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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Eighth Chamber) of 8 December 2016 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Angel Marinkov v Predsedatel na Darzhavna agentsia za balgarite v chuzhbina

(Case C-27/16) ([1])

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Directives 2000/78/EC and 2006/54/EC — Scope — Manifest inadmissibility — Charter of Fundamental Rights of the European Union — Implementation of EU law — None — Manifest lack of jurisdiction)

(2017/C 086/02)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Angel Marinkov

Defendant: Predsedatel na Darzhavna agentsia za balgarite v chuzhbina

Re:

The request for a preliminary ruling brought by the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), by decision of 28 December 2015, is manifestly inadmissible in that it concerns Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The Court of Justice of the European Union manifestly has no jurisdiction to answer the questions referred in that they concern Article 30, 47 and 52(1) of the Charter of Fundamental Rights of the European Union.

([1]) OJ C 111, 29.3.2016.

Order of the Court (Tenth Chamber) of 29 November 2016 (request for a preliminary ruling from the Tribunal de première instance de Liège — Belgium) — Jean Jacob, Dominique Lennertz v Belgian State

(Case C-345/16) ([1])

(Reference for a preliminary ruling — Legislative and factual background to the case in the main proceedings — Insufficient information — Manifestly inadmissible — Article 53(2) — Article 94 of the Court's Rules of Procedure)

(2017/C 086/03)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Jean Jacob, Dominique Lennertz

Defendant: Belgian State

Operative part of the order

The request for a preliminary ruling made by the tribunal de première instance de Liège (Belgique) (Court of First Instance, Liège, Belgium) by decision of 9 June 2016 is manifestly inadmissible.

([1]) OJ C 326, 5.9.2016.

Order of the Court (Ninth Chamber) of 24 November 2016 — European Dynamics Luxembourg SA, European Dynamics Belgium SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Union Intellectual Property Office (EUIPO)

(Case C-379/16 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Public service contracts — Software development and maintenance services — Misinterpretation of the arguments and distortion of the evidence submitted by the other party to the proceedings before the General Court)

(2017/C 086/04)

Language of the case: English

Parties

Appellants: European Dynamics Luxembourg SA, European Dynamics Belgium SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: C.-N. Dede and D. Papadopoulou, dikigoroi)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: N. Bambara, acting as Agent)

Operative part of the order

1. *The appeal is dismissed.*

2. *European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE shall bear their own costs.*

([1]) OJ C 305, 22.8.2016.

Order of the Court (Ninth Chamber) of 13 December 2016 (request for a preliminary ruling from the Giudice di Pace di Taranto — Italy) — Criminal proceedings against Antonio Semeraro

(Case C-484/16) ([1])

(Reference for a preliminary ruling — Manifest lack of jurisdiction — Article 53(2) of the Rules of Procedure of the Court — Judicial cooperation in criminal matters — Directive 2012/29/EU — Article 2 (1)(a) — Minimum standards on the rights, support and protection of victims of crime — Charter of Fundamental Rights of the European Union — Articles 49, 51, 53 and 54 — Offence of defamation — Repeal by the national legislature of the offence of defamation — Lack of connection to EU law — Manifest lack of jurisdiction of the Court)

(2017/C 086/05)

Language of the case: Italian

Referring court

Giudice di Pace di Taranto

Criminal proceedings against

Antonio Semeraro

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the request for a preliminary ruling from the Giudice di Pace di Taranto (Justice of the Peace, Taranto, Italy), made by decision of 2 September 2016.

([1]) OJ C 428, 21.11.2016.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 7 October 2016 — A v Staatssecretaris van Financiën

(Case C-522/16)

(2017/C 086/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: A

Respondent: Staatssecretaris van Financiën

Questions referred

1. Should Article 62 of the CCC [Community Customs Code], ([1]) read in conjunction with Articles 205, 212, 216, 217 and 218 of the Regulation implementing the CCC ([2]) as well as the provisions of Regulation (EEC) No 2777/75 ([3]) and Regulation (EC) No 1484/95, ([4]) be interpreted as meaning that the information referred to in the second subparagraph of Article 201(3) of the CCC, on the basis of which a customs declaration is drawn up, should include the documents referred to in Article 3(2) of Regulation (EC) No 1484/95 which must be submitted to the customs authorities?

2. Should the second subparagraph of Article 201(3) of the CCC be interpreted as meaning that the persons who should be held liable must include the natural person who has not personally actually performed the act described in that paragraph ('provided the information required to draw up the declaration') and who can also not be held liable in an official capacity for performing that act, but who was closely and consciously involved in devising and then setting up a structure of companies and patterns of trade in the context of which (others) subsequently 'provided the information required to draw up the declaration'?

3. Should the condition 'who knew, or who ought reasonably to have known that the information required to draw up the declaration was false' in the second subparagraph of Article 201(3) of the CCC be interpreted as meaning that legal persons and natural persons, who are experienced traders, cannot be held liable for additional duties which are due as a result of an abuse of law, if they only proceeded to set up a transaction structure intended to avoid the payment of additional duties after reputable specialists in the field of customs law had confirmed that such a structure was legally and fiscally acceptable?

4. Should Article 221(4) of the CCC be interpreted as meaning that the three-year period will not be extended in a situation where it is established, after the expiry of the period referred to in the first sentence of Article 221(3) of the CCC, that import duties which became due under Article 201 of the CCC as a result of a customs declaration for release for free circulation of goods, were not levied earlier as a result of the submission of false or incomplete information in the declaration?

5. Should Article 221(3) and Article 221(4) of the CCC be interpreted as meaning that, once a communication about duties due has been made to a customs debtor in relation to an import declaration, against which that customs debtor has lodged an appeal within the meaning of Article 243 of the CCC, the customs authorities can, in respect of the same customs declaration, in a supplementary action to the legal challenge to that communication, make an additional assessment with regard to import duties legally due, while ignoring the provisions of Article 221(4) of the CCC?

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
([2]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).
([3]) Regulation of the Council of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77).
([4]) Commission Regulation of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ 1995 L 145, p. 47).

Appeal brought on 7 November 2016 by European Union Intellectual Property Office against the judgment of the General Court (Seventh Chamber) delivered on 9 September 2016 in Case T-159/15: Puma SE v European Union Intellectual Property Office

(Case C-564/16 P)

(2017/C 086/07)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (represented by: D. Hanf, D. Botis, Agents)

Other party to the proceedings: Puma SE

Form of order sought

The appellant claims that the Court should:

— Set aside the Judgment under appeal in its entirety;

— Order Puma SE to bear the costs incurred by the Office.

Pleas in law and main arguments

First, the General Court disregarded the Office's procedural position and obligations in *inter partes* proceedings before the Office, infringing Article 76(1) of Regulation 207/2009 ([1]) and the principle of sound administration, in that it found that Puma 'duly relied on' the three previous Office decisions for the purposes complying with its duty to show the reputation of the Puma marks (Rule 19(2)(c) of Regulation No 2868/95 ([2])). In doing so, the General Court accepted that this duty can be discharged by means of general and unspecified references to documents submitted in prior opposition proceedings involving different parties — and to which the other party to the proceedings at hand had not been a party.

Since the Office cannot ignore, but rather needs to respect, the other party's right to be heard (Article 75 of Regulation 207/2009), the General Court's finding necessarily obliges the Office to take on an active role in the *inter partes* proceedings. This undermines the adversarial nature of these proceedings, the Office's corresponding duty of neutrality, as well as the sound administration of these proceedings.

Second, in qualifying the previous decisions of the Office invoked by Puma as a 'decision-making practice' of the Office, the General Court misconceived both the adversarial nature of the *inter partes* proceedings and the notion of 'reputation' within the meaning of Article 8(5) of Regulation 207/2009. This twofold misconception resulted in a corresponding twofold breach of the principle of sound administration.

On the one hand, the prerequisite for the very application of the Technopol-case law is not fulfilled in the present — *inter partes* — case because that case law on the Office's duty to inquire *ex officio* the relevant facts of the case to decide only relates to *ex parte* proceedings. In any event, given the inevitable absence of any specific 'decisionmaking practice' of the Office with respect to the reputation of the Puma marks, no duty could possibly exist to state the reasons for not applying the findings made on the Puma marks' reputation in previous decisions to the situation in the case at hand.

On the other hand, the General Court could not — without infringing the adversarial principle governing *inter partes* proceedings laid down in Article 76(1) of Regulation 207/2009 — infer from the principle of sound administration the Board of Appeal's additional duty to invite, on its own motion, Puma to submit supplementary evidence of the reputation it claimed of its Puma marks.

Third, the General Court's finding of the Office's duty to invite, on its own motion, Puma to submit supplementary evidence moreover infringed Article 76(2) of Regulation 207/2009 (applicable pursuant to Rule 50(1) of Regulation No 2868/95) which exclusively applies to submissions made by the parties on their own motion.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ 2009, L 78, p. 1

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark
OJ 1995, L 303, p. 1

Request for a preliminary ruling from the Rechtbank Noord-Holland (Netherlands) lodged on 7 December 2016 — X BV v Inspecteur van de Belastingdienst/Douane, kantoor Rotterdam Rijnmond

(Case C-631/16)

(2017/C 086/08)

Language of the case: Dutch

Referring court

Rechtbank Noord-Holland

Parties to the main proceedings

Applicant: X BV

Defendant: Inspecteur van de Belastingdienst/Douane, kantoor Rotterdam Rijnmond

Questions referred

1. Is Commission Implementing Regulation (EU) 2016/1647 ([1]) of 13 September 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by [A] Ltd, and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14, valid?

2. Is Commission Implementing Regulation (EU) 2016/1731 ([2]) of 28 September 2016 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by [I] Ltd (China), and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14, valid?

3. If the answer to the first and/or the second question is in the negative, does it then mean that the duties paid should be repaid to the applicant with interest?

4. If the answer to the third question is in the affirmative, how should that interest then be calculated?

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

([2]) Commission Implementing Regulation (EU) 2016/1731 of 28 September 2016 reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by General Footwear Ltd (China), Diamond Vietnam Co. Ltd and Ty Hung Footgearmex/Footwear Co. Ltd and implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2016 L 262, p. 4).

Appeal brought on 7 December 2016 by European Union Intellectual Property Office against the judgment of the General Court (Sixth Chamber) delivered on 28 September 2016 in Case T-476/15: European Food SA v European Union Intellectual Property Office

(Case C-634/16 P)

(2017/C 086/09)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (represented by: M. Rajh, Agent)

Other parties to the proceedings: European Food SA, Société des produits Nestlé SA

Form of order sought

The appellant claims that the Court should:

— Annul the contested Judgment

— Order European Food to pay the costs incurred by the Office.

Pleas in law and main arguments

First, the General Court disregarded that Regulations No 207/2009 ([1]) and No 2868/95 ([2]) provide for two types of time-limit for submissions in proceedings before the Office: those specified in the legislation itself and which can thus not be extended by the Office, and those to be set by the Office in each individual case for the proper organization of the proceedings and which can, where appropriate according to the specific circumstances of the case, be extended on the parties' request. The General Court's statement that there is no time-limit applicable to invalidity proceedings based on absolute grounds is therefore erroneous.

Second, the General Court misconceived the meaning and effect of Article 76(2) of Regulation 207/2009. This article applies to all types of proceedings before the Office and to all applicable time-limits, namely (i) to those set directly by Regulations No 207/2009 and No 2868/95 and (ii) to those set up by EUIPO in the exercise of its competence to organize the procedures before it.

Third, by concentrating on the third subparagraph of Rule 50(1) of Regulation No 2868/95, the General Court disregarded the core significance of that rule which lies in its first subparagraph, namely that the Board of Appeal is subject to the same procedural provisions as the division that issued the decision under appeal. The first subparagraph is not confined to opposition proceedings but applies to all proceedings, including cancellation proceedings.

Fourth, the Judgment under Appeal infringed Article 76(2) of Regulation No 207/2009 in that it (i) failed to apply this provision to the time-limits set by the Office and (ii) deprived the Board of Appeal of its power under Article 76(2) of Regulation No 207/2009 to assess whether the evidence submitted for the first time qualified as being 'new' and, failing this, to exercise its discretion as to the admissibility of that evidence.

Finally, the Contested Judgment disrupts the balance between the parties' respective procedural rights by giving any party in invalidity proceedings an unconditional right to submit any evidence at any stage of proceedings before the Office, including on appeal. This deprives the defendant of one step of administrative examination where the cancellation applicant deliberately chooses not to submit any — or any relevant — fact or evidence before the Cancellation Division. Moreover, by giving any party in invalidity proceedings an unconditional right to submit any evidence at any stage of proceedings is also in breach of the principles of procedural economy and sound administration.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ 2009, L 78, p. 1
([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark OJ 1995, L 303, P. 1

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 9 December 2016 — Florian Hanig v Air France SA

(Case C-637/16)

(2017/C 086/10)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Florian Hanig

Defendant: Air France SA

Question referred

Must heading (b) of the first sentence of Article 7(1) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, ([1]) be interpreted as meaning that the term 'intra-Community' also extends to those territories that are so-called 'overseas countries and territories' under Annex II to the Treaty on the Functioning of the European Union, for which only the special arrangements for association set out in Part Four of the TFEU apply?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 15 December 2016 — Synthon BV v Astellas Pharma Inc.

(Case C-644/16)

(2017/C 086/11)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Synthon BV

Respondent: Astellas Pharma Inc.

Questions referred

1. (a) Must Article 6 of the Enforcement Directive ([1]) be interpreted as meaning that, when adopting a criterion for granting a claim for the production of exhibits, a distinction must be made according to whether the party from whom the exhibits are sought is an (alleged) infringer or a third party?

   (b) If the answer to that question is in the affirmative, in what respect do those criteria then differ?

2. (a) If a defence is raised against a claim for the production of exhibits contending that the intellectual-property right on the basis of which the exhibits are sought is void (or no longer exists), should the merits of that defence be assessed on the basis of the same criterion as that which applies to the question of the plausibility of the alleged infringement (assuming that the intellectual-property right invoked actually exists)?

   (b) If the answer to that question is in the negative, in what respect do the criteria differ?

   (c) In answering Questions 2(a) and 2(b), should a distinction be made according to whether the intellectual-property right concerned was granted after its validity had been investigated (as in the case of a European patent), or whether it arose by operation of law (as in the case of copyright)?

([1]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual-property rights (OJ 2004 L 157, p. 45).

Request for a preliminary ruling from the Commissione Tributaria Provinciale di Reggio Calabria (Italy) lodged on 16 December 2016 — Fortunata Silvia Fontana v Agenzia delle Entrate -Direzione provinciale di Reggio Calabria

(Case C-648/16)

(2017/C 086/12)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Reggio Calabria

Parties to the main proceedings

Applicant: Fortunata Silvia Fontana

Defendant: Agenzia delle Entrate -Direzione provinciale di Reggio Calabria

Question referred

Do Articles 113 and 114 TFEU and Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax preclude the Italian domestic legislation in Articles 62 sexies (3) and 62 bis of Legislative Decree 331/1993 [converted into law by] Law No 427 of 29 October 1993, which allows the application of VAT to the overall turnover established by extrapolation, in the light of the principle of deduction and the obligation to recover the tax and, more generally, the principle of the neutrality and the passing-on of the tax?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 19 December 2016 — DW v Valsts sociālās apdrošināšanas aģentūra

(Case C-651/16)

(2017/C 086/13)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: DW

Defendant: Valsts sociālās apdrošināšanas aģentūra, Rīga.

Question referred

Must Article 4(3) of the Treaty on European Union and Article 45(1) and (2) of the Treaty on the Functioning of the European Union be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings that, for the purposes of determining the amount of a maternity benefit, does not exclude from the 12-month period which is to be used in determining the average contribution basis the months in which the person worked in an EU institution and was covered by the joint insurance scheme of the European Communities, but that, on the grounds that, during that period, the person was not insured in Latvia, equates her income with the average contribution basis in the State, which may substantially reduce the amount of the maternity benefit granted in comparison with the possible amount of the benefit that the person could have received if, during the period under consideration for the purposes of the calculation, she had not worked for an EU institution but had been employed in Latvia?

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 19 December 2016 — Nigyar Rauf Kaza Ahmedbekova, Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

(Case C-652/16)

(2017/C 086/14)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Nigyar Rauf Kaza Ahmedbekova, Rauf Emin Ogla Ahmedbekov

Defendant: Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

Questions referred

1. Does it follow from Article 78(1) and 78(2)(a), (d) and (f) of the Treaty on the Functioning of the European Union and from recital 12 and Article 1 of Directive 2013/32/EU ([1]) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) that the ground for the inadmissibility of applications for international protection provided for in Article 33(2)(e) of that directive constitutes a directly effective provision which the Member States may not choose not to apply, for example by applying more favourable provisions of national law under which the initial application for international protection must, in accordance with Article 10(2) of that directive, be examined first from the point of view of whether the applicant fulfils the conditions for qualification as a refugee and then from the point of view of whether that person is eligible for subsidiary protection?

2. Does it follow from Article 33(2)(e) of Directive 2013/32, in conjunction with Article 7(3) and Article 2(a), (c) and (g) and recital 60 of that directive, that, in the circumstances of the main proceedings, an application for international protection lodged by a parent on behalf of an accompanied minor is inadmissible where the reason given for the application is that the child is a member of the family of the person who has applied for international protection on the ground that he is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees?

3. Does it follow from Article 33(2)(e) of Directive 2013/32, in conjunction with Article 7(1) and Article 2(a), (c) and (g) and recital 60 of that directive, that, in the circumstances of the main proceedings, an application for international protection lodged on behalf of an adult is inadmissible where the only reason given for the application in the proceedings before the relevant administrative authority is that the applicant is a member of the family of the person who has applied for international protection on the ground that he is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees and, at the time when he lodges the application, the applicant has no right to carry on an occupation?

4. Does Article 4(4) of Directive 2011/95/EU ([2]) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), in conjunction with recital 36 of that directive, require that the assessment of whether there is a well-founded fear of being persecuted or a real risk of suffering serious harm be carried out only on the basis of facts and circumstances relating to the applicant?

5. Does Article 4 of Directive 2011/95, in conjunction with recital 36 thereof and Article 31(1) of Directive 2013/32, permit national case-law in a Member State which:

   (a) obliges the responsible authority to assess the applications for international protection lodged by members of one and the same family in a joint procedure, in cases where those applications are based on the same facts, specifically the assertion that only one of the family members is a refugee;

(b) obliges the responsible authority to suspend the proceedings relating to applications for international protection lodged by family members who do not personally meet the conditions for such protection until such time as the proceedings relating to the application lodged by the family member on the ground that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees are concluded; and

is that case-law also permissible in the light of considerations relating to the best interests of the child, maintenance of family unity and respect for the right to private and family life and the right to remain in the Member State pending the assessment of the application, more specifically in the light of Articles 7, 18 and 47 of the Charter of Fundamental Rights of the European Union, recitals 12 and 60 and Article 9 of Directive 2013/32, recitals 16, 18 and 36 and Article 23 of Directive 2011/95 and recitals 9, 11 and 35 and Articles 6 and 12 of Directive 2013/33/EU ([3]) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection?

6. Does it follow from recitals 16, 18 and 36 and Article 3 of Directive 2011/95, in conjunction with recital 24 and Article 2(d) and (j), Article 13 and Article 23(1) and (2) of that directive, that a provision of national law, such as Article 8(9) of the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees), at issue in the main proceedings, pursuant to which the members of the family of a foreign national who has been granted refugee status are also regarded as refugees in so far as this is compatible with their personal status and there are no reasons in national law for excluding the granting of refugee status, is permissible?

7. Does it follow from the rules relating to the reasons for persecution contained in Article 10 of Directive 2011/95 that the bringing of a complaint before the European Court of Human Rights against the State of origin of the person concerned establishes that person's membership of a particular social group within the meaning of Article 10(1)(d) of that directive, or that the bringing of that complaint is to be regarded as constituting a political opinion within the meaning of Article 10(1)(e) of the directive?

8. Does it follow from Article 46(3) of Directive 2013/32 that the court is obliged to examine the substance of new grounds for international protection which have been put forward in the course of the judicial proceedings but which were not relied on in the action brought against the decision refusing international protection?

9. Does it follow from Article 46(3) of Directive 2013/32 that the court is obliged to assess the admissibility of the application for international protection on the basis of Article 33(2)(e) of that directive in the proceedings brought against the decision refusing international protection, in so far as, in accordance with Article 10(2) of that directive, the contested decision assessed the application first from the point of view of whether the applicant meets the conditions for qualification as a refugee and then from the point of view of whether that applicant is eligible for subsidiary protection?

([1]) OJ 2013 L 180, p. 60.
([2]) OJ 2011 L 337, p. 9.
([3]) OJ 2013 L 180, p. 96.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 December 2016 — Achim Kollroß v Finanzamt Dachau

(Case C-660/16)

(2017/C 086/15)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Achim Kollroß

Defendant: Finanzamt Dachau

Questions referred

1. Are the requirements as to the certainty that a supply will take place, as a condition of the deduction of input tax on a payment on account within the meaning of the judgment of the Court of Justice of the European Union in Case C-107/13 *Firin*, ([1]) to be determined purely objectively or from the point of view of the person having made the payment on account in the light of the circumstances apparent to him?

2. Are the Member States, taking into account the fact that the chargeability of tax and the right of deduction arise at the same time, in accordance with Article 167 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([2]) and the regulatory powers which they enjoy under Article 185(2) and Article 186 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, entitled to make the adjustment of both tax and the deduction of input tax subject to a refund of the payment on account?

3. Must the tax office responsible for a person who has made a payment on account refund the value added tax to that person where the latter cannot recover the payment on account from the recipient of that payment? If so, must this take place as part of the tax assessment procedure or is a separate equitable procedure sufficient for this purpose?

([1]) ECLI:EU:C:2014:151.
([2]) OJ L 347, p. 1.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 December 2016 — Erich Wirtl v Finanzamt Göppingen

(Case C-661/16)

(2017/C 086/16)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Erich Wirtl

Defendant: Finanzamt Göppingen

Questions referred

1. In accordance with the judgment of the Court of Justice of 13 March 2014, *Firin*, (C-107/13, ([1])), is the deduction of input tax on a payment on account excluded where the occurrence of the chargeable event is uncertain at the time when the payment on account is made. Is that exclusion determined by reference to the objective situation or by reference to the point of view of the person having made the payment on account in the light of the circumstances objectively apparent to him?

2. Is the judgment of the Court of Justice in *Firin* to be interpreted as meaning that, under EU law, an adjustment of the deduction, by a person having made a payment on account for a supply of goods, of the input tax indicated on the invoice issued to that person for that payment is not conditional upon the refund of the payment on account which has been made, where that supply does not ultimately take place?

3. In the event that the foregoing question is answered in the affirmative, does Article 186 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive), ([2]) which allows the Member States to lay down the detailed rules for the adjustment provided for in Article 185 of the VAT Directive, authorise the Federal Republic of Germany, as a Member State, to provide in its national law that the taxable amount may be reduced only if the payment on account is refunded, and that the VAT debt and the deduction of input tax are, accordingly, to be adjusted at the same time and under the same conditions?

([1]) ECLI:EU:C:2014:151.
([2]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 29 December 2016 — Imofloresmira — Investimentos Imobiliários S.A. v Autoridade Tributária e Aduaneira

(Case C-672/16)

(2017/C 086/17)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Imofloresmira — Investimentos Imobiliários S.A.

Defendant: Autoridade Tributária e Aduaneira

Questions referred

(1) When a property, despite being unoccupied for the period of two or more years, is being marketed, that is it is available on the market to be let or for the provision of 'office centre' services, and it is established that the owner intends to let the property subject to VAT and has made the necessary efforts to give effect to that intention, is the characterisation as a '*failure actually to use the property for the purposes of the business*' and/or '*failure actually to use the property in taxed transactions*' — for the purposes of Article 26(1) of the VAT Code and Article 10(1)(b) of the Regime for the Waiver of the VAT exemption in Transactions relating to Immovable Property, introduced by Decree-Law No 21 of 29 January 2007, in their earlier versions — and therefore adopting the view that the deduction initially made must be adjusted, since it is above the amount to which the taxable person was entitled, compatible with Articles 167, 168, 184, 185 and 187 of Council Directive 2006/112/EC ([1]) of 28 November 2006?

(2) If the answer is in the affirmative, may that adjustment, having regard to the correct interpretation of Articles 137, 167, 168, 184, 185 and 187 of … Directive 2006/112/EC …, be imposed only once for the entirety of the period yet to expire — as laid down in the Portuguese legislation, in Article 10(1)(b) and (c) of the Regime for the Waiver of the VAT exemption in Transactions relating to Immovable Property, introduced by Decree-Law No 21 of 29 January 2007, in its earlier version — where the property has been unoccupied for more than two years, but still marketed to be let (with the possibility of waiver) and/or for the provision of services (taxable), with the aim of assigning the property in subsequent years to taxed activities which confer the right to deduct?

(3) Is Article 2(2)(c) of the Regime for the Waiver of the VAT exemption in Transactions relating to Immovable Property introduced by Decree-Law No 21 of 29 January 2007, in conjunction with Article 10(1)(b) of that regime, compatible with Articles 137, 167, 168 and 184 of … Directive 2006/112/EC …, in making it impossible for a taxable person for VAT to waive the VAT exemption when entering into new leases after a single adjustment to VAT has been made and in undermining the subsequent deduction regime during the adjustment period?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1.)

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 27 December 2016 — CORPORATE COMPANIES s.r.o. v Ministerstvo financí ČR

(Case C-676/16)

(2017/C 086/18)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: CORPORATE COMPANIES s.r.o.

Defendant: Ministerstvo financí ČR

Question referred

Do persons who, by way of their business activity, sell companies already entered in the Register of Companies and formed for the purposes of sale ('ready-made companies'), whose sale is realised by the transfer of a holding in the subsidiary company which they are selling, fall within the scope of Article 2(1), point 3(c) of Directive 2005/60/EC [1] of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in conjunction with Article 3(7)(a) thereof?

(1) OJ 2005 L 309, p. 15.

Request for a preliminary ruling from the Juzgado de lo Social No 33 de Madrid (Spain) lodged on 29 December 2016 — Lucía Montero Mateos v Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la Comunidad Autónoma de Madrid

(Case C-677/16)

(2017/C 086/19)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Madrid

Parties to the main proceedings

Applicant: Lucía Montero Mateos

Defendant: Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la Comunidad Autónoma de Madrid

Question referred

Must clause 4(1) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP which forms part of the Community legal order by virtue of Council Directive 1999/70 ([1]) be interpreted as meaning that termination of a temporary 'contrato de interinidad' to cover a vacancy when the term for which the contract was concluded by the employer and the worker expires constitutes objective grounds justifying the Spanish legislature's not providing in such a case for any compensation whatsoever for the termination of the contract, whereas compensation of 20 days' pay for every year of service is provided for in the case of a comparable permanent worker dismissed on objective grounds?

([1]) OJ 1999 L 175, p. 1.

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 30 December 2016 — A

(Case C-679/16)

(2017/C 086/20)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: A

Other party: Espoon kaupungin sosiaali- ja terveyslautakunnan yksilöasioiden jaosto

Questions referred

1. Is a benefit such as personal assistance in accordance with the Disability Services Law a sickness benefit within the meaning of Article 3(1) of Regulation No 883/2004? ([1])

2. If the answer to Question 1 is in the negative, are the rights of Union citizens to move and reside freely in the territory of another Member State, laid down in Articles 20 and 21 TFEU, restricted in a situation in which the grant abroad of a benefit such as personal assistance in accordance with the Disability Services Law is not separately provided for and the conditions for grant of the benefit are interpreted in such a way that personal assistance is not granted in another Member State in which the person completes a three-year course of higher education studies leading to a degree?

   — Is it relevant, in assessing the matter, that a benefit such as personal assistance may be granted in Finland in a municipality other than the person's home municipality, for example when the person is studying in another municipality in Finland?

   — Must relevance be attached, in assessing the matter with respect to EU law, to the rights derived from Article 19 of the United Nations Convention on the Rights of Disabled Persons?

3. If the Court of Justice considers, in its answer to Question 2, that an interpretation of national law such as that in the present case constitutes a restriction of freedom of movement, is such a restriction none the less justifiable on compelling grounds of the public interest in connection with the obligation of the municipality to supervise the arranging of personal assistance, the municipality's possibilities of choosing the most suitable way of arranging assistance, and the maintenance of the coherence and efficacy of the system of personal assistance in accordance with the Disability Services Law?

(1) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 9 January 2017 — Maria Tirkkonen

(Case C-9/17)

(2017/C 086/21)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Maria Tirkkonen

Other party: Maaseutuvirasto

Question referred

Is Article 1(2)(a) of Procurement Directive 2004/18/EC (1) to be interpreted as meaning that the definition of 'public contract' within the meaning of that directive encompasses a scheme

— by which a public body seeks to obtain services in the market for a contractual period limited in advance by entering into contracts, subject to the conditions of a draft framework agreement annexed to the invitation to tender, with all economic operators who meet the individual requirements laid down in the tender documents in regard to the suitability of the offeror and to the service offered, and pass an examination more particularly described in the invitation to tender, and

— which can no longer be joined during the currency of the contract?

(1) 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 (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Korkein oikeus (Finland) lodged on 13 January 2017 — Bosphorus Queen Shipping Ltd Corp. v Rajavartiolaitos

(Case C-15/17)

(2017/C 086/22)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Bosphorus Queen Shipping Ltd Corp.

Defendant: Rajavartiolaitos

Questions referred

1. Is the expression 'coastline or related interests' in Article 220(6) of the Convention on the Law of the Sea and the expression 'coastline or related interests' in Article 7(2) of Directive 2005/35/EC ([1]) to be interpreted by reference to the definition of the expression 'coastline or related interests' contained in Article II(4) of the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties?

2. In accordance with the definition contained in Article II(4)(c) of the 1969 Convention referred to in Question 1, 'related interests' means, inter alia, the well-being of the area concerned, including conservation of living marine resources and of wildlife. Does that provision also apply to the conservation of living resources and wildlife in the exclusive economic zone, or is that provision of the Convention concerned only with conservation of the interests of the coastal area?

3. If Question 1 is answered in the negative, what meaning is to be ascribed to the expression 'coastline or related interests' in Article 220(6) of the Convention on the Law of the Sea and the expression 'coastline or related interests' in Article 7(2) of Directive 2005/35/EC?

4. What meaning is to be ascribed to the expression 'resources of its territorial sea or exclusive economic zone' as it is used in Article 220(6) of the Convention on the Law of the Sea and Article 7(2) of Directive 2005/35/EC? Are living resources to be taken to mean only exploitable species or does that term also include species associated with or dependent upon exploitable species within the meaning of Article 61(4) of the Convention on the Law of the Sea, such as, for example, species of flora and fauna which are used by exploitable species as food?

5. What definition is to be adopted of the expression 'causing … [a] threat' in Article 220(6) of the Convention on the Law of the Sea and Article 7(2) of Directive 2005/35/EC? Is the threat of damage being caused to be determined by reference to the concept of abstract or specific risk or in some other way?

6. In the assessment of the conditions governing the exercise of power by the coastal State, laid down in Article 220(6) of the Convention on the Law of the Sea and Article 7(2) of Directive 2005/35/EC, must it be assumed that major damage or the threat of major damage is a more serious consequence than significant pollution of the marine environment or the threat of such pollution within the meaning of Article 220(5)? What definition is to be adopted of 'significant pollution of the marine environment' and how is account to be taken of such pollution in the assessment of major damage or the threat of major damage?

7. What factors are to be taken into account in the assessment of whether damage or the threat of damage is major? Is account to be taken, for example, of the duration and geographical extent of the adverse effects that manifest themselves as damage? If so, how are the duration and the extent of the damage to be assessed?

8. Directive 2005/35/EC is a directive laying down minimum standards and does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law (Article 2). Does the possibility of applying more stringent rules apply to Article 7(2) of that directive, which governs the power of the coastal State to take action against a vessel in transit?

9. May any account be taken of the specific geographical and ecological characteristics and sensitivity of the Baltic Sea Area in the assessment of the conditions governing the exercise of power by the coastal State which are laid down in Article 220(6) of the Convention on the Law of the Sea and Article 7(2) of the Directive?

10. Does 'clear objective evidence' within the meaning of Article 220(6) of the Convention on the Law of the Sea and Article 7(2) of Directive 2005/35/EC include not only evidence that a vessel has committed the infringements to which the aforementioned provisions refer but also evidence of the consequences of the spill? What form of evidence is to be required to show that there is a threat of major damage to the coastline or related interests or to any resources of the territorial sea or of the exclusive economic zone, such as the bird and fish stocks and the marine environment in the area? Does the requirement of clear objective evidence mean, for example, that the assessment of the adverse effects of the oil spillage on the marine environment must always be based on specific surveys and studies relating to the impact of the oil spill that has occurred?

([1]) Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ 2009 L 280, p. 52).

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 19 January 2017 — Tietosuojavaltuutettu v Jehovah's Witnesses — Religious Community

(Case C-25/17)

(2017/C 086/23)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Tietosuojavaltuutettu

Defendant: Jehovah's Witnesses — Religious Community

Questions referred

1. Are the exceptions to the material scope laid down in Article 3(2), second subparagraph, of the Data Protection Directive ([1]) to be interpreted as meaning that the collection and other processing of personal data carried out by the members of a religious community in connection with door-to-door evangelical work fall outside the scope of that directive? When assessing the applicability of the directive, what significance is to be given to the fact that, on one hand, the evangelical work in connection with which the data is collected is organised by a religious community and its congregations and, on the other, that that data collection is part of the personal religious practice of members of a religious community?

2. Is the definition of personal data filing system in Article 2(c) of the Data Protection Directive, taking account of recitals 26 and 27 thereto, to be interpreted as meaning that, taken as a whole, the manual collection of personal data (name and address and other information and characteristics of a person) carried out in connection with door to door evangelical work

   (a) does not constitute a personal data filing system on the ground that card indexes, directories or other comparable search methods are not expressly included in the definition laid down in the Finnish Law on personal data? or

   (b) constitutes such a data filing system on the ground that, taking account of the intended use, the information required for later use may in fact be extracted from those data easily and at reasonable cost as required by the Finnish Law on personal data?

3. Is the phrase 'alone or jointly with others determines the purposes and means of the processing of personal data' in Article 2(d) of the Data Protection Directive to be interpreted as meaning that a religious community which organises the activity in connection with which personal data is collected (inter alia by dividing up the areas in which the activity is carried out among members involved in evangelical work, supervising the work of those members and maintaining a list of individuals who do not wish to receive visits from evangelists) may be regarded as a controller, on account of the processing of personal data carried out by its members, even though the religious community claims that only the individual members carrying out evangelical work have access to the data collected.

4. Is Article 2(d) to be interpreted as meaning that in order for a religious community to be considered a controller other specific actions are required, such as giving instructions or written guidelines governing the collection of data, or is it sufficient that that religious community is regarded as having de facto control of the activities of its members?

It is necessary to answer Questions 3 and 4 only if, on the basis of the answers to Questions 1 and 2, the directive is applicable. It is necessary to answer Question 4 only if, on the basis of Question 3, the application of Article 2(d) of the Directive to the Religious Community cannot be excluded.

(1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Request for a preliminary ruling from the Okrajno Sodišče Pliberk (Austria) lodged on 23 January 2017 — Čepelnik d.o.o. v Michael Vavti

(Case C-33/17)

(2017/C 086/24)

Language of the case: Slovenian

Referring court

Okrajno Sodišče Pliberk

Parties to the main proceedings

Applicant: Čepelnik d.o.o.

Defendant: Michael Vavti

Questions referred

1. Are Article 56 TFEU and Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System to be interpreted as meaning that they prohibit a Member State from imposing a payment stop and the payment of a surety equal to the outstanding fee for work rendered on the domestic customer if the payment stop and the payment of the surety serve only to secure a possible fine, which would be imposed subsequently in separate proceedings against a service provider established in another Member State?

If that question is answered in the negative:

a. Are Article 56 TFEU and Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System to be interpreted as meaning that they prohibit a Member State from imposing on the domestic customer a payment stop and the payment of a surety equal to the outstanding fee for work rendered if the service provider established in another Member State on whom a fine is to be imposed has no legal remedy against the imposition of a surety on the service provider established in another Member State in proceedings for the imposition of a surety and if the domestic customer's appeal against that decision has no suspensory effect?

b. Are Article 56 TFEU and Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System to be interpreted as meaning that they prohibit a Member State from imposing on the domestic customer a payment stop and the payment of a surety equal to the outstanding fee for work rendered solely because the service provider is established in another Member State?

c. Are Article 56 TFEU and Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System to be interpreted as meaning that they prohibit a Member State from imposing on the domestic customer a payment stop and the payment of a surety equal to the outstanding fee for work rendered even though the fee is not yet due and the amount of the final fee has not yet been determined on account of counter claims and retention rights?

Order of the President of the Court of 30 November 2016 (request for a preliminary ruling from the High Court of Justice Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, on the application of: Prospector Offshore Drilling SA and Others v Her Majesty's Treasury, Commissioners for Her Majesty's Revenue and Customs

(Case C-72/16) ([1])

(2017/C 086/25)

Language of the case: English

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

([1]) OJ C 136, 18.4.2016.

Order of the President of the Court of 6 December 2016 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Riksåklagaren v Zenon Robert Akarsar

(Case C-148/16) ([1])

(2017/C 086/26)

Language of the case: Swedish

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

([1]) OJ C 175, 17.5.2016.

Order of the President of the First Chamber of the Court of 6 December 2016 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — proceedings brought by „Starptautiskā lidosta 'Riga' VAS, intervener: Konkurences padome

(Case C-159/16) ([1])

(2017/C 086/27)

Language of the case: Latvian

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

([1]) OJ C 191, 30.5.2016.

Order of the President of the Court of 25 November 2016 (request for a preliminary ruling from the Handelsgericht Wien — Austria) — RMF Financial Holdings Sàrl v Heta Asset Resolution AG

(Case C-282/16) ([1])

(2017/C 086/28)

Language of the case: German

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

([1]) OJ C 314, 29.8.2016.

Order of the President of the Court of 21 November 2016 (request for a preliminary ruling from the Landgericht Frankfurt am Main — Germany) — FMS Wertmanagement AöR v Heta Asset Resolution AG

(Case C-394/16) ([1])

(2017/C 086/29)

Language of the case: German

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

([1]) OJ C 419, 14.11.2016.

GENERAL COURT

Judgment of the General Court of 18 January 2017 –Andersen v Commission

(Case T-92/11 RENV) ([1])

(State aid — Rail transport — Aid granted by the Danish authorities to the public undertaking Danske Statsbaner (DSB) — Public service contracts for the supply of rail passenger transport services between Copenhagen and Ystad — Decision declaring the aid compatible with the internal market subject to certain conditions — Temporal application of rules of substantive law — Service of general economic interest — Manifest error of assessment)

(2017/C 086/30)

Language of the case: English

Parties

Applicant: Jørgen Andersen (Ballerup, Denmark) (represented by: J. Rivas Andrés and M.-I. Rantou, lawyers)

Defendant: European Commission (represented by: L. Armati and T. Maxian Rusche, acting as Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented by: C. Thorning, acting as Agent, assisted by R. Holdgaard, lawyer) and Danske Statsbaner (DSB), (Copenhagen, Denmark) (represented by: M. Honoré, lawyer)

Intervener in support of the applicant: Dansk Tog (Copenhagen, Denmark) (represented by: G. van de Walle de Ghelcke, J. Rivas Andrés and F. Nissen Morten, lawyers)

Re:

Application based on Article 263 TFEU seeking the partial annulment of Commission Decision 2011/3/EU of 24 February 2010 concerning public transport service contracts between the Danish Ministry of Transport and Danske Statsbaner (State aid C 41/08 (ex NN 35/08)) (OJ 2011 L 7, p. 1).

Operative part of the judgment

The Court:

1. *Annuls the second paragraph of Article 1 of Commission Decision 2011/3/EU of 24 February 2010 concerning public transport service contracts between the Danish Ministry of Transport and Danske Statsbaner (State aid C 41/08 (ex NN 35/08)) in so far as it concerns the payment of 21 December 2009;*

2. *Dismisses the remainder of the action;*

3. *Orders Mr Jørgen Andersen, the European Commission, Dansk Tog, the Kingdom of Denmark and Danske Statsbaner (DSB) to bear their own costs.*

([1]) OJ C 103, 2.4.2011.

Judgment of the General Court of 3 February 2017 — Minority SafePack — one million signatures for diversity in Europe v Commission

(Case T-646/13) ([1])

(Law governing the institutions — European citizens' initiative — Protection of national and linguistic minorities and strengthening of cultural and linguistic diversity in the European Union — Refusal of registration — Commission manifestly lacking legislative powers — Obligation to state reasons — Article 4(2)(b) and (3) of Regulation (EU) No 211/2011)

(2017/C 086/31)

Language of the case: German

Parties

Applicant: Bürgerausschuss für die Bürgerinitiative Minority SafePack — one million signatures for diversity in Europe (represented by: E. Johansson, J. Lund and C. Lund, and subsequently by E. Johansson and T. Hieber, lawyers)

Defendant: European Commission (represented by: H. Krämer, acting as Agent)

Intervener in support of the applicant: Hungary (represented by: M. Fehér, A. Pálfy and G. Szima, acting as Agents)

Interveners in support of the defendant: Slovak Republic (represented by: B. Ricziová, acting as Agent) and Romania (represented by: R. Radu, R. Hațieganu, D. Bulancea and A. Wellman, acting as Agents)

Re:

Application pursuant to Article 263 TFEU and seeking annulment of Commission Decision C(2013) 5969 final of 13 September 2013 rejecting the request for registration of the proposed European citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe'.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2013) 5969 final of 13 September 2013 rejecting the request for registration of the proposed European citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe';*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Bürgerausschuss für die Bürgerinitiative Minority SafePack — one million signatures for diversity in Europe;*

3. *Orders Hungary, the Slovak Republic and Romania to bear their own respective costs.*

([1]) OJ C 112, 14.4.2014.

Judgment of the General Court of 3 February 2017 — Kessel medintim v EUIPO — Janssen-Cilag (Premeno)

(Case T-509/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark Premeno — Earlier national word mark Pramino — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Decision taken following the annulment by the General Court of an earlier decision — Right to be heard — Article 75 of Regulation No 207/2009)

(2017/C 086/32)

Language of the case: German

Parties

Applicant: Kessel medintim GmbH (Mörfelden-Walldorf, Germany) (represented by: A. Jacob and U. Staudenmaier, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Janssen-Cilag GmbH (Neuss, Germany) (represented by: M. Wenz, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 2 July 2015 (Case R 349/2015-4), relating to opposition proceedings between Janseen-Cilag and Kessel medintim.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kessel medintim GmbH to pay the costs.*

([1]) OJ C 354, 26.10.2015.

Judgment of the General Court of 9 February 2017 — Bodegas Vega Sicilia v EUIPO (TEMPOS VEGA SICILIA)

(Case T-696/15) ([1])

(EU trade mark — Application for the EU word mark TEMPOS VEGA SICILIA — Absolute ground for refusal — Trade mark for wine with geographical indications — Article 7(1)(j) of Regulation (EC) No 207/2009)

(2017/C 086/33)

Language of the case: Spanish

Parties

Applicant: Bodegas Vega Sicilia, SA (Valbuena de Duero, Spain) (represented by: S. Alonso Maruri, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 30 September 2015 (Case R 285/2015-4) concerning an application for registration of the word sign TEMPOS VEGA SICILIA as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bodegas Vega Sicilia, SA to pay the costs.*

([1]) OJ C 38, 1.2.2016.

Judgment of the General Court of 9 February 2017 — Mast-Jägermeister v EUIPO (Beakers)

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

(Community design — Application for Community designs representing beakers — 'Representation suitable for reproduction' — Lack of precision of the representation with regard to the scope of the protection sought — Refusal to remedy the deficiencies — Refusal to attribute a date of filing — Articles 36 and 46 of Regulation (EC) No 6/2002 — Articles 4(1)(e) and 10(1) and (2) of Regulation (EC) No 2245/2002)

(2017/C 086/34)

Language of the case: German

Parties

Applicant: Mast-Jägermeister SE (Wolfenbüttel, Germany) (represented by: H.-P. Schrammek, C. Drzymalla, S. Risthaus and J. Engberding, lawyers)

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

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 17 November 2015 (Case R 1842/2015 3), concerning applications for the registration of beakers as Community designs.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mast-Jägermeister SE to pay the costs.*

([1]) OJ C 90, 7.3.2016.

Judgment of the General Court of 9 February 2017 — International Gaming Projects v EUIPO — adp Gauselmann (TRIPLE EVOLUTION)

(Case T-82/16) ([1])

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

(2017/C 086/35)

Language of the case: English

Parties

Applicant: International Gaming Projects Ltd (Qormi, Malta) (represented initially by M. Garayalde Niño and A. Alpera Plazas, and subsequently by M. Garayalde Niño, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 December 2015 (Case R 0725/2015-2), relating to opposition proceedings between adp Gauselmann and International Gaming Projects.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders International Gaming Projects Ltd to pay the costs.*

(1) OJ C 136, 18.4.2016.

Judgment of the General Court of 9 February 2017 — zero v EUIPO — Hemming (ZIRO)

(Case T-106/16) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative trade mark ZIRO — Earlier EU figurative mark zero — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 086/36)

Language of the case: English

Parties

Applicant: zero Holding GmbH & Co. KG (Bremen, Germany) (represented by: M. Nentwig, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Oliver Hemming (Cadbury, United Kingdom)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 12 January 2016 (Case R 71/2015-5), relating to opposition proceedings between zero Holding and Mr Hemming.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 January 2016 (Case R 71/2015-5);*

2. *Orders EUIPO to pay the costs.*

(1) OJ C 175, 17.5.2016.

Appeal brought on 24 November 2016 by Valéria Anna Gyarmathy against the judgment of the Civil Service Tribunal of 5 March 2015 in Case F-97/13, Gyarmathy/FRA

(Case T-196/15 P)

(2017/C 086/37)

Language of the case: English

Parties

Appellant: Valéria Anna Gyarmathy (Györ, Hungary) (represented by: A. Cech, lawyer)

Other party to the proceedings: European Union Agency for Fundamental Rights (FRA)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside in full the contested judgment and uphold in its entirety the form of order sought at first instance;

— order the defendant to bear all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging distortion of evidence and substantive inaccuracy in the factual appraisal by the Civil Service Tribunal of the question of the violation of the terms of the vacancy notice.

2. Second plea in law, alleging failure by the Civil Service Tribunal, contrary to the applicant's right to a fair trial under Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to give adequate reasons for its judgment on the questions arising from the selection process.

3. Third plea in law, alleging failure by the Civil Service Tribunal to adopt further procedural measures which would have enabled the applicant to substantiate her claim concerning a lack of impartiality, objectivity or independence in the selection process.

4. Fourth plea in law, alleging that the Civil Service Tribunal erred in law by declaring inadmissible the applicant's plea in law at first instance relating to the filling of the post concerned, on the ground that it was not raised in the pre-litigation procedure.

5. Fifth plea in law, alleging that the Civil Service Tribunal erred in law by declaring inadmissible the applicant's plea in law at first instance relating to the irregular composition of the selection committee and the breach of the principle of non-discrimination on grounds of sex, on the ground that it was not raised in the pre-litigation procedure and was not closely related to the pleas in the complaint (correspondence rule).

Action brought on 7 December 2016 — Miserini Johansson v EIB

(Case T-870/16)

(2017/C 086/38)

Language of the case: English

Parties

Applicant: Virna Miserini Johansson (Luxembourg, Luxembourg) (represented by: A. Senes, lawyer)

Defendant: European Investment Bank (EIB)

Form of order sought

The applicant claims that the Court should:

Principally:

annul the EIB's decision of 25 January 2016;

order the EIB to restore the applicant's full salary rights and all relevant accessories, including full pension rights and Optional Supplementary Provident Scheme (OSPS)contributions;

order the EIB to reimburse the amount corresponding to the loss of salary (provisionally evaluated in the amount of EUR 24 000 as of 31 December 2016);

order the EIB to retroactively calculate the applicant's full pension rights and OSPS contributions, with effect from 1 February 2016;

order the EIB to pay the applicant damages for the moral prejudice suffered by her, provisionally evaluated as EUR 5 000;

order the EIB to pay the costs of the present proceedings, including legal fees and expertise fees (as applicable).

In the alternative:

order the EIB to restore the prejudice that the applicant has suffered for the loss of her full salary rights by paying her a sum of corresponding damages provisionally evaluated in the amount of EUR 24 000 as of 31 December 2016;

appoint an expert to determine the exact final amount of the item above, of the applicant's pensions rights and OSPS contributions, with effect from 1 February 2016;

order the EIB to reimburse the medical and psychological costs related to the health issues developed due to the severe stress suffered by the applicant and which is not reimbursed by the EIB Health Insurance Scheme;

order the EIB to compensate the applicant for the moral prejudice she has suffered, evaluated at EUR 5 000, with, if required by the Court, an expert being appointed in order to determine the exact sum;

order the EIB to pay the costs of the present proceedings, including legal fees and expertise fees (as applicable).

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the EIB breached the applicant's fundamental rights as guaranteed by the Charter of Fundamental Rights of the European Union and the case-law of the Court of Justice concerning the protection of fundamental rights (inter alia, judgment of 13 December 1979, Hauer v Rheinland-Pfalz, C-44/79, EU:C:1979:290).

The applicant argues that the EIB violated its general duty of care owed to the applicant with regard to her medical condition and the risks to which this condition exposed her. Furthermore, the applicant was not properly informed of the procedures to follow in relation to the proof of an occupational disease. The applicant maintains, in any case, that the disease from which she is suffering has been declared to be occupational in origin by medical opinion and that she has provided the EIB with all relevant documents to enable a determination to be made. No further procedural steps, on her part, are required, and the EIB should immediately provide her with the relief sought.

Action brought on 17 January 2017 — LA Superquimica v EUIPO — D-Tack (D-TACK)

(Case T-24/17)

(2017/C 086/39)

Language in which the application was lodged: English

Parties

Applicant: LA Superquimica, SA (Barcelona, Spain) (represented by: A. Canela Giménez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: D-Tack GmbH (Hüttlingen, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'D-TACK' — Application for registration No 9 650 847

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 November 2016 in Case R 1983/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the EUIPO decision dated 15/11/2016;

— order EUIPO and those whose oppose this request to pay the costs.

Pleas in law

— The Board of Appeal failed to consider Sitadex extracts concerning Spanish trade mark registration Nos: 2515958, 2516679, 2542249, 2591412 and 2668711 submitted by the applicant;

— The Board of Appeal failed to consider the proof of use submitted by the applicant.

Action brought on 19 January 2017 — Habermaaß v EUIPO — Here Global (h)

(Case T-40/17)

(2017/C 086/40)

Language in which the application was lodged: English

Parties

Applicant: Habermaaß GmbH AG (Bad Rodach, Germany) (represented by: U. Blumenröder, H. Gauß and E. Bertram, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Here Global BV (Eindhoven, The Netherlands)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'h' — Application for registration No 12 833 141

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 24 October 2016 in Case R 53/2016-2

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 Articles 8(1)(b) and 41 of Regulation No 207/2009;

— Infringement of the legal principles to be considered when applying and interpreting the Regulation No 207/2009;

— Infringement of Article 135(4) of the Rules of procedure.

Action brought on 27 January 2017 — Poland v Commission

(Case T-51/17)

(2017/C 086/41)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2016/2018 of 15 November 2016 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2016) 7232) (OJ 2016 L 312, p. 26), in so far as it excludes from European Union financing the sums of EUR 38 984 850,50 and EUR 76 816 098,12 paid by the paying agency accredited by the Republic of Poland;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 52(1) of Regulation (EU) No 1306/2013 ([1]) through the application of a financial correction based on incorrect factual findings and an incorrect interpretation of the law, despite the fact that the expenditure was effected by the Republic of Poland in accordance with the provisions of EU law.

— The amounts excluded from European Union financing under the contested decision were spent in accordance with Regulation (EC) No 1234/2007 ([2]) and Commission Implementing Regulation No 543/2011 ([3]) and there was therefore no basis for excluding those amounts from that financing.

2. Second plea in law, alleging infringement of Article 52(2) of Regulation (EU) No 1306/2013 through the application of a flat-rate correction which was grossly excessive in relation to the risk of potential financial loss for the European Union budget.

— The flat-rate correction of 25 % applied by the Commission is too high and exceeds the maximum potential loss that could be borne by the Fund. In addition, the applicant makes reference to Guidelines No VI/5330/97 for the calculation of financial consequences and points out that it has fulfilled all of the conditions described in those guidelines necessary for the application by the Commission of a lower rate or for the non-application of the correction.

3. Third plea in law, alleging infringement of Article 52(4)(a) of Regulation (EU) No 1306/2013 by reason of the calculation of a flat-rate correction in relation to expenditure effected more than 24 months before the Commission notified the Member State in writing of its inspection findings.

— Under Article 52(4)(a) of that regulation, financing may not be refused for expenditure which was effected more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

([2]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

([3]) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

Action brought on 1 February 2017 — Westbrae Natural v EUIPO — Kaufland Warenhandel (COCONUT DREAM)

(Case T-65/17)

(2017/C 086/42)

Language in which the application was lodged: English

Parties

Applicant: Westbrae Natural, Inc. (Delaware, United States) (represented by: D. McFarland, Barrister)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Kaufland Warenhandel GmbH & Co. KG (Neckarsulm, Germany)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: EU word mark 'COCONUT DREAM' — Application for registration No 13 599 501

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 November 2016 in Case R 182/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— make an order concerning the costs in favour of the applicant.

Plea in law

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

Order of the General Court of 2 February 2017 — Adama Agriculture and Adama France v Commission

(Case T-476/16) ([1])

(2017/C 086/43)

Language of the case: English

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

([1]) OJ C 402, 31.10.2016.

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