet, Erhvervs- og Vækstministeriet

Operative part of the judgment

1. *The provisions of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and, in particular, Article 32 thereof, must be interpreted as precluding national legislation which provides for a compensation mechanism for the provision of additional mandatory services by virtue of which an undertaking is not entitled to compensation from the Member State for the net cost of the provision of an additional mandatory service where the profits made by that undertaking on other services related to the universal service obligation are greater than the loss arising from the provision of the additional mandatory service.*

2. *Directive 2002/22 must be interpreted as precluding national legislation under which an undertaking designated as the provider of additional mandatory services is entitled to compensation from the Member State for the net cost of providing those services only if that cost constitutes an unfair burden on that undertaking.*

3. *Directive 2002/22 must be interpreted as precluding national legislation under which the net cost borne by an undertaking designated to fulfil a universal service obligation is the result of the difference between all the revenue and all the costs connected with the provision of the service in question, including the revenue and the costs which the undertaking would also have registered had it not been a universal service operator.*

4. *In circumstances such as those at issue in the main proceedings, the fact that the undertaking entrusted with an additional mandatory service, within the meaning of Article 32 of Directive 2002/22, provides that service not only on the territory of Denmark but also on that of Greenland does not make any difference to the interpretation of the provisions of that directive.*

5. *Article 32 of Directive 2002/22 must be interpreted as having direct effect, inasmuch as it prohibits the Member States from making the undertaking responsible for providing an additional mandatory service bear all or part of the costs connected with the provision of that service.*

6. *The principles of good faith, equivalence and effectiveness must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which makes the submission of applications for compensation for the loss in the previous financial year by the operator responsible for a universal service subject to a time limit of three months running from the expiry of the period within which that operator is required to send an annual report to the competent national authority, provided that that time limit is no less favourable than that provided for in national law for an analogous application and that it is not such as to render impossible in practice or excessively difficult the exercise of rights conferred on undertakings by Directive 2002/22, which is for the referring court to ascertain.*

(1) OJ C 294, 7.9.2015.

Judgment of the Court (Eighth Chamber) of 21 December 2016 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Bietergemeinschaft Technische Gebäudebetreuung GesmbH und Caverion Österreich GmbH v Universität für Bodenkultur Wien, VAMED Management und Service GmbH & Co. KG in Wien

(Case C-355/15) (1)

(Reference for a preliminary ruling — Public procurement — Directive 89/665/EEC — Review procedures in the area of public procurement — Article 1(3) — Legal interest in bringing proceedings — Article 2a (2) — Concept of a 'tenderer concerned' — Right of a tenderer definitively excluded by the contracting authority to seek review of a subsequent award decision)

(2017/C 053/16)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Bietergemeinschaft Technische Gebäudebetreuung GesmbH und Caverion Österreich GmbH

Defendants: Universität für Bodenkultur Wien, VAMED Management und Service GmbH & Co. KG in Wien

Operative part of the judgment

Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as not precluding a tenderer who has been excluded from a public procurement procedure by a decision of the contracting authority which has become final from being refused access to a review of the decision awarding the public contract concerned and of the conclusion of the contract where only that unsuccessful tenderer and the successful tenderer submitted bids and the unsuccessful tenderer maintains that the successful tenderer's bid should also have been rejected.

(1) OJ C 320, 28.9.2015.

Judgment of the Court (Third Chamber) of 21 December 2016 (request for a preliminary ruling from the Tribunale amministrativo regionale per il Veneto — Italy) — Associazione Italia Nostra Onlus v Comune di Venezia and Others

(Case C-444/15) ([1])

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 3(3) — Plans and programmes which require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects — Validity in the light of the TFEU and the Charter of Fundamental Rights of the European Union — Meaning of use of 'small areas at local level' — National legislation referring to the size of the areas concerned)

(2017/C 053/17)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per il Veneto

Parties to the main proceedings

Applicant: Associazione Italia Nostra Onlus

Defendants: Comune di Venezia, Ministero per i beni e le attività culturali, Regione Veneto, Ministero delle Infrastrutture e dei Trasporti, Ministero della Difesa — Capitaneria di Porto di Venezia, Agenzia del Demanio

Intervener: Società Ca' Roman Srl

Operative part of the judgment

1. *The examination of the first question referred has disclosed no factor of such a kind as to affect the validity of Article 3(3) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in the light of the provisions of the TFEU and the Charter of Fundamental Rights of the European Union.*

2. *Article 3(3) of Directive 2001/42, read in conjunction with recital 10 of that directive, must be interpreted to the effect that the term 'small areas at local level' in paragraph 3 must be defined with reference to the size of the area concerned where the following conditions are fulfilled:*

   — *the plan or programme is prepared and/or adopted by a local authority, as opposed to a regional or national authority, and*

   — *that area inside the territorial jurisdiction of the local authority is small in size relative to that territorial jurisdiction.*

([1]) OJ C 381, 16.11.2015.

Judgment of the Court (First Chamber) of 21 December 2016 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — Sidika Ucar (C-508/15), Recep Kilic (C-509/15) v Land Berlin

(Joined Cases C-508/15 and C-509/15) ([1])

(References for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 7, first paragraph — Right of residence of family members of a Turkish worker duly registered as belonging to the labour force of a Member State — Conditions — No need for the Turkish worker to be duly registered as belonging to the labour force of a Member State for the first three years of the residence of a family member)

(2017/C 053/18)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicants: Sidika Ucar (C-508/15), Recep Kilic (C-509/15)

Defendant: Land Berlin

Operative part of the judgment

Article 7, first paragraph, first indent, of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association must be interpreted as meaning that that provision confers a right of residence in the host Member State on a family member of a Turkish worker, who has been authorised to enter that Member State, for the purposes of family reunification, and who, from his entry into the territory of that Member State, has lived with that Turkish worker, even if the period of at least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host Member State, but is subsequent to it.

([1]) OJ C 16, 18.1.2016.

Judgment of the Court (Sixth Chamber) of 21 December 2016 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Daniel Bowman v Pensionsversicherungsanstalt

(Case C-539/15) ([1])

(Reference for a preliminary ruling — Social policy — Charter of Fundamental Rights of the European Union — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) and (2) — Discrimination on grounds of age — Collective labour agreement — Extension of the period of advancement from the first to the second step in the salary scale — Indirect unequal treatment on grounds of age)

(2017/C 053/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Daniel Bowman

Defendant: Pensionsversicherungsanstalt

Operative part of the judgment

Article 2(1) and (2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a national collective labour agreement, such as that at issue in the main proceedings, by which an employee who benefits from account being taken of periods of school education for the purpose of his classification in the salary steps is subject to a longer period of advancement between the first and second salary step, as long as that extension applies to every employee benefiting from the inclusion of those periods, including retroactively to those having already reached the next steps.

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Fourth Chamber) of 21 December 2016 (request for a preliminary ruling from the Kúria — Hungary) — Interservice d.o.o. Koper v Sándor Horváth

(Case C-547/15) ([1])

(Reference for a preliminary ruling — Community Customs Code — Regulation (EEC) No 2913/92 — Article 96 — External transit procedure — Definition of 'carrier' — Failure to produce goods at the customs office of destination — Liability — Transport subcontractor who has handed the goods over to the main carrier in the car park of the customs office of destination and subsequently again assumed responsibility for the goods in order to continue with the transport)

(2017/C 053/20)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Interservice d.o.o. Koper

Defendant: Sándor Horváth

Operative part of the judgment

1. *The concept of a 'carrier' under an obligation to produce goods intact at the customs office of destination in Article 96(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, is to be interpreted as referring to any person, including a transport subcontractor, who actually transports the goods moving under the external Community transit procedure and has agreed to transport the goods knowing that they are moving under that procedure.*

2. *Article 96(2) of Regulation No 2913/92, as amended by Regulation No 648/2005, is to be interpreted as meaning that a transport subcontractor, such as the subcontractor in the main proceedings, who has, first, handed over the goods to the main carrier, together with the transit document, at the car park of the customs office of destination and, second, assumed responsibility for the goods once again in order to continue with the transport, was under an obligation to ensure that the goods were produced at the customs office of destination and may be held liable for any failure to ensure that the goods were thus produced only if he was aware, when he again assumed responsibility for the goods, that the transit procedure had not been properly completed, which is a matter to be determined by the national court.*

(1) OJ C 27, 25.1.2016.

Judgment of the Court (Third Chamber) of 21 December 2016 (request for a preliminary ruling from the Cour de cassation — France) — Concurrence SARL v Samsung Electronics France SAS, Amazon Services Europe Sàrl

(Case C-618/15) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction — Tort, delict or quasi-delict — Selective distribution network — Prohibition on online resale outside a network — Action for an injunction prohibiting unlawful interference — Connecting factor)

(2017/C 053/21)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Concurrence SARL

Defendants: Samsung Electronics France SAS, Amazon Services Europe Sàrl

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted, for the purpose of conferring the jurisdiction given by that provision to hear an action to establish liability for infringement of the prohibition on resale outside a selective distribution network resulting from offers, on websites operated in various Member States, of products covered by that network, as meaning that the place where the damage occurred is to be regarded as the territory of the Member State which protects the prohibition on resale by means of the action at issue, a territory on which the appellant alleges to have suffered a reduction in its sales.

(1) OJ C 38, 1.2.2016.

Judgment of the Court (Second Chamber) of 21 December 2016 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Länsförsäkringar AB v Matek A/S

(Case C-654/15) (1)

(Reference for a preliminary ruling — EU trade mark — Regulation (EC) No 207/2009 — Article 9(1)(b) — Article 15(1) — Article 51(1)(a) — Extent of the exclusive right granted to the proprietor — Period of five years following registration)

(2017/C 053/22)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Länsförsäkringar AB

Defendant: Matek A/S

Operative part of the judgment

Article 9(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark, read in conjunction with Articles 15(1) and 51(1)(a) of that regulation, must be interpreted as meaning that, during the period of five years following registration of an EU trade mark, its proprietor may, if there is a likelihood of confusion, prevent third parties from using in the course of trade a sign identical or similar to his mark in respect of all goods and services identical or similar to those for which that mark has been registered without having to demonstrate genuine use of that mark in respect of those goods or services.

([1]) OJ C 48, 8.2.2016.

Judgment of the Court (Grand Chamber) of 21 December 2016 — Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario), European Commission

(Case C-104/16 P) ([1])

(Appeal — External relations — Agreement between the European Union and the Kingdom of Morocco concerning liberalisation measures on agricultural and fishery products — Decision approving the conclusion of an international agreement — Action for annulment — Admissibility — Locus standi — Territorial scope of the agreement — Interpretation of the agreement — Principle of self-determination — Principle of the relative effect of treaties)

(2017/C 053/23)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: H. Legal, A. de Elera-San Miguel Hurtado and A. Westerhof Löfflerová, acting as Agents)

Other parties to the proceedings: Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) (represented by: G. Devers, avocat), European Commission (represented by: F. Castillo de la Torre, E. Paasivirta and B. Eggers, acting as Agents)

Interveners in support of the applicants: Kingdom of Belgium (represented by: C. Pochet and J.-C. Halleux, acting as Agents), Federal Republic of Germany (represented by: T. Henze, acting as Agent), Kingdom of Spain (represented by: M. Sampol Pucurull and S. Centeno Huerta, acting as Agents), French Republic (represented by: F. Alabrune, G. de Bergues, D. Colas, F. Fize and B. Fodda, acting as Agents), Portuguese Republic (represented by: L. Inez Fernandes and M. Figueiredo, acting as Agents), Confédération marocaine de l'agriculture et du développement rural (Comader) (represented by: J.-F. Bellis, M. Struys, A. Bailleux, L. Eskenazi and R. Hicheri, avocats)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 10 December 2015, Front Polisario v Council (T-512/12, EU:T:2015:953);*

2. *Dismisses the action brought by the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) as inadmissible;*

3. *Orders the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) to bear its own costs and to pay those incurred by the Council of the European Union;*

4. *Orders the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Portuguese Republic, the European Commission and the Confédération marocaine de l'agriculture et du développement rural (Comader) to bear their own respective costs.*

([1]) OJ C 111, 29.3.2016.

Appeal brought on 20 June 2016 by Europäischer Tier- und Naturschutz e.V. and Horst Giesen against the order of the General Court (Third Chamber) delivered on 14 June 2016 in Case T-595/15, Europäischer Tier- und Naturschutz e.V. and Horst Giesen v European Commission

(Case C-343/16 P)

(2017/C 053/24)

Language of the case: German

Parties

Appellants: Europäischer Tier- und Naturschutz e.V. and Horst Giesen (represented by: Dr. P. Brockmann, lawyer)

Other party to the proceedings: European Commission

By order of 12 January 2017 the Court of Justice of the European Union (Eighth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles (Belgium) lodged on 26 September 2016 — Karim Boudjellal v Rauwers Contrôle SA

(Case C-508/16)

(2017/C 053/25)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicant: Karim Boudjellal

Defendant: Rauwers Contrôle SA

By order of 11 January 2017, the Court (Seventh Chamber) declared that it had no jurisdiction to answer the questions put to it by the Tribunal de première instance francophone de Bruxelles (Belgium).

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 4 November 2016 — Birgit Bossen and Others v Brussels Airlines

(Case C-559/16)

(2017/C 053/26)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Birgit Bossen, Anja Bossen, Gudula Gräßmann

Defendant: Brussels Airlines

Question referred

Is the second sentence of Article 7(1) of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that the concept of 'distance' relates only to the direct distance calculated between the point of departure and the last destination on the basis of the 'great circle' method, regardless of the distance actually flown?

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

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 10 November 2016 — Stadt Wuppertal v Maria Elisabeth Bauer

(Case C-569/16)

(2017/C 053/27)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Stadt Wuppertal

Defendant: Maria Elisabeth Bauer

Question referred

Do Article 7 of 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 ([1]) or Article 31(2) of the Charter of Fundamental Rights of the European Union allow the heir of a worker who died while in an employment relationship to be entitled to financial compensation in respect of the worker's entitlement to minimum annual leave prior to his death, which is precluded by Paragraph 7(4) of the Bundesurlaubsgesetz (Federal Law on Paid Leave), read in conjunction with Paragraph 1922(1) of the Bürgerliches Gesetzbuch (the Civil Code)?

([1]) OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 10 November 2016 — Volker Willmeroth, as owner of TWI Technische Wartung und Instandsetzung Volker Willmeroth e. K. v Martina Broßonn

(Case C-570/16)

(2017/C 053/28)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Volker Willmeroth, as owner of TWI Technische Wartung und Instandsetzung Volker Willmeroth e. K.

Defendant: Martina Broßonn

Questions referred

1. Do Article 7 of 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 ([1]) or Article 31(2) of the Charter of Fundamental Rights of the European Union grant the heir of a worker who died while in an employment relationship a right to financial compensation for the worker's minimum annual leave prior to his death, which is precluded by Paragraph 7(4) of the Bundesurlaubsgesetz (Federal Law on paid leave), read in conjunction with Paragraph 1922(1) of the Bürgerliches Gesetzbuch (Civil Code)?

2. If the first question is answered in the affirmative:

   Does this also apply where the employment relationship is between two private persons?

([1]) OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 14 November 2016 — INEOS Köln GmbH v Bundesrepublik Deutschland

(Case C-572/16)

(2017/C 053/29)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: INEOS Köln GmbH

Defendant: Bundesrepublik Deutschland

Question referred

Do the provisions of Article 10a 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]) and the provisions of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC ([2]) preclude legislation enacted by a Member State which, for the 2013-2020 trading period, prescribes a mandatory substantive time limit applicable to out-of-time applications for the allocation of free emissions allowances to existing installations, thereby making it impossible to correct errors or to supplement (incomplete) data in the allocation application in cases where such shortcomings are not established until after the time limit laid down by the Member State has expired?

([1]) OJ 2003 L 275, p. 32.
([2]) OJ 2011 L 130, p. 1.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 15 December 2016 — Khadija Jafari, Zainab Jafari

(Case C-646/16)

(2017/C 053/30)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellants on a point of law: Khadija Jafari, Zainab Jafari

Respondent authority: Bundesamt für Fremdenwesen und Asyl

Questions referred

1. Is it necessary, for the purpose of understanding Articles 2(m), 12 and 13 of Regulation (EU) No 604/2013 ([1]) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) ('the Dublin III Regulation'), for other acts, linked to the Dublin III Regulation, to be taken into account, or are those provisions to be interpreted independently of such acts?

2. *In the event that the provisions of the Dublin III Regulation are to be interpreted independently of other acts*

   (a) In the circumstances of the cases in the main proceedings, which are characterised by the fact that they fall within a period in which the national authorities of the States principally involved were faced with an unusually large number of people demanding transit through their territory, is the entry into the territory of a Member State, where such entry is de facto tolerated by that Member State and was intended to be solely for the purpose of transit through that Member State and the lodging of an application for international protection in another Member State, to be regarded as a 'visa' within the meaning of Article 2(m) and Article 12 of the Dublin III Regulation?

   If question 2(a) is answered in the affirmative:

   (b) Must it be assumed, in the light of the fact that entry is de facto tolerated for the purpose of transit, that the 'visa' ceased to be valid upon departure from the Member State concerned?

   (c) Must it be assumed, in the light of the fact that entry is de facto tolerated for the purpose of transit, that the 'visa' continues to be valid if departure from the Member State concerned has not yet taken place, or does the 'visa' cease to be valid, notwithstanding non-departure, at the point at which an applicant finally abandons his plan to travel to another Member State?

   (d) Does the applicant's abandonment of his plan to travel to the Member State which he originally envisaged as being his destination mean that a fraud can be said to have been committed after the 'visa' had been issued, within the meaning of Article 12(5) of the Dublin III Regulation, so that the Member State issuing the 'visa' is not to be responsible?

   If question 2(a) is answered in the negative:

   (e) Is the expression used in Article 13(1) of the Dublin III Regulation, 'has irregularly crossed the border into a Member State by land, sea or air having come from a third country', to be interpreted as meaning that, in the special circumstances of the cases in the main proceedings referred to, an irregular crossing of the external border is to be regarded as not having taken place?

3. *In the event that the provisions of the Dublin III Regulation are to be interpreted taking other acts into account:*

(a) In assessing whether, for the purposes of Article 13(1) of the Dublin III Regulation, there has been an 'irregular crossing' of the border, must regard be had in particular to the question whether the entry conditions under the Schengen Borders Code — notably under Article 5 of Regulation (EC) No 562/2006 ([2]) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, which is particularly relevant to the cases in the main proceedings, given the timing of the entry — have been fulfilled?

If question 3(a) is answered in the negative:

(b) Of which provisions of EU law is particular account to be taken when assessing whether there has been an 'irregular crossing' of the border for the purposes of Article 13(1) of the Dublin III Regulation?

If question 3(a) is answered in the affirmative:

(c) In the circumstances of the cases in the main proceedings, which are characterised by the fact that they fall within a period in which the national authorities of the States principally involved were faced with an unusually large number of people demanding transit through their territory, is the entry into the territory of a Member State, where such entry is, without any assessment of the circumstances of individual cases, de facto tolerated by that Member State and was intended to be solely for the purpose of transit through that Member State and the lodging of an application for international protection in another Member State, to be regarded as authorisation to enter within the meaning of Article 5(4)(c) of the Schengen Borders Code?

If questions 3(a) and 3(c) are answered in the affirmative:

(d) Does authorisation to enter pursuant to Article 5(4)(c) of the Schengen Borders Code mean that an authorisation comparable to a visa within the meaning of Article 5(1)(b) of the Schengen Borders Code, and thus a 'visa' under Article 2(m) of the Dublin III Regulation, must be deemed to exist, so that, when applying the provisions for establishing the Member State responsible under the Dublin III Regulation, regard must be had also to Article 12 of that regulation?

If questions 3(a), 3(c) and 3(d) are answered in the affirmative:

(e) Must it be assumed, in the light of the fact that entry is de facto tolerated for the purpose of transit, that the 'visa' ceased to be valid upon departure from the Member State concerned?

(f) Must it be assumed, in the light of the fact that entry is de facto tolerated for the purpose of transit, that the 'visa' continues to be valid if departure from the Member State concerned has not yet taken place, or does the 'visa' cease to be valid, notwithstanding non-departure, at the point at which an applicant finally abandons his plan to travel to another Member State?

(g) Does the applicant's abandonment of his plan to travel to the Member State which he originally envisaged as being his destination mean that a fraud can be said to have been committed after the 'visa' had been issued, within the meaning of Article 12(5) of the Dublin III Regulation, so that the Member State issuing the 'visa' is not to be responsible?

If questions 3(a) and 3(c) are answered in the affirmative, but question 3(d) is answered in the negative:

(h) Is the expression used in Article 13(1) of the Dublin III Regulation, 'has irregularly crossed the border into a Member State by land, sea or air having come from a third country', to be interpreted as meaning that, in the special circumstances of the cases in the main proceedings referred to, a border crossing which is to be categorised as authorised entry for the purposes of Article 5(4)(c) of the Schengen Borders Code is not to be regarded as an irregular crossing of the external border?

([1]) OJ L 180, p. 31.

([2]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

Appeal brought on 21 December 2016 by Lysoform Dr. Hans Rosemann GmbH and Ecolab Deutschland GmbH against the order of the General Court (Fifth Chamber) delivered on 12 October 2016 in Case T-669/15: Lysoform Dr. Hans Rosemann GmbH and Ecolab Deutschland GmbH v European Chemicals Agency

(Case C-663/16 P)

(2017/C 053/31)

Language of the case: English

Parties

Appellants: Lysoform Dr. Hans Rosemann GmbH, Ecolab Deutschland GmbH (represented by: M. Grunchard, avocate, K. Van Maldegem, avocat, P. Sellar, Advocate)

Other party to the proceedings: European Chemicals Agency

Form of order sought

The appellants claim that the Court should:

— set aside the order of the General Court in Case T-669/15; and

— rule on admissibility and refer the case back to the General Court to rule on the merits of the case;

— in the alternative, refer the case back to the General Court to rule on the admissibility of appellants' application for annulment of the contested act; and, as appropriate, thereafter to rule on the merits of the case;

— order the defendant to pay all the costs of these proceedings (including the costs related to the objection to admissibility before the General Court).

Pleas in law and main arguments

The appellants submit that the General Court misinterpreted and misapplied the law which led it to err in law in declaring the appellants' application for annulment of the contested act inadmissible.

In particular, the appellants contend that the General Court committed a number of errors in its reasoning and in its interpretation of the legal framework as applicable to the appellants' situation. That resulted in the General Court making the following errors in law:

— The General Court erred in its interpretation and application of article 130, paragraph 1 of the Rules of Procedure of the General Court, by entering into the substantive merits of the case;

— The General Court erred in its interpretation and application of article 130, paragraph 7 of the Rules of Procedure of the General Court, by failing to reserve its judgment on admissibility until it had heard a full exposition of the arguments on the substance of the case.

Furthermore, by declaring the appellants' application inadmissible, the General Court infringed the appellants' rights of defence, their right of access to justice and the duty to state reasons which pertain to fundamental rights of the individuals and thus reflect general principles of EU law.

For these reasons the appellants claim that the order of the General Court in Case T-669/15 should be set aside and the Court should rule on admissibility and refer the case back to the General Court to rule on the merits of the case.

Appeal brought on 21 December 2016 by Lysoform Dr. Hans Rosemann GmbH and Ecolab Deutschland GmbH against the order of the General Court (Fifth Chamber) delivered on 12 October 2016 in Case T-543/15: Lysoform Dr. Hans Rosemann GmbH and Ecolab Deutschland GmbH v European Chemicals Agency

(Case C-666/16 P)

(2017/C 053/32)

Language of the case: English

Parties

Appellants: Lysoform Dr. Hans Rosemann GmbH, Ecolab Deutschland GmbH (represented by: M. Grunchard, avocate, K. Van Maldegem, avocat, P. Sellar, Advocate)

Other party to the proceedings: European Chemicals Agency

Form of order sought

The appellants claim that the Court should:

— set aside the order of the General Court in Case T-543/15; and

— rule on admissibility and refer the case back to the General Court to rule on the merits of the case;

— in the alternative, refer the case back to the General Court to rule on the admissibility of appellants' application for annulment of the contested act; and, as appropriate, thereafter to rule on the merits of the case;

— order the defendant to pay all the costs of these proceedings (including the costs related to the objection to admissibility before the General Court).

Pleas in law and main arguments

The appellants submit that the General Court misinterpreted and misapplied the law which led it to err in law in declaring the appellants' application for annulment of the contested act inadmissible.

In particular, the appellants contend that the General Court committed a number of errors in its reasoning and in its interpretation of the legal framework as applicable to the appellants' situation. That resulted in the General Court making the following errors in law:

— The General Court erred in its interpretation and application of article 130, paragraph 1 of the Rules of Procedure of the General Court, by entering into the substantive merits of the case;

— The General Court erred in its interpretation and application of article 130, paragraph 7 of the Rules of Procedure of the General Court, by failing to reserve its judgment on admissibility until it had heard a full exposition of the arguments on the substance of the case.

Furthermore, by declaring the appellants' application inadmissible, the General Court infringed the appellants' rights of defence, their right of access to justice and the duty to state reasons which pertain to fundamental rights of the individuals and thus reflect general principles of EU law.

For these reasons the appellants claim that the order of the General Court in Case T-543/15 should be set aside and the Court should rule on admissibility and refer the case back to the General Court to rule on the merits of the case.

GENERAL COURT

Judgment of the General Court of 10 January 2017 — Gascogne Sack Deutschland GmbH and Gascogne v European Union

(Case T-577/14) ([1])

(Non-contractual liability — Precision of the application — Prescription — Admissibility — Article 47 of the Charter of Fundamental Rights — Reasonable time for adjudication — Material damage — Losses sustained — Interest on the unpaid amount of the fine — Bank guarantee charges — Loss of opportunity — Non-material damage — Causal link)

(2017/C 053/33)

Language of the case: French

Parties

Applicants: Gascogne Sack Deutschland GmbH (Wieda, Germany) and Gascogne (Saint-Paul-les-Dax, France) (represented by: F. Puel, E. Durand and L. Marchal, lawyers)

Defendant: European Union, represented by the Court of Justice of the European Union (represented by: initially A. Placco, and subsequently J. Inghelram and S. Chantre, Agents)

Intervener in support of the defendant: European Commission (represented by: N. Khan, V. Bottka and P. van Nuffel, Agents)

Subject matter

Application based on Article 268 TFEU and seeking compensation in respect of the harm allegedly suffered by the applicants by reason of the length of the proceedings before the General Court in the cases which gave rise to the judgments of 16 November 2011, *Groupe Gascogne* v *Commission* (T-72/06, not published, EU:T:2011:671), and *Sachsa Verpackung* v *Commission* (T-79/06, not published, EU:T:2011:674).

Operative part

The Court:

1) *Orders the European Union, represented by the Court of Justice of the European Union, to pay damages of EUR 47 064,33 to Gascogne by way of compensation for the material damage sustained by that company as a result of the failure to adjudicate within a reasonable time in the cases which gave rise to the judgments of 16 November 2011, Groupe Gascogne v Commission (T-72/06, not published, EU:T:2011:671), and Sachsa Verpackung v Commission (T-79/06, not published, EU:T:2011:674). That compensation is to be reassessed by the application of compensatory interest as from 4 August 2014 up to the date of delivery of the present judgment, at the annual rate of inflation recorded, for the period at issue, by Eurostat (Statistical Office of the European Union) in the Member State in which that company is established;*

2) *Orders the European Union, represented by the Court of Justice of the European Union, to pay damages of EUR 5 000 to Gascogne Sack Deutschland GmbH and damages of EUR 5 000 to Gascogne by way of compensation for the non-material damage sustained by those companies respectively as a result of the failure to adjudicate within a reasonable time in Cases T-72/06 and T-79/06;*

3) *Orders that each award of compensation referred to in points (1) and (2) above be increased by default interest, as from the delivery of the present judgment up to the date of full payment, at the rate set by the European Central Bank (ECB) for its principal refinancing operations, increased by two percentage points;*

4) *Dismisses the action as to the remainder;*

5) *Orders the European Union, represented by the Court of Justice of the European Union, to pay, in addition to its own costs, the costs incurred by Gascogne Sack Deutschland and by Gascogne and the costs related to the inadmissibility claim which gave rise to the order of 2 February 2015, Gascogne Sack Deutschland and Gascogne v European Union (T-577/14, not published, EU:T:2015:80);*

6) *Orders Gascogne Sack Deutschland and Gascogne, on the one hand, and the European Union, represented by the Court of Justice of the European Union, on the other hand, to bear their own costs relating to the action giving rise to the present judgment;*

7) *Orders the European Commission to bear its own costs.*

([1]) OJ C 351, 6.10.2014, p. 19.

Judgment of the General Court of 11 January 2017 — Topps Europe v Commission

(Case T-699/14) ([1])

(Competition — Agreements, decisions and concerted practices — Abuse of dominant position — Grant of licences in respect of intellectual-property rights for football-related collectibles — Decision rejecting a complaint — Access to the file — Article 8(1) of Regulation (EC) No 773/2004 — Manifest error of assessment — Relevant market — Exclusive licence — Single branding — Excessive prices)

(2017/C 053/34)

Language of the case: English

Parties

Applicant: Topps Europe Ltd (Milton Keynes, United Kingdom) (represented initially by: R. Vidal, A. Penny, Solicitors, and B. Kennelly, QC, then by R. Subiotto, QC, and A. Cleenewerck de Crayencour, lawyer, and subsequently by T. de la Mare, QC)

Defendant: European Commission (represented by: F. Jimeno Fernández and M. Farley, acting as Agents)

Interveners in support of the defendant: Fédération internationale de football association (FIFA) (Zurich, Switzerland) (represented by: A. Barav and D. Reymond, lawyers) and Panini SpA (Modena, Italy) (represented by: F. Wijckmans, F. Tuytschaever and M. Varga, lawyers)

Re:

Application under Article 263 TFEU for annulment of Commission Decision C(2014) 5123 final of 15 July 2014 rejecting the complaint lodged by the applicant in Case AT.39899 — Licensing of intellectual-property rights for football collectibles.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Topps Europe Ltd to bear its own costs and to pay those incurred by the European Commission, Fédération internationale de football association (FIFA) and Panini Spa.*

([1]) OJ C 448, 15.12.2014.

Order of the General Court of 16 December 2016 — Ica Foods v EUIPO — San Lucio (GROK)

(Case T-774/14) ([1])

(EU trade mark — Invalidity proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 053/35)

Language of the case: Italian

Parties

Applicant: Ica Foods SpA (Pomezia, Italy) (represented by: A. Nespega, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: San Lucio Srl (San Gervasio Bresciano, Italy) (represented by: F. Sangiacomo, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 9 September 2014 (Case R 1815/2013-2), relating to invalidity proceedings between San Lucio Srl and Ica Foods SpA.

Operative part of the order

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

2. *Ica Foods SpA and San Lucio Srl shall bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 26, 26.1.2015.

Action brought on 7 November 2016 — Salehi v Commission

(Case T-773/16)

(2017/C 053/36)

Language of the case: German

Parties

Applicant: Dominik Salehi (Bremen, Germany) (represented by: C. Drews, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the defendant has infringed Article 1(4) of Regulation (EC) No 539/2001 (as amended by Regulation (EU) No 1289/2013) by failing to refer to the applicant's letters of 1 July 2016 and 16 September 2016 to take the measures provided for in that provision and to send a communication to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of the principle of reciprocity by the strict application of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015

1. Second plea in law, defendant's failure to act

The applicant complains that the Commission has not adopted measures pursuant to Article 1(4)(e)(i) of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1).

Action brought on 30 November 2016 — QG v Commission

(Case T-845/16)

(2017/C 053/37)

Language of the case: Spanish

Parties

Applicant: QG (Madrid, Spain) (represented by: L. Ruiz Ezquerra, R. Oncina Borrego, I. Sobrepera Millet y A. Hernández Pardo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the Commission Decision of 4 July 2016 on State aid SA. 29769 (2013/C) (ex 2013/NN), granted by Spain to certain football clubs, infringes Articles 107(1) and 108(3) of the TFEU, since the possibility of consolidating accounts brought about by the authorisation of four clubs to participate in different sports under Law 10/1990, as well as the application of the reduced tax rate under the same corporate tax, also constitute State aid incompatible with the internal market and, therefore, should be declared to be such by the European Commission.

— consequently, provide for the withdrawal/annulment of the measure and require the Kingdom of Spain to recover from the beneficiaries the aid that is incompatible with the internal market, and order it to pay costs in that regard.

Pleas in law and main arguments

In support of the action, the applicant alleges an infringement of Articles 107(1) and 108(3) of the TFEU.

The applicant, a basketball club, expresses its agreement with the contested measure, inasmuch as it considers the measure introduced by Law 10/1990, consisting in more favourable treatment in terms of corporation tax by applying a reduced rate of taxation to certain football clubs, to be State aid incompatible with the internal market.

Nonetheless the applicant considers that the Commission should have reached the same conclusion in respect of the tax privilege provided for in Law 10/1990 and which consists in permitting those same clubs to participate in different sports.

Only the clubs that were able to participate in professional competitions in different sports were permitted to consolidate the accounts in respect of football and basketball, the main sports in Europe, with direct effects on the calculation of the corporate tax base. By consolidating the accounts, the significant receipts from football are reduced by the losses from basketball and, thus, the corporate tax base is significantly reduced, together with the tax to be paid.

Action brought on 30 November 2016 — QF v Commission

(Case T-846/16)

(2017/C 053/38)

Language of the case: Spanish

Parties

Applicant: QF (Barcelona, Spain) (represented by: L. Ruiz Ezquerra, R. Oncina Borrego, I. Sobrepera Millet and A. Hernández Pardo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should;

— declare that the Commission Decision of 4 July 2016 on State aid SA.29769 (2013/C) (ex 2013/NN), granted by Spain to certain football clubs, infringes Articles 107(1) and 108(3) of the TFEU, since the possibility of consolidating accounts brought about by the authorisation of four clubs to participate in different sports under Law 10/1990, as well as the application of the reduced tax rate under the same corporate tax, also constitute State aid incompatible with the internal market and, therefore, should be declared to be such by the European Commission.

— consequently, provide for the withdrawal/annulment of the measure and require the Kingdom of Spain to recover from the beneficiaries the aid that is incompatible with the internal market, and order it to pay the costs in that regard.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-845/16 *QG* v *Commission*.

Action brought on 30 November 2016 — Access Info Europe v Commission

(Case T-851/16)

(2017/C 053/39)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer, E. Raedts and J. Wolfhagen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul decision C(2016) 6029 of the Commission of 19 September 2016 refusing to grant access to documents requested by the applicant pursuant to Regulation (EC) No 1049/2001 ([1]);

— order the Commission to pay the applicant's costs for conducting the proceedings including the costs of any intervening parties.

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 misapplied Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine international relations.

2. Second plea in law, alleging that the Commission misapplied Article 4(2), second indent, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine the protection of pending court proceedings initiated in cases T-192/16, T-193/16 and T-257/16 and that access to the said documents would undermine the Commission's interest in seeking legal advice and receiving frank, objective and comprehensive advice. It is also argued under this plea that the Commission failed to recognize that access to the requested documents is of overriding public interest and that they should for that reason be disclosed.

3. Third plea in law, alleging that the Commission misapplied Article 4(3), first and second subparagraph, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine the decision-making process and/or by failing to recognize the existence of an overriding public interest, particularly given that the decision-making process in question has been finalised.

4. Fourth plea in law, alleging, in subsidiary order, that the Commission misapplied Article 4(6) of Regulation (EC) No 1049/2001 by not granting at least partial access to the requested documents which it withheld in their entirety.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

Action brought on 30 November 2016 — Access Info Europe v Commission

(Case T-852/16)

(2017/C 053/40)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer, E. Raedts and J. Wolfhagen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul decision C(2016) 6030 of the Commission of 19 September 2016 refusing to grant access to documents requested by the applicant pursuant to Regulation (EC) No 1049/2001 ([1]);

— order the Commission to pay the applicant's costs for conducting the proceedings including the costs of any intervening parties.

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 misapplied Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine international relations.

2. Second plea in law, alleging that the Commission misapplied Article 4(2), second indent, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine the protection of pending court proceedings initiated in cases T-192/16, T-193/16 and T-257/16 and that access to the said documents would undermine the Commission's interest in seeking legal advice and receiving frank, objective and comprehensive advice. It is also argued under this plea that the Commission failed to recognize that access to the requested documents is of overriding public interest and that they should for that reason be disclosed.

3. Third plea in law, alleging that the Commission misapplied Article 4(3), first and second subparagraph, of Regulation (EC) No 1049/2001 by deciding that access to the requested documents would seriously undermine the decision-making process and/or by failing to recognize the existence of an overriding public interest, particularly given that the decision-making process in question has been finalised.

4. Fourth plea in law, alleging, in subsidiary order, that the Commission misapplied Article 4(6) of Regulation (EC) No 1049/2001 by not granting at least partial access to the requested documents which it withheld in their entirety.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

Action brought on 22 December 2016 — SilverTours v EUIPO (billiger-mietwagen.de)

(Case T-866/16)

(2017/C 053/41)

Language of the case: German

Parties

Applicant: SilverTours GmbH (Freiburg im Breisgau, Germany) (represented by: P. Neuwald, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'billiger-mietwagen.de' — Application No 14 343 099

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 3 November 2016 in Case R 206/2016-5

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 the first sentence of Article 76(1) of Regulation No 207/2009;

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

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

Action brought on 9 December 2016 — Verschuur v Commission

(Case T-877/16)

(2017/C 053/42)

Language of the case: English

Parties

Applicant: Steven Verschuur (Baarn, Netherlands) (represented by: P. Kreijger, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 3 October 2016, C(2016) 6455 final, rejecting the applicant's confirmatory application ([1]) for access to documents under Regulation (EC) 1049/2001 ([2]) (GESTDEM 2015/3732); and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violated Article 4(2), third indent, of Regulation 1049/2001 related to the protection of the purpose of investigations, thereby also committing a manifest error of fact.

2. Second plea in law, alleging that the Commission violated the first subparagraph of Article 4(3) of Regulation 1049/2001 related to the protection of the Commission's decision making process, thereby also giving an inadequate statement of reasons.

3. Third plea in law, alleging that the Commission violated Article 4(2), first indent, of Regulation 1049/2001, related to the protection of the commercial interests of a legal person, and Article 4(6) of Regulation 1049/2001, related to the institution's obligation to grant partial access when only parts of a document are covered by one or more exceptions, thereby also giving an inadequate statement of reasons.

([1]) Application for access to some documents related to the Commission's decision of 21 October 2015 in case SA.38374, State aid implemented by the Netherlands to Starbucks.

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 2001, p. 43).

Action brought on 14 December 2016 — Sony Interactive Entertainment Europe/EUIPO — Marpefa (Vieta)

(Case T-879/16)

(2017/C 053/43)

Language in which the application was lodged: English

Parties

Applicant: Sony Interactive Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Marpefa, SL (Barcelona, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word element 'VIETA' — EU trade mark No 1 790 674

Procedure before EUIPO: Revocation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 4 October 2016 in Case R 1010/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to bear their own costs and pay those of the applicant.

Pleas in law

— Infringement of Article 65(6) of Regulation No 207/2009;

— Infringement of the principle of clarity and precision of trade mark terms.

Action brought on 5 December 2016 — RF v Commission

(Case T-880/16)

(2017/C 053/44)

Language of the case: Polish

Parties

Applicant: RF (Gdynia, Poland) (represented by: K. Komar-Komarowski, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision C(2016)5925 final of 15 September 2016 rejecting the complaint in case COMP AT.40251 — Rail transport, freight forwarding, and remit the case back to the Commission for re-examination;

— 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 in law, alleging infringement of Article 13 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1) through misinterpretation or possible misapplication thereof.

2. Second plea in law, alleging infringement of Article 105(1) TFEU.

Action brought on 8 December 2016 — BP v FRA

(Case T-888/16)

(2017/C 053/45)

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:

— annul the decision of the authority empowered to conclude contracts of employment (AHCC) of 21 April 2016 not to renew the applicant's employment contract;

— order the defendant to compensate the applicant for the material and non-material damage suffered as a result of unlawful non-renewal decision on the one side and unlawful execution of the Judgment in case T-658/13 P ([1]), on the other side: EUR 63 246 for loss of earnings; EUR 26 630 to compensate the applicant for loss of pension rights for 19 months, or, such capital sum as the Court may fix ex aequo et bono; EUR 1 200 to reimburse legal costs paid by the applicant in pre-litigation phase, starting with the date of the draft decision of 29 January 2016 until the date of the defendant's decision of 21 April 2016; EUR 60 000 for loss of chance to be awarded an indefinite contract, or, such sum as the Court may fix ex aequo et bono; EUR 50 000 for the non-material damage caused to the applicant as a result of alleged errors, irregularities and harm made by the defendant during the procedure for execution of the Judgment in case T-658/13P;

— Order the defendant to compensate the material and non-material damage suffered by the applicant due to the defendant's failure to adopt lawful rules for appraisal, reclassification and renewal and related harm resulted from absence of such lawful rules, on the one side, and the delay in finalising the applicant's staff reports and related harm resulted from the absence of such reports finalised in due time, on the other side;

— declare that the defendant's Guidelines applicable to appraisal and reclassification procedure and Rules on renewal procedure are unlawful insofar as these rules were adopted following an unlawful procedure by an author lacking appropriate competence;

— exercise its full jurisdiction to ensure the effectiveness of its decision;

— order the defendant to pay default interest at the key rate of European Central Bank plus two percentage points on the amount eventually awarded or any other award of interest payment which the Court thinks just and appropriate; and

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

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 breach of the right of defence:

— breach of right to be heard, failure of FRA's appointing authority to hold a fair and effective hearing, and breach of Article 41 (2) (a) of the Fundamental Rights Charter;

— breach of the second component of the right of defence (right to access the file), refusal to grant access to the personal file and to the documents used for the negative decision of 27.02.2012, breach of Articles 25 and 26 of the Staff Regulation, and breach of Article 41 (2) (b) of the Charter.

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

3. Third plea in law, alleging misuse of powers and conflict of interest, breach of interest of the service, manifest error of assessment and wrong application of the principle of retroactivity.

4. Fourth plea in law, alleging breach of the obligation to comply honestly and in a good faith with the Judgement T-658/13 P.

(1) Judgment of 3 June 2015, BP v FRA, T-658/13 P, EU:T:2015:356

Action brought on 19 December 2016 — Apple Sales International and Apple Operations Europe v Commission

(Case T-892/16)

(2017/C 053/46)

Language of the case: English

Parties

Applicants: Apple Sales International (Cork, Ireland) and Apple Operations Europe (Cork, Ireland) (represented by: A. von Bonin and E. van der Stok, lawyers, D. Beard QC, A. Bates, L. Osepciu and J. Bourke, Barristers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple;

— alternatively, annul the decision in part; and

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its interpretation of Irish law.

   — The applicants consider that as non-resident Irish companies, they were only liable to Irish corporation tax under Section 25 of the Taxes Consolidation Act 1997 on 'chargeable profits' attributable to activities performed by their Irish branches. The Opinions properly reflected the branches' 'chargeable profits' and did not therefore confer an advantage. The Commission also erred by finding that profit allocation under Section 25 must be under the 'arm's length principle' (the 'ALP').

2. Second plea in law, alleging that the ALP does not operate as the test for State aid in tax assessments under Article 107 TFEU.

— The Commission was wrong to find that Article 107(1) TFEU required Ireland to calculate the applicants' taxable profits under Section 25 in accordance with the Commission's ALP.

3. Third plea in law, alleging that the Commission made fundamental errors relating to the applicants' activities outside of Ireland.

— The Commission made fundamental errors by failing to recognise that the applicants' profit-driving activities, in particular the development and commercialisation of intellectual property ('Apple IP'), were controlled and managed in the United States. The profits from those activities were attributable to the United States, not Ireland. The Commission wrongly considered only the minutes of the applicants' board meetings and ignored all other evidence of activities.

4. Fourth plea in law, alleging that the Commission made fundamental errors relating to the applicants' activities in Ireland.

— The Commission failed to recognise that the Irish branches carried out only routine functions and were not involved in the development and commercialisation of Apple IP which drove profits.

5. Fifth plea in law, alleging that the Commission's presumptions are contrary to the burden of proof, OECD guidelines and unanimous expert evidence; the conclusion is self-contradictory.

— The Commission presumed that all of the applicants' critical profit-making activities were attributable to the Irish branches without properly assessing the evidence, including extensive expert evidence showing that the profits were not attributable to activities in Ireland.

6. Sixth plea in law, alleging that the applicants were treated in the same way as other non-resident taxpayers in Ireland and were not afforded selective treatment.

— The Commission failed to prove selectivity: it has wrongly treated the applicants as if they were Irish resident companies and as if they should be taxed on their worldwide profits.

7. Seventh plea in law, alleging that the primary line must be annulled for a breach of an essential procedural requirement.

— The opening decision did not articulate the primary line of reasoning. If it had, Apple would have been able to present evidence which could and should have changed the outcome.

8. Eighth plea in law, alleging that there were errors of fact and assessment in the Commission's application of the TNMM to the Irish branches under the subsidiary line.

— The Commission's subsidiary line wrongly rejects expert evidence and fails to articulate what a correct profit attribution analysis would be.

9. Ninth plea in law, alleging that the alternative line is vitiated by breach of essential procedural requirements and manifest error of assessment.

— The Commission was wrong to compare the opinions with other opinions issued by Irish Revenue to third parties since the factual circumstances were different.

10. Tenth plea in law, alleging that the subsidiary and alternative lines do not enable calculation of a recovery amount.

— The decision does not contain any explanation of how much is to be recovered under the subsidiary or alternative lines, contrary to State aid rules and the principle of legal certainty.

11. Eleventh plea in law, alleging that the Commission violated the principles of legal certainty and non-retroactivity by ordering recovery of the alleged aid.

12. Twelfth plea in law, alleging a failure to conduct a diligent and impartial investigation.

13. Thirteenth plea in law, alleging a breach of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

14. Fourteenth plea in law, alleging that the decision exceeds the Commission's competence under Article 107(1) TFEU.

— The Commission has violated legal certainty by ordering recovery under an unforeseeable interpretation of State aid law; failed to examine all relevant evidence contrary to its obligation of due diligence; failed to reason the decision adequately; and exceeded its competence under Article 107 TFEU by attempting to redesign Ireland's corporate tax system.

Action brought on 20 December 2016 — Puma v EUIPO — Senator (TRINOMIC)

(Case T-896/16)

(2017/C 053/47)

Language in which the application was lodged: German

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: M. Schunke, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Senator GmbH & Co. KGaA (Groß-Bieberau, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'TRINOMIC' — Application No 12 697 074

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 October 2016 in Case R 70/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs of the proceedings, including those incurred in the appeal proceedings.

Pleas in law

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

— Infringement of the principle of equal treatment and of the principle that the administration is bound by its own decisions.

Action brought on 21 December 2016 — Elche Club de Fútbol v Commission

(Case T-901/16)

(2017/C 053/48)

Language of the case: Spanish

Parties

Applicant: Elche Club de Fútbol, SAD (Elche, Spain) (represented by: M. Segura Catalán and M. Clayton, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Uphold the pleas for annulment raised in the application;

— annul the decision of the European Commission of 4 July 2016 on State aid SA.36387 (2013/C) (ex 2013/CP), by which Spain granted aid to Elche Club de Fútbol, SAD (and other football clubs), in particular as regards Elche CF;

— annul Article 1 of the decision in respect of measure 3;

— annul Article 2 of the decision in so far as it requires the recovery of the State aid in respect of measure 3 by Elche CF;

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

Pleas in law and main arguments

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

1. First plea in law, alleging an error of assessment and reasoning in the identification of the aid measure and of the beneficiary, in holding that the loan guarantees issued by the Instituto Valenciano de Finanzas (Valencian Institute for Finance) (IVF) in favour of Fundación Elche CF had as their beneficiary, within the meaning of Article 107 TFEU, Elche CF.

2. Second plea in law, alleging an infringement of Article 107 TFEU and failure to state reasons in respect of the classification as State aid of the loan guarantees granted by the IVF to the Fundación Elche CF. The Commission has not demonstrated imputability to the State, that it has conferred an advantage and that that advantage is selective and has not evaluated the distortion of competition nor given sufficient reasons regarding the effect on trade within the European Economic Area.

3. Third plea in law, alleging an infringement of Article 107 TFEU in the quantification of the aid and the amount of aid to be recovered.

4. Fourth plea in law, in the alternative, alleging an infringement of Article 107 TFEU in the assessment of the compatibility of the aid and the application of the Rescue and Restructuring Guidelines.

Action brought on 21 December 2016 — HeidelbergCement v Commission

(Case T-902/16)

(2017/C 053/49)

Language of the case: English

Parties

Applicant: HeidelbergCement AG (Heidelberg, Germany) (represented by: U. Denzel, C. von Köckritz, P. Pichler and H. Weiß, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission No (2016)6591 final of 10 October 2016 to initiate proceedings pursuant to article 6(1)(c) of Council Regulation (EC) No 139/2004 ([1]) in Case M. 7878 — HeidelbergerCement/Schwenk/Cemex Hungary/Cemex Croatia concerning the envisaged acquisition by Duna-Dráva Cement Kft. of 100 % of the shares in Cemex Hratska dd. and Cemex Hungária Építőanyagok Kft.; and

— in any event, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law.

According to the applicant, the European Commission committed a manifest error of assessment by considering the applicant and Schwenk Zement KG — rather than Duna-Dráva Cement Kft., a full-function joint venture in which the applicant and Schwenk Zement KG each hold respectively a controlling interest of 50 %, as 'undertakings concerned' and thus concluded that the transaction has a 'Union dimension' within the meaning of article 1 of Council Regulation (EC) No 139/2004. According to the applicant, in reality, the European Commission lacks the competence for adopting the contested decision and reviewing the transaction on the basis of the Council Regulation (EC) 139/2004 and the contested decision therefore violates article 1 of Council Regulation (EC) 139/2004 and the underlying principles of legal certainty and subsidiarity.

First, the applicant puts forward that the European Commission erred in law and committed a manifest error of assessment in relying on paragraph 147 of the Consolidated Jurisdictional Notice ([2]) in order to qualify the applicant and SchwenkZement KG, rather than Duna-Dráva Cement Kft., as the 'undertakings concerned';

Second, the applicant puts forward that paragraph 147 of the Consolidated Jurisdictional Notice would be unlawful if it could indeed be applied to the case at hand due to a violation of article 1 of the Council Regulation (EC) No 139/2004 and the underlying primary law principles of legal certainty and subsidiarity.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ, L 24, p. 1.
([2]) Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ 2008, C 95, p. 1.

Action brought on 19 December 2016 — RE v Commission

(Case T-903/16)

(2017/C 053/50)

Language of the case: English

Parties

Applicant: RE (Abu Dhabi, United Arab Emirates) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the annulment of the decision SEC 10.20/06/15 of the European Commission of 12 October 2016 for the part pertaining to Regulation 45/2001, and order the defendant to pay to the applicant ten thousand euros (EUR 10 000) as fair and equitable compensation for non-material damages from the unlawful refusal for access to his personal data;

— order the defendant to produce a document relating to the applicant's recruitment, pursuant to Article 91 (c) of the Rules of Procedure of the General Court or, alternatively, to communicate this document to the Court pursuant to Article 104 of the above Rules and order the defendant to pay to the applicant thirty thousand euros (EUR 30 000) in compensation for non-material damages from the unethical and unlawful processing of his personal data during the investigation;

— order the defendant to bear its own costs as well as the costs of the applicant in the current proceedings.

Pleas in law and main arguments

In support of its action for annulment, the applicant alleges that the contested decision is vitiated by a complete lack of reasoning as regards data for which no exception was invoked that would justify the refusal to grant the applicant access to these personal data.

Moreover, the applicant puts forward that as far as it precluded the applicant from accessing his personal data invoking an exception pertinent to the protection of investigations under Article 20(1)(a) of Regulation 45/2001 ([1]), the contested decision must be considered unlawful as it failed to demonstrate how such an exception continued to apply after the closing of the investigation involving the applicant.

The applicant further submits that the contested decision's rejection of his specific request to obtain access in an expunged/redacted form, submitted for the first time with his application of 21 September 2016, must be considered unlawful as far as it did not provide any reasons as to why disclosure of the applicant's personal data in an expunged form was not possible in this case, particularly after the closing of the investigation.

In support of his action for damages, the applicant alleges that he suffered moral damage stemming from the Directorate-General Human Resources and Security's unlawful refusal of access to his personal data, that he incurred significant damage to his professional advancement from the unlawful processing of his personal data by the said Directorate and more specifically from the unlawful dissemination of information regarding the investigation with the intent of harming the development of his career, which damage cannot be remedied solely by the annulment of the contested decision. In this context, the applicant asks the Court to take into consideration two documents so as to examine the applicant's claim for reparation of the non-material harm incurred due to the administration's conduct and order the award of compensation for non-material damages.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, p. 1)

Action brought on 22 December 2016 — Chefaro Ireland v EUIPO — Laboratoires M&L (NUIT PRECIEUSE)

(Case T-905/16)

(2017/C 053/51)

Language in which the application was lodged: English

Parties

Applicant: Chefaro Ireland DAC (Dublin, Ireland) (represented by: P. Maeyaert and J. Muyldermans, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Laboratoires M&L SA (Manosque, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word elements 'NUIT PRECIEUSE' — International registration designating the European Union No 1 063 952

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 October 2016 in Case R 2596/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to bear their own costs and to pay those incurred by Chefaro Ireland.

Plea in law

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

Action brought on 29 December 2016 — Laboratorios Ern v EUIPO — Sharma (NRIM Life Sciences)

(Case T-909/16)

(2017/C 053/52)

Language in which the application was lodged: English

Parties

Applicant: Laboratorios Ern, SA (Barcelona, Spain) (represented by: S. Correa Rodríguez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Anil K. Sharma (Hillingdon, United Kingdom)

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: EU word mark 'NRIM life Sciences' — Application for registration No 13 031 455

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth of Appeal of EUIPO of 26 September 2016 in Case R 2376/2015-5

Form of order sought

The applicant claims that the Court should:

— revoke the contested decision and reject the EUTM No. 013031455 NRIM LIFE SCIENCES for all goods in class 5;

— impose the costs to EUIPO and, in case ANIL K SHARMA decides to intervene in the present proceedings, to ANIL K. Sharma.

Plea in law

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

Action brought on 23 December 2016 — Hesse v EUIPO — Wedl & Hofmann (TESTA ROSSA)

(Case T-910/16)

(2017/C 053/53)

Language in which the application was lodged: German

Parties

Applicant: Kurt Hesse (Nuremberg, Germany) (represented by: M. Krogmann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Wedl & Hofmann GmbH (Mils/Hall in Tirol, Austria)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark containing the word elements 'TESTA ROSSA' –EU trade mark No 7 070 519

Proceedings before EUIPO: Revocation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 October 2016 in Case R 68/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and also declare EU trade mark No 7 070 519 revoked in respect of the following goods:

Class 21 — Household and kitchen containers; Glassware, Porcelain, in particular tableware; Glass beverage ware;

Class 25 — Clothing, namely aprons, shirts, polo shirts and t-shirts; Headgear;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 51(1)(a) of Regulation No 207/2009.

Action brought on 23 December 2016 — Wedl & Hofmann v EUIPO — Hesse (TESTA ROSSA)

(Case T-911/16)

(2017/C 053/54)

Language in which the application was lodged: German

Parties

Applicant: Wedl & Hofmann GmbH (Mils/Hall in Tirol, Austria) (represented by: T. Raubal, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Kurt Hesse (Nuremberg, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'TESTA ROSSA' — EU trade mark No 7 070 519

Proceedings before EUIPO: Revocation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 October 2016 in Case R 68/2016-1

Form of order sought

The applicant claims that the Court should:

— annul or amend the contested decision in so far as it dismissed the applicant's appeal and declared the applicant's mark to be revoked in respect of Classes 7, 11, 20, parts of Classes 21 and 25, Class 28, parts of Class 30, and Classes 34 and 38, and in so far as it confirmed the decision of the Cancellation Division of 17 November 2015 in that regard (however, the part of the contested decision upholding the applicant's appeal remains unchallenged by the applicant);

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 51(1) of Regulation No 207/2009;

— Infringement of Article 15(1)(a) of Regulation No 207/2009;

— Infringement of Rule 40(5) of Regulation No 2868/95, in conjunction with Rule 22(3) and (4) thereof.

Action brought on 2 January 2017 — La Mafia Franchises v EUIPO — Italy (La Mafia SE SIENTA A LA MESA)

(Case T-1/17)

(2017/C 053/55)

Language in which the application was lodged: English

Parties

Applicant: La Mafia Franchises, SL (Zaragoza, Spain) (represented by I. Sempere Massa, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Republic of Italy

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'La Mafia SE SIENTA A LA MESA' — EU trade mark No 5 510 921

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 27 October 2016 in Case R 803/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare the contested European Union Trademark No 5 510 921 'LA MAFIA SE SIENTA A LA MESA' valid;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 52(1)(a) of Regulation No 207/2009;

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

Action brought on 4 January 2017 — Sharif v Council

(Case T-5/17)

(2017/C 053/56)

Language of the case: English

Parties

Applicant: Ammar Sharif (Damascus, Syria) (represented by: B. Kennelly, QC and J. Pobjoy, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Decision (CFSP) 2016/1897 of 27 October 2016 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 293, p. 36, hereafter the 'Contested Decision') and Council Implementing Regulation (EU) 2016/1893 of 27 October 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 293, p. 25, hereafter the 'Contested Regulation') insofar as they apply to the applicant;

— declare, pursuant to Article 277 TFEU, that Article 28(2)(a) of the Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14) and Article 15(l a)(a) of the Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1) are inapplicable insofar as they apply to the Applicant, and the consequential annulment, insofar as they apply to the Applicant, of the Contested Decision and Contested Regulation;

— indemnify the applicant, pursuant to Article 340(2) TFEU, for the damages arising from the non-contractual liability of the EU for the unlawful acts of the Council; and

— order the Council to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council has made manifest errors of assessment in considering that the criterion for listing the applicant in Article 28 of Decision 2013/255/CFSP and Article 15 of Regulation No 36/2012 was satisfied.

2. Second plea in law, alleging that the Council has infringed, without justification or proportion, the applicant's fundamental rights, including his right to protection of property, reputation and business. The impact of the Contested Measures on the applicant is far-reaching, both as regards to his property, and to his reputation worldwide. The Council has failed to demonstrate that the freezing of the applicant's assets and economic resources is related to, or justified by, any legitimate aim, still less that it is proportionate to such an aim.

3. Third plea in law, if, contrary to the applicant's principal case, the designation criterion is to be interpreted to capture any leading businessperson in Syria, irrespective of whether that businessperson has any association or connection with the Syrian regime, and irrespective of whether that individual benefits from or supports the Syrian regime, the applicant seeks a declaration that Article 28(2)(a) of Decision 2013/255/CFSP and Article 15(1a)(a) of Regulation No 36/2012 are inapplicable insofar as they apply to the applicant on the basis that the designation criterion is disproportionate to the otherwise legitimate objectives of those texts.

Order of the General Court of 21 December 2016 — fleur ami v EUIPO — 8 seasons design (Lamps)

(Case T-67/16) ([1])

(2017/C 053/57)

Language of the case: German

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

([1]) OJ C 111, 29.3.2016.

Order of the General Court of 20 December 2016 — Amira and Others v Commission and ECB

(Case T-736/16) ([1])

(2017/C 053/58)

Language of the case: English

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

([1]) OJ C 475, 19.12.2016.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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