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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Tenth Chamber) of 2 March 2017 (request for a preliminary ruling from the Judecătoria Balş — Judeţul Olt — Romania) — SC Casa Noastră SA v Ministerul Transporturilor — Inspectoratul de Stat pentru Controlul în Transportul Rutier (ISCTR)

(Case C-245/15) ([1])

(Reference for a preliminary ruling — Road transport — Social provisions — Exceptions — Regulation (EC) No 561/2006 — Article 3(a) — Regulation (EC) No 1073/2009 — Article 2(3) — Regular services providing for the carriage of passengers — Concept — Carriage free of charge organised by an economic operator for its employees, to and from work, in vehicles belonging to it and driven by one of its employees)

(2017/C 121/02)

Language of the case: Romanian

Referring court

Judecătoria Balş — Judeţul Olt

Parties to the main proceedings

Applicant: SC Casa Noastră SA

Defendants: Ministerul Transporturilor — Inspectoratul de Stat pentru Controlul în Transportul Rutier (ISCTR)

Operative part of the judgment

Article 3(a) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 and Article 2(3) of Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, must be interpreted as meaning that the service of the carriage by road of workers between home and work, organised by their employer, where the route covered does not exceed 50 km, falls within the scope of the derogation laid down in Article 3(a) of Regulation No 561/2006, according to which that regulation does not apply to such a service.

([1]) OJ C 337, 12.10.2015.

Judgment of the Court (Fourth Chamber) of 1 March 2017 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — ITV Broadcasting Limited, ITV2 Limited, ITV Digital Channels Limited, Channel Four Television Corporation, 4 Ventures Limited, Channel 5 Broadcasting Limited, ITV Studios Limited v TVCatchup Limited, TVCatchup (UK) Limited, Media Resources Limited

(Case C-275/15) ([1])

(Reference for a preliminary ruling — Directive 2001/29/EC — Harmonisation of certain aspects of copyright and related rights in the information society — Article 9 — Access to cable of broadcasting services — Concept of 'cable' — Retransmission of broadcasts of commercial television broadcasters by a third party via the internet — 'Live streaming')

(2017/C 121/03)

Language of the case: English

Referring court

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

Parties to the main proceedings

Appellants: ITV Broadcasting Limited, ITV2 Limited, ITV Digital Channels Limited, Channel Four Television Corporation, 4 Ventures Limited, Channel 5 Broadcasting Limited, ITV Studios Limited

Respondents: TVCatchup Limited, TVCatchup (UK) Limited, Media Resources Limited

Interveners: The Secretary of State for Business, Innovation and Skills, Virgin Media Limited

Operative part of the judgment

Article 9 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, and specifically the concept of 'access to cable of broadcasting services', must be interpreted as not covering, and not permitting, national legislation which provides that copyright is not infringed in the case of the immediate retransmission by cable, including, where relevant, via the internet, in the area of initial broadcast, of works broadcast on television channels subject to public service obligations.

([1]) OJ C 279, 24.8.2015.

Judgment of the Court (Tenth Chamber) of 2 March 2017 (request for a preliminary ruling from the Tribunal da Relação de Évora — Portugal) — Andrew Marcus Henderson v Novo Banco SA

(Case C-354/15) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Service of judicial and extrajudicial documents — Regulation No 1393/2007 — Articles 8, 14 and 19 — Postal service of a document instituting the proceedings — Failure to provide a translation of the document — Annex II — Standard form — None — Consequences — Service by registered letter with acknowledgement of receipt — Failure to return acknowledgement of receipt — Receipt of document by a third party — Conditions of validity of the proceedings)

(2017/C 121/04)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Évora

Parties to the main proceedings

Applicant: Andrew Marcus Henderson

Defendant: Novo Banco SA

Operative part of the judgment

1. *Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('service of documents'), and repealing Council Regulation (EC) No 1348/2000, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, according to which, in the event that a judicial document, served on a defendant residing in the territory of another Member State, has not been drafted or accompanied by a translation either in a language which that defendant understands, or in the official language of the requested Member State or, where there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, the omission of the standard form set out in Annex II to that regulation renders such service invalid, even if such invalidity must be invoked by that defendant within a specified period or at the beginning of the proceedings and before any defence on the merits.*

   The regulation requires, on the other hand, that such an omission be corrected in accordance with the provisions laid down in that regulation, by communicating the standard form set out in Annex II of that regulation to the person concerned.

2. *Regulation No 1393/2007 must be interpreted as meaning that postal service of a document instituting proceedings is valid, even if:*

   — *The acknowledgment of receipt of the registered letter containing the document to be served on the addressee has been replaced by another document, provided that such document provides equivalent guarantees as regards information provided and evidence. It is for the court hearing the matter in the Member State of transmission to satisfy itself that the addressee has received the document in question in such a way as to ensure that his rights of defence have been respected;*

   — *The document to be served has not been delivered to its addressee in person, provided that it has been served on an adult person who is inside the habitual residence of that person and is either a member of his family or an employee in his service. Where appropriate, it is for the addressee to establish, by all admissible forms of evidence before the court hearing the matter in the Member State of transmission, that he could not effectively take account of the fact that judicial proceedings were being brought against him in another Member State, that he could not identify the subject-matter and grounds of the claim, or that he did not have sufficient time to prepare his defence.*

([1]) OJ C 302, 14.9.2015.

Judgment of the Court (Second Chamber) of 2 March 2017 (request for a preliminary ruling from the Landessozialgericht Rheinland-Pfalz, Mainz — Germany) — Alphonse Eschenbrenner v Bundesagentur für Arbeit

(Case C-496/15) ([1])

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45 TFEU — Regulation (EU) No 492/2011 — Article 7 — Equal treatment — Frontier worker subject to income tax in the Member State of residence — Benefit paid by the Member State of employment in the event of the employer's insolvency — Detailed rules for the calculation of the insolvency benefit — Notional taking into account of the income tax of the Member State of employment — Insolvency benefit lower than the previous net remuneration — Bilateral convention for the avoidance of double taxation)

(2017/C 121/05)

Language of the case: German

Referring court

Landessozialgericht Rheinland-Pfalz, Mainz

Parties to the main proceedings

Applicant: Alphonse Eschenbrenner

Defendant: Bundesagentur für Arbeit

Operative part of the judgment

Article 45 TFUE and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as not precluding, in circumstances such as those at issue in the main proceedings, the amount of the insolvency benefit awarded by a Member State to a frontier worker who is not subject to income tax in that State, and for whom that benefit, under the provisions applicable to him, is not taxable, from being determined by deducting income tax, as it applies in that State, from the remuneration used to calculate that benefit, with the consequence that that frontier worker, unlike persons working and residing in that State, does not receive a benefit corresponding to his previous net remuneration. The fact that that worker does not have a claim against his employer corresponding to the part of his previous gross salary which he has not received because of that deduction has no effect in that regard.

([1]) OJ C 429, 21.12.2015.

Judgment of the Court (Seventh Chamber) of 2 March 2017 (request for a preliminary ruling from the Landgericht Stuttgart — Germany) — Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV v comtech GmbH

(Case C-568/15) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Article 21 — Communication by telephone — Operation of a telephone line by a trader to enable consumers to contact him in relation to a contract concluded — Prohibition on applying a rate higher than the basic rate — Concept of 'basic rate')

(2017/C 121/06)

Language of the case: German

Referring court

Landgericht Stuttgart

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV

Defendant: comtech GmbH

Operative part of the judgment

The concept of 'basic rate' referred to in Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, must be interpreted as meaning that call charges relating to a contract concluded with a trader to a telephone helpline operated by the trader may not exceed the cost of a call to a standard geographic landline or mobile telephone line. Provided that that limit is respected, the fact that the relevant trader makes or does not make a profit through that telephone helpline is irrelevant.

([1]) OJ C 38, 1.2.2016.

Judgment of the Court (Fourth Chamber) of 2 March 2017 (request for a preliminary ruling from the tribunal administratif de Melun — France) — Glencore Céréales France v Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Case C-584/15) ([1])

(Reference for a preliminary ruling — Regulation (EC, Euratom) No 2988/95 — Protection of the European Union's financial interests — Article 3 — Regulation (EEC) No 3665/87 — Article 11 — Recovery of an export refund unduly granted — Regulation (EEC) No 3002/92 — Article 5a — Security wrongly released — Interest due — Limitation period — Point from which time begins to run — Interruption of the period — Maximum limit — Longer period — Whether applicable)

(2017/C 121/07)

Language of the case: French

Referring court

Tribunal administratif de Melun

Parties to the main proceedings

Applicant: Glencore Céréales France

Defendant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Operative part of the judgment

1. *Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests must be interpreted as meaning that the limitation period laid down in that provision is applicable to the recovery of claims for interest, such as those at issue in the main proceedings, due on the basis of Article 11(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 495/97 of 18 March 1997, and Article 5a of Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention, as amended by Commission Regulation (EC) No 770/96 of 26 April 1996.*

2. *The second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the fact that an operator is liable for claims for interest, such as those at issue in the main proceedings, does not constitute a 'continuous or repeated irregularity' within the meaning of that provision. Such claims must be regarded as resulting from the same irregularity, within the meaning of Article 1(1) of Regulation No 2988/95, as that giving rise to the recovery of the aid and amounts wrongly received, constituting the principal claims.*

3. *The first subparagraph of Article 3(1) of Regulation 2988/95 must be understood as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of claims for interest, such as those at issue in the main proceedings, the limitation period laid down in the first subparagraph of Article 3(1) starts to run from the date on which the irregularity which gives rise to the recovery of the aid and amounts not due, on the basis of which that interest is calculated, was committed, that is, on the date of the factor constituting that irregularity, namely, either the date of the act or omission or the date of the prejudice, which occurs last.*

4. *The fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of interest, such as those at issue in the main proceedings, limitation becomes effective on the expiry of the period laid down in the fourth subparagraph of Article 3(1), when within that period the competent authority, while having sought recovery of the aid or amounts wrongly received by the operator concerned, has not adopted a decision regarding that interest.*

5. *Article 3(3) of Regulation No 2988/95 must be interpreted as meaning that a limitation period laid down under national law, which is longer than that laid down in Article 3(1) of that regulation, may be applied, in a situation such as that at issue in the main proceedings, as regards the recovery of claims arising before the date on which that period entered into force, not yet time-barred under Article 3(1).*

([1]) OJ C 38, 1.2.2016.

Judgment of the Court (Eighth Chamber Chamber) of 2 March 2017 — Panrico, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (EUIPO), HDN Development Corp.

(Case C-655/15 P) ([1])

(Appeal — European Union trade mark — Regulation (EC) No 40/94 — Article 52 — Article 8(1)(b) and Article 8(5) — Figurative mark containing the word elements 'krispy kreme doughnuts' — National and international word and figurative marks containing the elements 'donut', 'donuts' and 'doughnuts' — Application for a declaration of invalidity — Dismissal)

(2017/C 121/08)

Language of the case: Spanish

Parties

Appellant: Panrico, SA (represented by: D. Pellisé Urquiza, abogado)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), HDN Development Corp. (represented by: M. H. Granado Carpenter and L. Polo Carreño, abogadas)

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders Panrico SA to pay the costs.*

([1]) OJ C 118, 4.4.2016.

Judgment of the Court (Second Chamber) of 2 March 2017 (request for a preliminary ruling from the Sąd Apelacyjny w Warszawie Wydział Cywilny — Poland) — J. D. v Prezes Urzędu Regulacji Energetyki

(Case C-4/16) ([1])

(Reference for a preliminary ruling — Environment — Directive 2009/28/EC — The second subparagraph of Article 2(a) — Energy from renewable sources — Hydropower — Meaning — Energy produced in a small-scale hydropower plant located at the point of discharge of industrial waste water from another plant)

(2017/C 121/09)

Language of the case: Polish

Referring court

Sąd Apelacyjny w Warszawie Wydział Cywilny

Parties to the main proceedings

Applicant: J. D.

Defendant: Prezes Urzędu Regulacji Energetyki

Operative part of the judgment

The concept of 'energy from renewable sources', in the second subparagraph of Article 2(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, must be interpreted as covering energy generated by a small-scale hydropower plant, which is not a pumped-storage power station or a hydropower plant with a pumping installation, located at the point of discharge of industrial waste water from another plant which previously used the water for its own purposes.

([1]) OJ C 111, 29.3.2016.

Judgment of the Court (Tenth Chamber) of 2 March 2017 (Request for a preliminary ruling from the Juzgado de lo Social No 3 de Barcelona — Spain) — José María Pérez Retamero v TNT Express Worldwide Spain S.L., Last Mile Courier S.L., formerly Transportes Sapirod S.L., Fondo de Garantía Salarial (Fogasa)

(Case C-97/16) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2002/15/EC — Protection of the safety and health of workers — Organisation of working time — Road transport — Mobile worker — Self-employed driver — Concept — Inadmissibility)

(2017/C 121/10)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 3 de Barcelona

Parties to the main proceedings

Applicant: José María Pérez Retamero

Defendants: TNT Express Worldwide Spain S.L., Last Mile Courier S.L., formerly Transportes Sapirod S.L., Fondo de Garantía Salarial (Fogasa)

Operative part of the judgment

The request for a preliminary ruling made by the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona, Spain) is inadmissible.

([1]) OJ C 156, 2.5.2016.

Judgment of the Court (Ninth Chamber) of 2 March 2017 — European Commission v Hellenic Republic

(Case C-160/16) ([1])

(Failure of a Member State to fulfil obligations — Energy policy — Energy performance of buildings — Directive 2010/31/EU — Article 5(2) — Report on cost-optimal levels)

(2017/C 121/11)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and K. Talabér-Ritz, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou, acting as Agent)

Operative part of the judgment

The Court:

1) *declares that, since the Hellenic Republic failed to submit a report on cost-optimal levels, as is laid down in Article 5(2) of Directive 2010/31/EU (1) of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, as supplemented by Commission Delegated Regulation (EU) No 244/2012 (2) of 16 January 2012 establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements, the Hellenic Republic has failed to fulfil its obligations under Article 5(2) of Directive 2010/31.*

2. *orders the Hellenic Republic to pay the costs.*

([1]) OJ C 251, 11.7.2016.

Appeal brought on 18 November 2016 by Skylotec GmbH against the judgment of the General Court (Second Chamber) of 13 September 2016 in Case T-146/15, *hyphen GmbH* v *European Union Intellectual Property Office (EUIPO)*

(Case C-587/16 P)

(2017/C 121/12)

Language of the case: German

Parties

Appellant: Skylotec GmbH (represented by: M. De Zorti, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), hyphen GmbH

By order of 28 February 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 Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2016 — Amber Capital Italia Sgr SpA, Amber Capital Uk Llp v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-654/16)

(2017/C 121/13)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Amber Capital Italia Sgr SpA, Amber Capital Uk Llp

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Question referred

Is the proper application of the first and second subparagraphs of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, ([1]) in the light of the general principles laid down in Article 3(1) thereof, and in the light of the proper application of the general principles relating to protection of legitimate expectations, proportionality, reasonableness, transparency and non-discrimination, prevented by a provision of national law such as Article 106(3)(d)(2) of Legislative Decree No 58 of 24 February 1998 (consolidating all provisions in the field of financial intermediation within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), as subsequently amended, and Article 47 *octies* of the Decision of the Commissione Nazionale per le Società e la Borsa — Consob No 11971 of 14 May 1999 (Order implementing Legislative Decree No 58 of 24 February 1998 laying down rules applicable to offerees), as subsequently amended, in so far as those provisions, in authorising Consob to increase the price of the takeover bid as referred to in Article 106 where collusion is found between, on the one hand, the offeror or the persons acting in concert with it and, on the other, one or more sellers, simply refer to the criterion of the 'price ascertained' without specifying the parameters and criteria for such a finding?

([1]) OJ 2004 L 142, p. 12.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2016 — Hitachi Rail Italy Investments Srl v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-655/16)

(2017/C 121/14)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Hitachi Rail Italy Investments Srl

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Question referred

Is the proper application of the second subparagraph of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, ([1]) in the light of the general principles laid down in Article 3(1) thereof, and in the light of the proper application of the general principles of European law relating to legal certainty, protection of legitimate expectations, proportionality, reasonableness, transparency and non-discrimination, prevented by a provision of national law such as Article 106(3)(d)(2) of Legislative Decree No 58 of 24 February 1998 (consolidating all provisions in the field of financial intermediation within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), as subsequently amended, and Article 47 *octies* of the Decision of the Commissione Nazionale per le Società e la Borsa — Consob No 11971 of 14 May 1999 (Order implementing Legislative Decree No 58 of 24 February 1998 laying down rules applicable to offerees), as subsequently amended, in so far as those provisions authorise Consob to increase the takeover bid as referred to in Article 106 where the condition that 'there has been collusion between the offeror or the persons acting in concert with it and one or more sellers' is fulfilled, without identifying the specific actions which constitute such a situation, and thus without determining clearly the conditions and criteria under which Consob is authorised to adjust upwards the price of the takeover bid?

([1]) OJ 2004 L 142, p. 12.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2016 — Finmeccanica SpA v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-656/16)

(2017/C 121/15)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Finmeccanica SpA

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Question referred

Is the proper application of the second subparagraph of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, ([1]) in the light of the general principles laid down in Article 3(1) thereof, and the proper application of the general principles of European law relating to legal certainty, protection of legitimate expectations, proportionality, reasonableness, transparency and non-discrimination, prevented by a provision of national law such as Article 106(3)(d)(2) of Legislative Decree No 58 of 24 February 1998 (consolidating all provisions in the field of financial intermediation within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), as subsequently amended, and Article 47 *octies* of the Decision of the Commissione Nazionale per le Società e la Borsa — Consob No 11971 of 14 May 1999 (Order implementing Legislative Decree No 58 of 24 February 1998 laying down rules applicable to offerees), as subsequently amended, in so far as those provisions authorise Consob to increase the takeover bid as referred to in Article 106 where the condition that 'there has been collusion between the offeror or the persons acting in concert with it and one or more sellers' is fulfilled, without identifying the specific actions which constitute such a situation, and thus without determining clearly the conditions and criteria under which Consob is authorised to adjust upwards the price of the takeover bid?

([1]) OJ 2004 L 142, p. 12.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2016 — Bluebell Partners Limited v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-657/16)

(2017/C 121/16)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Bluebell Partners Limited

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Question referred

Is the proper application of the first and second subparagraphs of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, ([1]) in the light of the general principles laid down in Article 3(1) thereof, and in the light of the proper application of the general principles relating to the protection of legitimate expectations, proportionality, reasonableness, transparency and non-discrimination, prevented by a provision of national law such as Article 106(3)(d)(2) of Legislative Decree No 58 of 24 February 1998 (consolidating all provisions in the field of financial intermediation within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), as subsequently amended, and Article 47 *octies* of the Decision of the Commissione Nazionale per le Società e la Borsa — Consob No 11971 of 14 May 1999 (Order implementing Legislative Decree No 58 of 24 February 1998 laying down rules applicable to offerees), as subsequently amended, in so far as those provisions, in authorising Consob to increase the price of the takeover bid as referred to in Article 106 where collusion is found to have taken place between, on the one hand, the offeror or the persons acting in concert with it and, on the other hand, one or more sellers, simply refer to the criterion of the 'price ascertained' without specifying the parameters and criteria for such a finding?

([1]) OJ 2004 L 142, p. 12.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2016 — Elliot International Lp and Others v Commissione Nazionale per le Società e la Borsa (Consob)

(Case C-658/16)

(2017/C 121/17)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Elliot International Lp, The Liverpool Limited Partnership, Elliot Associates L.P.

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Question referred

Is the proper application of the first and second subparagraphs of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, ([1]) in the light of the general principles laid down in Article 3(1) thereof, and in the light of the proper application of the general principles relating to the protection of legitimate expectations, proportionality, reasonableness, transparency and non-discrimination, prevented by a provision of national law such as Article 106(3)(d)(2) of Legislative Decree No 58 of 24 February 1998 (consolidating all provisions in the field of financial intermediation within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), as subsequently amended, and Article 47 *octies* of the Decision of the Commissione Nazionale per le Società e la Borsa — Consob No 11971 of 14 May 1999 (Order implementing Legislative Decree No 58 of 24 February 1998 laying down rules applicable to offerees), as subsequently amended, in so far as those provisions, in authorising Consob to increase the price of the takeover bid as referred to in Article 106 where collusion is found to have taken place between the offeror or the persons acting in concert with it, on the one hand, and one or more sellers, on the other hand, simply refer to the criterion of the 'price ascertained' without specifying the parameters and criteria for such a finding?

([1]) OJ 2004 L 142, p. 12.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 19 January 2017 — NN A/S v Skatteministeriet

(Case C-28/17)

(2017/C 121/18)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: NN A/S

Defendant: Skatteministeriet

Questions referred

1. What factors are to be taken into account in assessing whether resident companies in a situation such as the present one are subject to an 'equivalent condition' within the meaning of paragraph 20 of the *Philips* judgment, ([1]) with respect to the setting off of losses, to that applicable to branches of non-resident companies?

2. If it is presumed that the Danish tax rules do not contain a difference of treatment as dealt with in the *Philips* case, does a prohibition of setting off similar to that described — in a case in which the loss in the non-resident company's permanent establishment is also subject to the host country's power of taxation — in itself constitute a restriction of the right of freedom of establishment under Article 49 TFEU, which has to be justified by reference to overriding reasons of the public interest?

3. If so, can such a restriction then be justified by the interest in preventing the double use of losses, the objective of ensuring a balanced distribution of powers of taxation between the Member States, or a combination of both?

4. If so, is such a restriction proportionate?

([1]) Judgment of the Court of 6 September 2012, C-18/11 (EU:C:2012:532).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 25 January 2017 — Isabel González Castro v Mutua Umivale, Prosegur España, S.L.

(Case C-41/17)

(2017/C 121/19)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Isabel González Castro

Respondents: Mutua Umivale, Prosegur España, S.L.

Questions referred

1. Has Article 7 of Directive 92/85/EEC ([1]) to be interpreted as meaning that the night work, which those workers referred to in Article 2, including workers who are breastfeeding, must not be obliged to perform, includes not only work performed entirely during the night, but also shift work when, as in this case, some of those shifts are worked at night?

2. In proceedings in which the existence of a situation of risk for a worker who is breastfeeding is at issue, do the special rules on burden of proof in Article 19(1) of Directive 2006/54/EC, ([2]) transposed into Spanish law by, inter alia, Article 96(1) of Ley 36/2011 (Law 36/2011), apply in conjunction with the requirements set out in Article 5 of Directive 92/85/EEC, transposed into Spanish law by Article 26 of the Ley de Prevención de Riesgos Laborales (Law on the Prevention of Occupational Risks), relating to the granting of leave to a breastfeeding worker and, as the case may be, payment of the relevant allowance under national legislation by virtue of Article 11(1) of Directive 92/85/EEC?

3. In proceedings in which the existence of a risk during breastfeeding giving entitlement to leave, as provided for in Article 5 of Directive 92/85/EEC and transposed into Spanish law by Article 26 of the Law on the Prevention of Occupational Risks, is at issue, can Article 19(1) of Directive 2006/54/EC be interpreted as meaning that the following are 'facts from which it may be presumed that there has been direct or indirect discrimination' in relation to a breastfeeding worker: (1) the fact that the worker does shift work as a security guard with some shifts being worked at night and alone; (2) in addition, that the work entails doing rounds and, where necessary, dealing with emergencies (criminal behaviour, fire and other incidents); and (3) furthermore that there is no evidence that the workplace has anywhere suitable for breastfeeding or, as the case may be, for expressing breast milk?

4. In proceedings in which the existence of a risk during breastfeeding giving entitlement to leave is at issue, when 'facts from which it may be presumed that there has been direct or indirect discrimination' have been established in accordance with Article 19(1) of Directive 2006/54/EC in conjunction with Article 5 of Directive 92/85/EEC, transposed into Spanish law by Article 26 of the Law on the Prevention of Occupational Risks, can a breastfeeding worker be required to demonstrate, in order to be granted leave in accordance with the domestic legislation transposing Article 5(2) and (3)of Directive 92/85/EEC, that the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required and that moving her to another job is not technically and/or objectively feasible or cannot reasonably be required or are these matters for the respondents (the employer and the mutual insurance company providing the social security benefit associated with the suspension of the contract of employment) to prove?

([1]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) . OJ 1992 L 348, p. 1

([2]) 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 (recast). OJ 2006 L 204, p. 23

Request for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 27 January 2017 — The Scotch Whisky Association v Michael Klotz

(Case C-44/17)

(2017/C 121/20)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: The Scotch Whisky Association

Defendant: Michael Klotz

Questions referred

1. Does 'indirect commercial use' of a registered geographical indication of a spirit drink in accordance with Article 16(a) of Regulation (EC) No 110/2008 ([1]) require that the registered geographical indication be used in identical or phonetically and/or visually similar form, or is it sufficient that the disputed element evokes in the relevant public some kind of association with the registered geographical indication or the geographical area?

   If the latter is sufficient: When determining whether there is any 'indirect commercial use', does the context in which the disputed element is embedded then also play a role, or can that context not counteract indirect commercial use of the registered geographical indication, even if the disputed element is accompanied by an indication of the true origin of the product?

2. Does an 'evocation' of a registered geographical indication in accordance with Article 16(b) of Regulation (EC) No 110/2008 require that there be a phonetic and/or visual similarity between the registered geographical indication and the disputed element, or is it sufficient that the disputed element evokes in the relevant public some kind of association with the registered geographical indication or the geographical area?

   If the latter is sufficient: When determining whether there is any 'evocation', does the context in which the disputed element is embedded also play a role, or can that context not counteract any unlawful evocation of the registered geographical indication, even if the disputed element is accompanied by an indication of the true origin of the product?

3. When determining whether there is any 'other false or misleading indication' in accordance with Article 16(c) of Regulation (EC) No 110/2008, does the context in which the disputed element is embedded play a role, or can that context not counteract any misleading indication, even if the disputed element is accompanied by an indication of the true origin of the product?

(1) Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89; OJ 2008 L 39, p. 16.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 30 January 2017 — Frédéric Jahin v Ministre de l'Économie et des Finances, Ministre des Affaires sociales et de la Santé

(Case C-45/17)

(2017/C 121/21)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Frédéric Jahin

Defendants: Ministre de l'Économie et des Finances, Ministre des Affaires sociales et de la Santé

Questions referred

Must Articles 63, 64 and 65 [TFEU] be interpreted as meaning that:

1) the fact that a person insured under a social security scheme in a third country outside the European Union, other than members of the European Economic Area or Switzerland, is subject to contributions on income from assets provided for under French legislation and falling within the scope of Regulation (EC) No 883/2004 (1) of 29 April 2004, in the same way as persons insured under the social security scheme in France, whereas a person insured under the social security scheme of a Member State other than France cannot be subject to those contributions, taking into account the provisions of that regulation, constitutes a restriction on the movement of capital from and to third countries, which is in principle prohibited by Article 63 [TFEU];

2) If that first question is answered in the affirmative, can that restriction on the movement of capital, which arises as a combined result of French legislation, which imposes the disputed contributions on all recipients of certain income from assets, without in itself making any distinction as to the place in which they are insured under a social security scheme, and a European Union act of secondary legislation, be regarded as compatible with the requirements of the said article of the Treaty on the Functioning of the European Union, in particular:

   — in light of Article 64(1) [TFEU], for the movement of capital falling within the scope of that paragraph, on the grounds that the restriction arises due to the application of the principle that the legislation of a single Member State is to apply, as provided in Article 11 of the Regulation [(EC) No 883/2004] of 29 April 2004, introduced into EU law by Article 13 of Regulation [(EEC) No 1408/71] of 14 June 1971, in other words, on a date prior to 31 December 1993, even though the contributions on income from assets in question were established or made applicable after 31 December 1993;

   — in light of Article 65(1) [TFEU], on the grounds that the French tax legislation, when applied in a way compliant with Regulation [(EC) No 883/2004] of 29 April 2004, creates a distinction between taxable persons whose situations differ in relation to the criterion for being insured under a social security scheme;

   — in light of the existence of overriding reasons in the public interest to justify a restriction on the free circulation of capital, derived from the fact that the provisions that might be regarded as restricting the movement of capital from or to a third country correspond to the aim of Regulation [(EC) No 883/2004] of 29 April 2004 of allowing free movement of workers within the European Union?

(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 2004 L 166, p. 1).

Request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) lodged on 3 February 2017 — Eva Soraya Checa Honrado v Fondo de Garantía Salarial

(Case C-57/17)

(2017/C 121/22)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana

Parties to the main proceedings

Appellant: Eva Soraya Checa Honrado

Respondent: Fondo de Garantía Salarial

Question referred

May statutory severance pay payable by a company to a worker, on termination of the employment relationship as a consequence of a change to a fundamental element of the contract of employment, such as geographic mobility obliging the worker to change residence, be understood to constitute 'severance pay on termination of employment relationships', as referred to in the first paragraph of Article 3 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer? ([1])

([1]) OJ 2008 L 283, p. 36.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 6 February 2017 — Ángel Somoza Hermo v Esabe Vigilancia, S.A., Fondo de Garantía Salarial (FOGASA)

(Case C-60/17)

(2017/C 121/23)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellants: Ángel Somoza Hermo, Ilunión Seguridad, S.A.

Respondents: Esabe Vigilancia, S.A., Fondo de Garantía Salarial (FOGASA)

Questions referred

1. Does Article 1(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses apply ([1]) when an undertaking ceases to hold the contract for the service it is engaged to provide for a client as a result of termination of the contract for the provision of the service, in a labour-intensive business (security of buildings), and the new holder of the contract for the service takes on the majority of the employees assigned to the performance of that service, when those employment contracts are taken over in accordance with the terms of the collective agreement on employment in the security sector?

2. If the answer to the first question should be in the affirmative, if the legislation adopted by the Member State in order to transpose the Directive provides, in accordance with Article 3(1) of Directive 2001/23/EC, that after the date of the transfer the transferor and the transferee are to be jointly and severally liable for obligations, including those relating to wages, which arose before the date of the transfer as a result of employment contracts existing on the date of the transfer, is an interpretation to the effect that joint and several liability for prior obligations does not apply when the majority of the workforce were taken on by the new contractor as a result of the requirements of the collective agreement for the sector, and the wording of that agreement excludes joint and several liability for obligations preceding the transfer, compatible with that article of the Directive?

([1]) OJ 2001 L 82, p. 16.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 9 February 2017 — NCG Banco, S.A. (now Abanca Corporación Bancaria, S.A.) v Alberto García Salamanca Santos

(Case C-70/17)

(2017/C 121/24)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: NCG Banco, S.A. (now Abanca Corporación Bancaria, S.A.)

Respondent: Alberto García Salamanca Santos

Questions referred

1. Must Article 6(1) of Directive 93/13 ([1]) be interpreted to the effect that a national court, in appraising the unfairness of an accelerated repayment clause in a mortgage loan contract concluded with a consumer that provides for acceleration upon failure to pay an instalment, in addition to other cases of non-payment of further instalments, may assess the unfairness only of the contractual term or case of non-payment of an instalment and treat the accelerated repayment clause covering non-payment of instalments also laid down on a general basis in the clause as still valid, regardless of whether any specific finding of validity or unfairness has to be deferred to the time when the power is exercised?

2. Does a national court have powers under Directive 93/13 — once an accelerated repayment clause in a loan or credit contract secured by a mortgage is declared unfair — whereby it may take the view that the supplementary application of a provision of national law, even though giving rise to the commencement or continuation of enforcement proceedings against the consumer, appears more favourable to the consumer than a stay of that special mortgage enforcement procedure and may allow the creditor to initiate proceedings to terminate the loan or credit contract, or to claim the sums owing, and ensure the subsequent enforcement of the adverse judgment, without the advantages which the special mortgage enforcement procedure makes available to consumers?

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

Action brought on 24 February 2017 — European Commission v Republic of Bulgaria

(Case C-97/17)

(2017/C 121/25)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: P. Mihaylova and C. Hermes, acting as Agents)

Defendant: Republic of Bulgaria

Form of order sought

The applicant claims that the Court should:

1. Declare that, in failing to classify the entirety of the Rila important bird area as a special protection area, the Republic of Bulgaria has failed to classify the most suitable territories in number and size as special protection areas for the conservation of the species of birds listed in Annex I to Directive 2009/147/EC ([1]) on the conservation of wild birds, and accordingly has failed to fulfil its obligations under Article 4(1) of that directive;

2. Order the Republic of Bulgaria to pay the costs.

Pleas in law and main arguments

The case concerns the conservation of many endangered species of birds listed in Annex 1 to the Birds Directive and their habitats in the territory of the Rila mountain range in the south-west of Bulgaria. The Rila important bird area is one of the most significant places in both Bulgaria and the European Union for the conservation of over 130 species of nesting birds. 41 species are of European conservation concern, of which one is endangered worldwide.

Under Article 4(1) of the Birds Directive, the species listed in Annex I must be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. Furthermore, Article 4(1) of the Birds Directive provides that the Member States must classify in particular the most suitable territories in number and size as special protection areas for the conservation of those species.

According to the Commission, the Republic of Bulgaria should have classified the Rila important bird area as a special protection area in its entirety, but, to date, has not done so. The Commission provides evidence of the ornithological importance of the unclassified territories in the Rila important bird area.

([1]) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

Appeal brought on 24 February 2017 by Koninklijke Philips NV, Philips France against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-762/14: Koninklijke Philips NV, Philips France v Commission

(Case C-98/17 P)

(2017/C 121/26)

Language of the case: English

Parties

Appellants: Koninklijke Philips NV, Philips France (represented by: J.K. de Pree, advocaat, T.M. Snoep, advocaat, A.M. ter Haar, advocaat)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal;

— annul the decision in so far as it concerns Koninklijke Philips NV and Philips France; and/or

— annul or reduce the fines imposed on Koninklijke Philips NV and Philips France; and

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

Pleas in law and main arguments

In support of the action, the applicants rely on the following main pleas in law and arguments:

— The General Court erred in law by applying a wrong legal standard in establishing a restriction of competition by object.

— In establishing a restriction of competition by object, the General Court erred in law by exceeding its unlimited jurisdiction.

— In establishing a restriction of competition by object, the General Court erred in law by breaching its obligation to state reasons.

— The General Court applied a clearly and manifestly incorrect assessment of the existing evidence in the file, resulting in a distortion of the clear sense of the evidence, in finding that the alleged common object finds support in other evidence.

— The General Court erred in law by applying the wrong legal standard and by distorting the clear sense of the evidence by considering that Philips participated in a single and continuous infringement as a whole and, as such, could be held liable for it.

— The General Court erred in law by misapplying the principle of proportionality and by failing to exercise its unlimited jurisdiction by rejecting Philips' plea that the gravity factor applied was disproportionate to the infringement and Philips' role therein.

Action brought on 3 March 2017 — European Commission v Kingdom of Belgium

(Case C-110/17)

(2017/C 121/27)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Roels and N. Gossement, Agents, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Commission claims that the Court should:

— declare that, by retaining provisions under which, in respect of the estimation of income relating to unrented buildings or buildings rented either to natural persons who do not use them for professional purposes, or to legal persons who make such buildings available to natural persons for private purposes, the tax base is calculated on the basis of the cadastral value so far as property on national territory is concerned, and on the actual rental value so far as buildings located abroad are concerned, the Kingdom of Belgium has failed to fulfil its obligations under Article 63 of the Treaty on the Functioning of the European Union and Article 40 of the Agreement on the European Economic Area, and

— order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission takes the view that Belgium has failed to fulfil its obligations under Articles 63 TFEU and Article 40 of the Agreement on the EEA.

While noting the attempts made by Belgium to bring its failure to fulfil obligations to an end, the Commission takes the view that the existence of the failure to fulfil obligations on 26 March 2012, the date when the period of two months laid down in the reasoned opinion expired, has been proven.

GENERAL COURT

Judgment of the General Court of 7 March 2017 — United Parcel Service v Commission

(Case T-194/13) ([1])

(Competition — Mergers — Regulation (EC) No 139/2004 — International express small package delivery services in the EEA — Acquisition of TNT Express by UPS — Decision declaring the merger incompatible with the internal market — Likely effects on prices — Econometric analysis — Rights of defence)

(2017/C 121/28)

Language of the case: English

Parties

Applicant: United Parcel Service, Inc. (Atlanta, Georgia, United States) (represented initially by A. Ryan, B. Graham, Solicitors, W. Knibbeler and P. Stamou, lawyers, and then by A. Ryan, W. Knibbeler, P. Stamou, A. Pliego Selie, F. Hoseinian and P. van den Berg, lawyers)

Defendant: European Commission (represented initially by T. Christoforou, N. Khan, A. Biolan, N. von Lingen and H. Leupold, and subsequently by T. Christoforou, N. Khan, A. Biolan and H. Leupold, acting as Agents)

Intervener in support of the defendant: FedEx Corp. (Memphis, Tennessee, United States) (represented initially by F. Carlin, Barrister, G. Bushell, Solicitor, and Q. Azau, lawyer, then by F. Carlin, G. Bushell and N. Niejahr, lawyer)

Re:

Application pursuant to Article 263 TFEU for annulment of Commission Decision C(2013) 431 of 30 January 2013 declaring a concentration incompatible with the internal market and the functioning of the EEA Agreement (Case COMP/M.6570 — UPS/TNT Express).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2013) 431 of 30 January 2013 declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case COMP/M.6570 — UPS/TNT Express);*

2. *Orders the European Commission to bear its own costs and to pay those incurred by United Parcel Service, Inc.;*

3. *Orders FedEx Corp. to bear its own costs.*

([1]) OJ C 147, 25.5.2013.

Judgment of the General Court of 1 March 2017 — France v Commission

(Case T-366/13) ([1])

(State aid — Maritime cabotage — Aid implemented by France in favour of the Société nationale maritime Corse Méditerranée (SNCM) and the Compagnie méridionale de navigation — Service of general economic interest — Compensation for a service additional to the basic service intended to cover peak periods during the tourist season — Decision declaring aid incompatible with the internal market — Concept of State aid — Advantage — Altmark judgment)

(2017/C 121/29)

Language of the case: French

Parties

Applicant: French Republic (represented by: initially, E. Belliard, G. de Bergues, D. Colas and N. Rouam, then G. de Bergues, D. Colas, F. Alabrune and J. Bousin, and subsequently D. Colas, F. Alabrune and J. Bousin, acting as Agents)

Defendant: European Commission (represented by: M. Afonso and B. Stromsky, acting as Agents)

Re:

Action under Article 263 TFEU for the annulment of Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) implemented by France in favour of Société Nationale Maritime Corse-Méditerranée (OJ 2013 L 220, p. 20).

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the French Republic to pay, in addition to its own costs, those incurred by the European Commission, including those incurred in the interim proceedings.*

([1]) OJ C 252, 31.8.2013.

Judgment of the General Court of 1 March 2017 — SNCM v Commission

(Case T-454/13) ([1])

(State aid — Maritime cabotage — Aid implemented by France in favor of the Société Nationale Maritime Corse Méditerranée (SNCM) and the Compagnie Méridionale de Navigation — Service of general economic interest — Compensation for an additional service to the service of Basis to cover peak periods during the tourist season — Decision declaring aid to be incompatible with the internal market — Concept of State aid — Advantage — Altmark judgment — Determination of the amount of aid)

(2017/C 121/30)

Language of the case: French

Parties

Applicant: Société nationale maritime Corse Méditerranée (SNCM) (Marseille, France) (represented by: initially by A. Winckler, F.-C. Laprévote, J.-P. Mignard and S. Mabile, and subsequently by A. Winckler and F.-C. Laprévote, and finally by F.-C. Laprévote and C. Froitzheim, avocats)

Defendant: Commission (represented by: M. Afonso and M. B. Stromsky, acting as Agents)

Intervener in support of the defendant: Corsica Ferries France SAS (Bastia — France), (represented by: S. Rodrigues and C. Bernard-Glanz, avocats)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of the Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) awarded by France to Société Nationale Corse-Méditerranée and the Compagnie Méridionale de Navigation (OJ 2013 L 220, p. 20).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Société nationale maritime Corse Méditerranée (SNCM) to bear its own costs and to pay those incurred by the European Commission and by Corsica Ferries France SAS.*

([1]) OJ C 325, 9.11.2013.

Judgment of the General Court of 28 February 2017 — JingAo Solar and Others v Council

(Case T-157/14) ([1])

(Dumping — Imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — Definitive anti-dumping duty — Undertakings — Action for annulment — Interest in bringing proceedings — Admissibility — Exporting country — Scope of the investigation — Sampling — Normal value — Definition of the product concerned — Time limit for the adoption of a decision on a market economy treatment claim — Temporal application of new provisions — Injury — Causal link)

(2017/C 121/31)

Language of the case: English

Parties

Applicants: JingAo Solar Co. Ltd (Ningjin, China) and the other applicants whose names appear in the annex (represented initially by A. Willems, S. De Knop and J. Charles, and subsequently by A. Willems and S. De Knop, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen, acting as Agent, B. O'Connor, Solicitor, and S. Gubel, lawyer)

Intervener in support of the defendant: European Commission (represented initially by J.-F. Brakeland, T. Maxian Rusche, and A. Stobiecka-Kuik, and subsequently by J.-F. Brakeland, T. Maxian Rusche, and A. Demeneix, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 1), in so far as it applies to the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders JingAo Solar Co. Ltd, and the other applicants whose names appear in the annex to bear their own costs and to pay those incurred by the Council of the European Union;*

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

([1]) OJ C 159, 26.5.2014.

Judgment of the General Court of 28 February 2017 — JingAo Solar and Others v Council

(Joined Cases T-158/14, T-161/14 and T-163/14) ([1])

(Subsidies — Imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — Definitive countervailing duty — Undertakings — Action for annulment — Interest in bringing proceedings — Admissibility — Scope of the investigation — Sampling — Definition of the product concerned)

(2017/C 121/32)

Language of the case: English

Parties

Applicants: JingAo Solar Co. Ltd (Ningjin, China) and the five other applicants whose names appear in the annex to the judgment (represented initially by A. Willems, S. De Knop and J. Charles, and subsequently by A. Willems and S. De Knop, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen, acting as Agent, B. O'Connor, Solicitor, and S. Gubel, lawyer)

Intervener in support of the defendant: European Commission (represented initially by J.-F. Brakeland, T. Maxian Rusche, and A. Stobiecka-Kuik, and subsequently by J.-F. Brakeland, T. Maxian Rusche, and A. Demeneix, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 66), in so far as it applies to the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders JingAo Solar Co. Ltd, and the other applicants whose names appear in the annex to bear their own costs and to pay those incurred by the Council of the European Union;*

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

([1]) OJ C 159, 26.5.2014.

Judgment of the General Court of 28 February 2017 — Yingli Energy (China) and Others v Council

(Case T-160/14) ([1])

(Dumping — Imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — Definitive anti-dumping duty — Undertakings — Action for annulment — Interest in bringing proceedings — Admissibility — Exporting country — Scope of the investigation — Sampling — Normal value — Definition of the product concerned — Time limit for the adoption of a decision on a market economy treatment claim — Temporal application of new provisions — Injury — Causal link — Rights of the defence — Calculation of the injury margin)

(2017/C 121/33)

Language of the case: English

Parties

Applicants: Yingli Energy (China) Co. Ltd (Baoding, China) and the 14 other applicants whose names appear in the annex to the judgment (represented initially by A. Willems, S. De Knop and J. Charles, and subsequently by A. Willems and S. De Knop, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen, acting as Agent, B. O'Connor, Solicitor, and S. Gubel, lawyer)

Intervener in support of the defendant: European Commission (represented initially by J.-F. Brakeland, T. Maxian Rusche, and A. Stobiecka-Kuik, and subsequently by J.-F. Brakeland, T. Maxian Rusche, and A. Demeneix, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 1), in so far as it applies to the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Yingli Energy (China) Co. Ltd, and the other applicants whose names appear in the annex to bear their own costs and to pay those incurred by the Council of the European Union;*

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

(1) OJ C 142, 12.5.2014.

Judgment of the General Court of 28 February 2017 — Canadian Solar Emea and Others v Council

(Case T-162/14) (1)

(Dumping — Imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — Definitive anti-dumping duty — Undertakings — Action for annulment — Interest in bringing proceedings — Admissibility — Exporting country — Scope of the investigation — Sampling — Normal value — Definition of the product concerned — Time limit for the adoption of a decision on a market economy treatment claim — Temporal application of new provisions — Injury — Causal link)

(2017/C 121/34)

Language of the case: English

Parties

Applicants: Canadian Solar Emea GmbH (Munich, Germany), Canadian Solar Manufacturing (Changshu), Inc. (Changshu, China), Canadian Solar Manufacturing (Luoyang), Inc. (Luoyang, China) Csi Cells Co. Ltd (Suzhou, China) Csi Solar Power (China), Inc. (Suzhou) (represented initially by: A. Willems, S. De Knop and J. Charles, and subsequently by A. Willems and S. De Knop, lawyers)

Defendant: Council of the European Union (represented initially by J.-F. Brakeland, T. Maxian Rusche, and A. Stobiecka-Kuik, and subsequently by J.-F. Brakeland, T. Maxian Rusche, and A. Demeneix, acting as Agents)

Intervener in support of the defendant: European Commission, represented initially by J.-F. Brakeland, T. Maxian Rusche, and A. Stobiecka-Kuik, and subsequently by J.-F. Brakeland, T. Maxian Rusche, and A. Demeneix, acting as Agents

Re:

Application under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013 L 325, p. 1), in so far as it applies to the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Canadian Solar Emea GmbH, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Csi Cells Co. Ltd and Csi Solar Power (China), Inc. to bear their own costs and to pay those incurred by the Council of the European Union;*

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

(1) OJ C 135, 5.5.2014.

Judgment of the General Court of 7 March 2017 — Neka Novin v Council

(Case T-436/14) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Maintenance of the applicant's name on the list of persons concerned — Error of law — Manifest error of assessment — Proportionality)

(2017/C 121/35)

Language of the case: French

Parties

Applicant: Neka Novin Co., Private Joint Stock (Tehran, Iran) (represented by: L. Vidal, lawyer)

Defendant: Council of the European Union (represented by: A. Vitro and M. Bishop, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of the decision of the Council to maintain the applicant's name on the list in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), as amended by Council Decision 2011/299/CFSP of 23 May 2011 (OJ 2011 L 136, p. 65), and on the list in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), as communicated by a notice of 15 March 2014.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Neka Novin Co., Private Joint Stock to bear its own costs and to pay half of those incurred by the Council of the European Union;*

3. *Orders the Council to bear half of its own costs.*

([1]) OJ C 253, 4.8.2014.

Judgment of the General Court of 1 March 2017 — Universiteit Antwerpen v REA

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

(Arbitration clause — Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Marie Curie actions — Early-stage researchers — Call for proposals FP7-People-ITN-2008 — Grant agreements — Eligible costs — Recovery of sums paid — Concept of hosting researchers — Proportionality)

(2017/C 121/36)

Language of the case: English

Parties

Applicant: Universiteit Antwerpen (Antwerp, Belgium) (represented by: P. Teerlinck and P. de Bandt, lawyers)

Defendant: Research Executive Agency (REA) (represented by: S. Payan-Lagrou and V. Canetti, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Action under Article 272 TFEU seeking, first of all, a declaration that Grant Agreements No 238214 'C7' (Cerebellar-Cortical Control: Cells, Circuits, Computation, and Clinic) and No 238686 'Cerebnet' (Timing and plasticity in the olivo-cerebellar system), which were entered into in the context of call for proposals FP7-People-ITN-2008, cannot be interpreted as imposing an obligation on the beneficiaries to provide training to early-stage researchers exclusively on their own premises and, as a consequence, confirmation that the REA cannot reject as ineligible part of the costs relating to the training of three early-stage researchers outside the applicant's premises; and, secondly, an order that the REA is to pay all the costs related to the training of those early-stage researchers, as claimed by the applicant, together with interest from the date on which the payments were due under the agreements.

Operative part of the judgment

The Court:

1. *Orders the Research Executive Agency (REA) to pay Universiteit Antwerpen the sum of EUR 45 526,73, corresponding to payment of some of the eligible costs under the 'Cerebnet' Agreement No 238686 entered into under the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013), together with contractual interest from the date from which that amount was due under that agreement;*

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

3. *Orders the REA and Universiteit Antwerpen to bear their own costs.*

([1]) OJ C 270, 17.8.2015.

Judgment of the General Court of 1 March 2017 — EEAS v Gross

(Case T-472/15 P) ([1])

(Appeal — Civil service — Officials — Promotion — 2013 promotion exercise — Non-inclusion on the list of promoted officials — No error of law)

(2017/C 121/37)

Language of the case: French

Parties

Appellant: European External Action Service (EEAS) (represented by: initially, S. Marquardt and M. Silva, and subsequently S. Marquardt, acting as Agents, and M. Troncoso Ferrer, S. Moya Izquierdo and F.-M. Hislaire, lawyers)

Other party to the proceedings: Philipp Oliver Gross (represented by: J.-N. Louis and N. de Montigny, lawyers)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 3 June 2015, *Gross* v *EEAS* (F-78/14, EU:F:2015:52), seeking to have that judgment set aside.

Operative part of the judgment

The General Court:

1. *Dismisses the appeal;*

2. *Orders the European External Action Service (EEAS) to bear its own costs and to pay those incurred by Mr Philipp Oliver Gross in the present proceedings.*

([1]) OJ C 346, 19.10.2015.

Judgment of the General Court of 1 March 2017 — Silvan v Commission

(Case T-698/15) ([1])

(Appeal — Civil service — Officials — 2013 promotion exercise — Decision not to promote the appellant — Comparison of the merits — Taking into account of staff reports — No error of law)

(2017/C 121/38)

Language of the case: French

Parties

Appellant: Juha Tapio Silvan (Brussels, Belgium) (represented by: N. de Montigny and J.-N. Louis, lawyers)

Other party to the proceedings: European Commission (represented by: G. Berscheid and C. Berardis-Kayser, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 22 September 2015, *Silvan* v *Commission* (F-83/14, EU:F:2015:106), and asking for annulment of that judgment.

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Mr Juha Tapio Silvan to bear his own costs as well as those incurred by the European Commission in the context of the present proceedings.*

([1]) OJ C 59, 15.2.2016.

Judgment of the General Court of 2 March 2017 — DI v EASO

(Case T-730/15) ([1])

(Appeal — Civil service — EASO staff — Member of the contract staff — Fixed-term contract — Probationary period — Dismissal decision — Action for annulment and for damages — Dismissal of the action as manifestly inadmissible at first instance — Rule of correspondence between the application and the complaint — Article 91(2) of the Staff Regulations)

(2017/C 121/39)

Language of the case: English

Parties

Appellant: DI (represented by: I. Vlaic and G. Iliescu, lawyers)

Other party to the proceedings: European Asylum Support Office (EASO) (represented by: W. Stevens, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Appeal against the order of the European Union Civil Service Tribunal (Second Chamber) of 15 October 2015, *DI* v *EASO* (F-113/13, EU:F:2015:120), seeking to have that order set aside.

Operative part of the judgment

The Court:

1. *Sets aside the order of the Civil Service Tribunal of the European Union (Second Chamber) of 15 October 2015, DI v EASO (F-113/13);*

2. *Refers the case to a chamber of the General Court other than that which ruled on the present appeal;*

3. *Reserves the costs.*

(1) OJ C 98, 14.3.2016.

Judgment of the General Court of 28 February 2017 — Labeyrie v EUIPO — Delpeyrat (Representation of a sowing of golden fish on a blue background)

(Case T-766/15) (1)

(EU trade mark — Revocation proceedings — EU figurative mark representing a sowing of golden fish on a blue background — Declaration of revocation — Genuine use of the mark — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Form that differs in elements does not alter the distinctive character)

(2017/C 121/40)

Language of the case: French

Parties

Applicant: Labeyrie (Saint-Geours-de-Maremne, France) (represented by: A. Lecomte, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Delpeyrat (Saint-Pierre-du-Mont, France) (represented by: J. Ennochi, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 October 2015 (Case R 2693/2014-1), relating to revocation proceedings between Depeyrat and Labeyrie.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Labeyrie to bear its own costs as well as those incurred by EUIPO;*

3. *Orders Delpeyrat to bear its own costs.*

(1) OJ C 78, 29.2.2016.

Judgment of the General Court of 28 February 2017 — Labeyrie v EUIPO — Delpeyrat (Representation of a sowing of light coloured fish on a dark background)

(Case T-767/15) (1)

(EU trade mark — Revocation proceedings — EU figurative mark representing a sowing of light coloured fish on a dark background — Declaration of revocation — Genuine use of the mark — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Form that differs in elements does not alter the distinctive character)

(2017/C 121/41)

Language of the case: French

Parties

Applicant: Labeyrie (Saint-Geours-de-Maremne, France) (represented by: A. Lecomte, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Delpeyrat (Saint-Pierre-du-Mont, France) (represented by: J. Ennochi, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 October 2015 (Case R 2694/2014-1), relating to revocation proceedings between Depeyrat and Labeyrie.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Labeyrie to bear its own costs as well as those incurred by EUIPO;*

3. *Orders Delpeyrat to bear its own costs.*

(1) OJ C 78, 29.2.2016.

Order of the General Court of 14 February 2017 — Helbrecht v EUIPO — Lenci Calzature (SportEyes)

(Case T-333/14) (1)

(EU trade mark — Opposition proceedings — Cancellation of the earlier figurative mark serving as a basis for the contested decision — No need to adjudicate)

(2017/C 121/42)

Language of the case: English

Parties

Applicant: Andreas Helbrecht (Hilden, Germany) (represented by: C. König, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Lenci Calzature SpA (Turchetto-Montecarlo, Italy) (represented by: F. Celluprica and F. Fischetti, lawyers)

Re:

Action for annulment of the decision of the Fifth Board of Appeal of EUIPO of 27 February 2014 (Case R 830/2013-5), concerning opposition proceedings between Lenci Calzature and Mr Helbrecht.

Operative part of the order

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

2. *Lenci Calzature SpA shall bear its own costs and pay those incurred by Mr Andreas Helbrecht. The European Union Intellectual Property Office (EUIPO) shall bear its own costs.*

(1) OJ C 235, 21.7.2014.

Order of the President of the General Court of 16 February 2017 — Le Pen v Parliament

(Case T-140/16 R II)

(Interim measures — Member of the European Parliament — Recovery by offsetting of allowances paid by way of reimbursement of parliamentary assistance expenses — Application for suspension of operation of a measure — Fresh application — New facts — No urgency)

(2017/C 121/43)

Language of the case: French

Parties

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

Defendant: European Parliament (represented by: G. Corstens and S. Alonso de León, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU, seeking the suspension of operation of the decision of the Secretary-General of the European Parliament of 29 January 2016 ordering the recovery from the applicant of a sum of EUR 320 026,23, and of debit note No 2016-195 of 4 February 2016 adopted pursuant to that decision.

Operative part of the order

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

2. *The costs are reserved.*

Order of the General Court of 28 February 2017 — NF v European Council

(Case T-192/16) ([1])

(Action for annulment — EU-Turkey statement of 18 March 2016 — Press release — Concept of 'international agreement' — Identification of the author of the act — Scope of the act — Meeting of the European Council — Meeting of the Heads of State or Government of the Member States of the European Union held on the premises of the Council of the European Union — Capacity of the representatives of the Member States of the European Union during a meeting with the representative of a third country — First paragraph of Article 263 TFEU — Lack of jurisdiction)

(2017/C 121/44)

Language of the case: English

Parties

Applicant: NF (represented by: B. Burns, Solicitor, P. O'Shea and I. Whelan, Barristers)

Defendant: European Council (represented by: K. Pleśniak, Á. de Elera-San Miguel Hurtado and S. Boelaert, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of an alleged agreement concluded between the European Council and the Republic of Turkey dated 18 March 2016 and entitled 'EU-Turkey statement, 18 March 2016'.

Operative part of the order

1. *The action is dismissed on the ground of the Court's lack of jurisdiction to hear and determine it.*

2. *There is no need to rule on the applications for leave to intervene submitted by NQ, NR, NS, NT, NU and NV, as well as by the Kingdom of Belgium, the Hellenic Republic and the European Commission.*

3. *NF and the European Council shall bear their own costs.*

4. *NQ, NR, NS, NT, NU and NV, as well as the Kingdom of Belgium, the Hellenic Republic and the Commission, shall bear their own costs.*

([1]) OJ C 232, 27.6.2016.

Order of the General Court of 28 February 2017 — NG v European Council

(Case T-193/16) ([1])

(Action for annulment — EU-Turkey statement of 18 March 2016 — Press release — Concept of 'international agreement' — Identification of the author of the act — Scope of the act — Meeting of the European Council — Meeting of the Heads of State or Government of the Member States of the European Union held on the premises of the Council of the European Union — Capacity of the representatives of the Member States of the European Union during a meeting with the representative of a third country — First paragraph of Article 263 TFEU — Lack of jurisdiction)

(2017/C 121/45)

Language of the case: English

Parties

Applicant: NG (represented by: B. Burns, Solicitor, P. O'Shea and I. Whelan, Barristers)

Defendant: European Council (represented by: K. Pleśniak, Á. de Elera-San Miguel Hurtado and S. Boelaert, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of an alleged agreement concluded between the European Council and the Republic of Turkey dated 18 March 2016 and entitled 'EU-Turkey statement, 18 March 2016'.

Operative part of the order

1. *The action is dismissed on the ground of the Court's lack of jurisdiction to hear and determine it.*

2. *There is no need to rule on the applications for leave to intervene submitted by NQ, NR, NS, NT, NU and NV, Amnesty International, the Kingdom of Belgium, the Hellenic Republic and the European Commission.*

3. *NG and the European Council shall bear their own costs.*

4. *NQ, NR, NS, NT, NU and NV, Amnesty International, the Kingdom of Belgium, the Hellenic Republic and the Commission shall bear their own costs.*

([1]) OJ C 232, 27.6.2016.

Order of the General Court of 28 February 2017 — NM v European Council

(Case T-257/16) ([1])

(Action for annulment — EU-Turkey statement of 18 March 2016 — Press release — Concept of 'international agreement' — Identification of the author of the act — Scope of the act — Meeting of the European Council — Meeting of the Heads of State or Government of the Member States of the European Union held on the premises of the Council of the European Union — Capacity of the representatives of the Member States of the European Union during a meeting with the representative of a third country — First paragraph of Article 263 TFEU — Lack of jurisdiction)

(2017/C 121/46)

Language of the case: English

Parties

Applicant: NM (represented by: B. Burns, Solicitor, P. O'Shea and I. Whelan, Barristers)

Defendant: European Council (represented by: K. Pleśniak, Á. de Elera-San Miguel Hurtado and S. Boelaert, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of an alleged agreement concluded between the European Council and the Republic of Turkey dated 18 March 2016 and entitled 'EU-Turkey statement, 18 March 2016'.

Operative part of the order

1. *The action is dismissed on the ground of the Court's lack of jurisdiction to hear and determine it.*

2. *There is no need to rule on the applications for leave to intervene submitted by the Kingdom of Belgium, the Hellenic Republic and the European Commission.*

3. *NM and the European Council shall bear their own costs.*

4. *The Kingdom of Belgium, the Hellenic Republic and the Commission shall bear their own costs.*

([1]) OJ C 251, 11.7.2016.

Order of the General Court of 16 February 2017 — Walton v Commission

(Case T-594/16) ([1])

(Action for annulment — Civil service — Temporary agents — Severance grant — Revision of the calculation — Res judicata — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2017/C 121/47)

Language of the case: French

Parties

Applicant: Robert Walton (Oxford, United Kingdom) (represented by: F. Moyse, lawyer)

Defendant: European Commission (represented by: A.-C. Simon and F. Simonetti, acting as Agents)

Re:

Application pursuant to Article 270 TFEU, seeking the annulment of the decision of the authority empowered to conclude contracts of employment notified by the Commission's letter of 15 March 2016 rejecting as inadmissible the applicant's request for revision of the calculation of the severance grant following his resignation.

Operative part of the order

1. *The action is dismissed.*

2. *Robert Walton is ordered to pay the costs.*

(1) OJ C 251, 11.7.2016 (Case initially registered before the European Union Civil Service Tribunal under number F-24/16 and transferred to the General Court of the European Union on 1.9.2016).

Order of the President of the General Court of 16 February 2017 — Gollnisch v Parliament

(Case T-624/16 R)

(Interim measures — Member of the European Parliament — Recovery, by way of compensation, of allowances paid as reimbursement of parliamentary assistance expenses — Application for suspension of operation of a measure — No urgency)

(2017/C 121/48)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Villiers-le-Mahieu, France) (represented by: N. Fakiroff, lawyer)

Defendant: European Parliament (represented by: G. Corstens and S. Alonso de León, acting as Agents)

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of the decision of the Secretary-General of the European Parliament of 1 July 2016, relating to recovery from the applicant of a sum of EUR 275 984,23, and of debit note No 2016-916 of 5 July 2016 adopted pursuant to that decision and to the notification of those measures by the Director-General for Finance of 6 July 2016.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 16 February 2017 — Troszczynski v Parliament

(Case T-626/16 R)

(Interim measures — Member of the European Parliament — Recovery by offsetting of allowances paid in the context of the reimbursement of parliamentary assistance expenses — Application for suspension of operation — Lack of urgency)

(2017/C 121/49)

Language of the case: French

Parties

Applicant: Mylène Troszczynski (Noyon, France) (represented by: M. Ceccaldi, lawyer)

Defendant: European Parliament (represented by: G. Corstens and S. Alonso de León, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking the suspension of operation of the decision of the Secretary General of the European Parliament of 23 June 2016 concerning the recovery from the applicant of EUR 56 554 and of debit note No 2016-888 issued pursuant to that decision

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 17 February 2017 — Janssen-Cases v Commission

(Case T-688/16 R)

(Interim proceedings — Civil service — Vacancy notice — Commission's ombudsman — Application for a stay in execution — No urgency)

(2017/C 121/50)

Language of the case: French

Parties

Applicant: Mercedes Janssen-Cases (Brussels, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

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

Re:

Application based on Articles 278 and 279 TFEU and seeking a stay in the execution of the Commission's decision of 15 June 2016, appointing Mr X. as the Commission's ombudsman, with effect as of 1 October 2016.

Operative part of the order

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

2. *Costs are reserved.*

Order of the General Court of 9 February 2017 — Asolo v EUIPO — Red Bull (FLÜGEL)

(Case T-714/16) ([1])

(EU trade mark — Cancellation proceedings — Revocation of the contested decision — No need to adjudicate)

(2017/C 121/51)

Language of the case: English

Parties

Applicant: Asolo LTD (Limassol, Cyprus) (represented by: W. Pors, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 29 July 2016 (Case R 282/2015-5), relating to cancellation proceedings between Red Bull and Asolo.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) shall bear its own costs and pay those incurred by Asolo LTD and Red Bull GmbH.*

([1]) OJ C 462, 12.12.2016.

Action brought on 22 January 2017 — Selimovic v Parliament

(Case T-61/17)

(2017/C 121/52)

Language of the case: Swedish

Parties

Applicant: Jasenko Selimovic (Hägersten, Sweden) (represented by: B. Leidhammar, lawyer)

Defendant: European Parliament

Form of order sought

— Annul the President's decisions of 22 November 2016, D 203109 and D 203110 ('the President's decisions');

— Annul the decision of the Bureau of the European Parliament of 22 December 2016, PE 595.204/BUR/DEC ('the Bureau's decision');

— Rule urgently in the case;

— Order the European Parliament to pay the applicant compensation in a sum to be specified at a later date.

Pleas in law and main arguments

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

1. First plea in law: the applicant alleges that he did not commit the offences of which he has been accused, namely psychological harassment under Article 12a of the Staff Regulations.

2. Second plea in law: the applicant alleges that the decisions were adopted in a procedure which runs counter to the general principles of legal certainty and the right to a fair hearing as expressed in Article 6 of the ECHR, due, inter alia, to the following: the assessment, evaluation of the evidence and decision were all made by the same party (that is to say, in the context of an inquisitorial system). The decisions were made without being based on a specified description of the offences. The applicant submits that he has been deprived of the possibility of knowing the precise accusations against him and was not given an opportunity to counter the substantive accusations. The applicant has not been allowed, either in person or through a representative, to put questions to those who have accused him or to the secret witnesses who came forward. He has not had sufficient time for preparation. The European Parliament has not taken a position on the applicant's arguments and evidence and has failed to demonstrate any infringement of the Staff Regulations.

3. Third plea in law: the applicant alleges that the Bureau's decision to reject the applicant's request to examine the substance of the President's decisions has been made without any basis in law.

4. Fourth plea in law: the applicant alleges that secret proceedings under an inquisitorial procedure in which it is not possible for a parliamentarian to learn of or at least to counter sweeping allegations of harassment is a threat to democracy. That is particularly so in the light of the harm an adverse decision causes to the ability to bring representative political influence to bear.

5. Fifth plea in law: the applicant claims that the question should be decided as a matter of urgency since the applicant has specific and practical difficulties in carrying out his political work and building support in Sweden in the fields in which he is called upon to act in Parliament. A timely remedy would radically alter the situation and give the applicant the time and opportunity to carry out his political work and commence constituency work before the next mandate.

6. Sixth plea in law: the applicant alleges that the European Parliament has acted deliberately or in any event negligently by failing to halt the proceedings when the advisory committee could not discern a single charge that was sufficiently specific (where, when, how) to serve as the basis for acceptance/repudiation or the possibility of showing proof or rebuttal and furthermore it adopted an adverse decision in full awareness of the clear legal uncertainties underlying it. That has harmed the applicant. The harm consists in costs, suffering and the difficulty in which he has been placed in his future political work as a result of the decision. The applicant will specify a reasonable amount at a later date.

Action brought on 6 February 2017 — Danjaq v EUIPO — Formosan (Shaken, not stirred)

(Case T-74/17)

(2017/C 121/53)

Language in which the application was lodged: English

Parties

Applicant: Danjaq, LLC (Los Angeles, California, United States) (represented by: S. Baran and G. Messenger, barristers, D. Stone and A. Dykes, solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Formosan IP (Oxford, 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 'Shaken, not stirred' — Application for registration No 13 406 343

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of in Case R 255/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener bear their own costs and pay those of the applicant.

Plea in law

— Infringement of Article 8(4) of Regulation No 207/2009.

Action brought on 7 February 2017 — PepsiCo v EUIPO — Intersnack Group (Exxtra Deep)

(Case T-82/17)

(2017/C 121/54)

Language in which the application was lodged: English

Parties

Applicant: PepsiCo, Inc. (New York, New York, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Intersnack Group GmbH & Co. KG (Düsseldorf, Germany)

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 word mark 'Exxtra Deep' — EU trade mark No 12 161 981

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 24 November 2016 in Case R 482/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the intervener to pay the costs of the applicant.

Plea in law

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

Action brought on 8 February 2017 — Heineken Romania v EUIPO — Lénárd (Csíki Sör)

(Case T-83/17)

(2017/C 121/55)

Language in which the application was lodged: English

Parties

Applicant: Heineken Romania SA (Bucharest, Romania) (represented by: A.-M. Baciu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: András Lénárd (Sincraieni, Romania)

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 'Csíki Sör' — Application for registration No 12 105 839

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 November 2016 in Case R 1310/2015-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of July 1st, 2015 in Opposition B 002 279 514;

— upheld the opposition B 002 279 514;

— reject the European Union trade mark application No 012 105 839 'Csíki Sör' in its entirety.

Plea in law

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

Action brought on 13 February 2017 — Gelinova Group v EUIPO — Cloetta Italia (galatea…è naturale)

(Case T-90/17)

(2017/C 121/56)

Language in which the application was lodged: Italian

Parties

Applicant: Gelinova Group Srl (Tezze di Vazzola, Italy) (represented by: A. Tornato and D. Hazan, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Cloetta Italia Srl (Cremona, Italy)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word elements 'galatea…è naturale' — Application for registration No 13 187 695

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 12 December 2016 in Case R 207/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 14 February 2017 — Duferco Long Products v Commission

(Case T-93/17)

(2017/C 121/57)

Language of the case: French

Parties

Applicant: Duferco Long Products SA (Luxembourg, Luxembourg) (represented by: J.-F. Bellis, R. Luff and M. Favart, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible and well founded;

— annul Article 1(f) and Article 2 of the Commission decision of 20 January 2016 on the State aid SA.33926 2013/C (ex 2013/NN, 2011/CP) implemented by Belgium in favour of Duferco;

— 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, alleging manifest errors of law and appraisal on the part of the Commission in the examination of the *pari passu* nature of the sixth measure declared incompatible with the common market. This plea is divided into two parts.

   — first part, according to which, contrary to the Commission's assessment, the transaction at issue was indeed carried out *pari passu*;

   — second part, according to which the Commission's assessment of the *pari passu* nature of the transaction is vitiated by serious errors of calculation and appraisal.

2. Second plea in law, alleging manifest errors of law and appraisal on the part of the Commission in the examination of the private investor in a market economy test. This plea is divided into four parts:

   — first part, according to which, in confusing the applicability of the private investor in a market economy test with the application thereof, the Commission erred in law and incorrectly applied that test;

   — second part, according to which, in not carrying out a comparative analysis or using another assessment method in respect of the transaction at issue, the Commission infringed the principle of the private investor in a market economy as well as the obligation to state reasons and the obligation of due diligence in the appraisal of that test;

   — third part, according to which the Commission breached the obligation to state reasons and the obligation of due diligence in the assessment of the private investor in a market economy test;

   — fourth part, according to which the Walloon Region provided a large number of documents demonstrating that Foreign Strategic Investment Holding, a subsidiary of Société Wallonne de Gestion et de Participations, acted in the manner of a private investor in a market economy.

Action brought on 15 February 2017 — Apple Distribution International v Commission

(Case T-101/17)

(2017/C 121/58)

Language of the case: English

Parties

Applicant: Apple Distribution International (Cork, Ireland) (represented by: S. Schwiddessen, H. Lutz, N. Niejahr, and A. Patsa, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision (EU) 2016/2042 of 1 September 2016;

— order the European Commission to pay its own costs as well as the applicant's costs in connection with these 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 a violation of the Audiovisual Media Services Directive

   — First, the European Commission violated Articles 2(1), 2(2) and 3 of the Audiovisual Media Services Directive by finding that the country of origin principle does not apply to the film levy. Second, the European Commission violated Article 13(1) of the Audiovisual Media Services Directive by considering that this article allows Member States to impose financial contributions for the promotion of European works on video-on-demand providers who are established in other Member States.

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

   — The European Commission violated Article 110 TFEU by finding that the application of the film levy to video-on-demand providers who are established in other Member States is not discriminatory.

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

   — The European Commission failed to examine whether the application of the film levy to video-on-demand providers who are established in other Member States violates Article 56 TFEU

4. Fourth plea in law, alleging a violation of Directive 98/34/EC

   — The European Commission failed to examine whether the application of the film levy to video-on-demand providers who are established in other Member States required notification under Directive 98/34/EC.

Action brought on 17 February 2017 — Cantina e oleificio sociale di San Marzano v EUIPO — Miguel Torres (SANTORO)

(Case T-102/17)

(2017/C 121/59)

Language in which the application was lodged: English

Parties

Applicant: Cantina e oleificio sociale di San Marzano (San Marzano di San Giuseppe, Italy) (represented by: F. Jacobacci and E. Truffo, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Miguel Torres, SA (Vilafranca del Penedés, Spain)

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 'SANTORO' — Application for registration No 12 282 141

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 December 2016 in Case R 2018/2015-2

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 Art. 8(1)(b) of Regulation No 207/2009 misconstruction of the case-law related to the issues in question;

— Infringement of Art. 8(5) of Regulation No. 207/2009 and distortion of evidence.

Action brought on 17 February 2017 — Recordati Orphan Drugs v EUIPO — Laboratorios Normon (NORMOSANG)

(Case T-103/17)

(2017/C 121/60)

Language in which the application was lodged: English

Parties

Applicant: Recordati Orphan Drugs (Puteaux, France) (represented by: J. Quirin, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Laboratorios Normon SA (Tres Cantos, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'NORMOSANG' — Application for registration No 12 174 926

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 22 November 2016 in Case R 831/2016-5

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

— Infringement of Rules 19(2)(a)(ii) and 20(1) of Regulation No 2868/95.

Action brought on 17 February 2017 — ClientEarth v Commission

(Case T-108/17)

(2017/C 121/61)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: A. Jones, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— annul the European Commission's decision, dated 7 December 2016 ('the Contested Decision'), refusing to review its Decision C(2016) 3549 ('the Authorisation Decision') granting to the undertakings VinyLoop Ferrara SpA, Stena Recycling AB, and Plastic Planet srl an authorisation for the use of a chemical known as bis(2-ethylhexyl) phthalate under Regulation (EC) No 1907/2006 ([1]);

— annul the Authorisation Decision;

— order the Commission to pay the applicant's costs; and

— order any other measure deemed appropriate.

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 Contested Decision is vitiated by manifest errors of law and assessment regarding the alleged conformity of the application for authorisation of VinyLoop, Stena, and Plastic Planet within the meaning of Article 62 and Article 60(7) of Regulation (EC) No 1907/2006.

2. Second plea in law, alleging that the Contested Decision is vitiated by manifest errors of law and assessment under Article 60(4) of Regulation (EC) No 1907/2006 regarding the socio-economic assessment.

3. Third plea in law, alleging that the Contested Decision is vitiated by manifest errors of assessment under Article 60(4) and 60(5) of Regulation (EC) No 1907/2006 regarding the analysis of alternatives.

4. Fourth plea in law, alleging that the Contested Decision is vitiated by a manifest error of law and assessment regarding the application of the precautionary principle in the context of the authorisation process under Regulation (EC) No 1907/2006.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006, L 396, p. 1).

Action brought on 21 February 2017 — FCA US v EUIPO — Busbridge (VIPER)

(Case T-109/17)

(2017/C 121/62)

Language in which the application was lodged: English

Parties

Applicant: FCA US LLC (City of Auburn Hills, Michigan, United States) (represented by: C. Morcom, QC)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Robert Dennis Busbridge (Hookwood, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'VIPER' — EU trade mark No 3 871 101

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 1 December 2016 in Case R 554/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the Cancellation Division and of the First Board of Appeal and that the application by Mr. Busbridge be remitted to the Cancellation Division for the appropriate action;

— the Applicant also seeks an order for costs.

Pleas in law

— The Board of appeal was wrong in concluding that Mr Busbridge had proved use in relation to the goods covered by the UK registration (namely 'Sports cars');

— The evidence submitted by Mr Busbridge was wholly inadequate to prove use that was 'genuine' as required by Art. 57 (2) and (3) of Regulation n° 207/2009.

Action brought on 18 February 2017 — Jiangsu Seraphim Solar System v Commission

(Case T-110/17)

(2017/C 121/63)

Language of the case: English

Parties

Applicant: Jiangsu Seraphim Solar System Co. Ltd (Changzhou, China) (represented by: Y. Melin, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 2 of Commission Implementing Regulation (EU) 2016/2146 of 7 December 2016 withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures (JO 2016, L 333, p. 4), as far as the applicant is concerned; and

— order the Commission, and any intervener who may be allowed to support the Commission in the course of the proceedings, to bear the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one sole ground.

According to the applicant, the Commission breached Article 8(1), (9) and (10) and Article 10(5) of Regulation (EU) 2016/1036 ([1]), and Article 13(1), (9) and (10) and Article 16(5) of Regulation (EU) 2016/1037 ([2]), when it invalidated undertaking invoices and then directed customs to all duties, as if no valid undertaking invoices had been issued and communicated to customs at the time the goods were declared for release in free circulation.

The applicant bases this plea on a plea of illegality of Article 3(2) of Council Implementing Regulation (EU) No 1238/2013 ([3]), and Article 2(2) of Council Implementing Regulation (EU) No 1239/2013 ([4]), which give to the Commission the power to declare undertaking invoices invalid.

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

([2]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016, L 176, p. 55).

([3]) Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013, L 325, p. 1).

([4]) Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China (OJ 2013, L 325, p. 66).

Action brought on 20 February 2017 — Spiegel-Verlag Rudolf Augstein and Sauga v ECB

(Case T-116/17)

(2017/C 121/64)

Language of the case: German

Parties

Applicants: Spiegel-Verlag Rudolf Augstein GmbH & Co. KG (Hamburg, Germany) and Michael Sauga (Berlin, Germany) (represented by: A. Koreng and T. Feldmann, lawyers)

Defendant: European Central Bank (ECB)

Form of order sought

The applicants claim that the Court should:

— annul the decision, notified by letter of 15 December 2016, of the Board of Directors of the European Central Bank, by which the applicants' request for access to the two European Central Bank documents 'The impact on government deficit and debt from off-market swaps. The Greek case' (SEC/GovC/X/10/88a) and 'The Titlos transaction and possible existence of similar transactions impacting on the euro area government debt or deficit levels' (SEC/GovC/X/10/88b) was rejected;

— order the European Central Bank to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law

1. First plea in law, alleging misapplication of the second indent of Article 4(1)(a) of Decision ECB/2004/3 ([1])

   The applicants claim that the ECB has failed to show in sufficient detail that disclosure of the documents concerned would undermine the protection of the public interest as regards the financial, monetary or economic policy of the European Union or of a Member State.

   The risk of detriment to the public interest claimed by the ECB is, they submit, more than six years after the documents were drafted and after a fundamental change in the surrounding circumstances, no longer a matter giving rise to actual concern.

2. Second plea in law, alleging misapplication of Article 4(3) of Decision ECB/2004/3

— The applicants submit that the documents in question did not serve as preparation for actual decisions but only for general opinion-forming and information purposes within the ECB.

— Furthermore, it also cannot be assumed that ECB employees would allow themselves to be intimidated by the possibility that the documents might be disclosed.

— Moreover, as matters stand, in light of the documents at issue in the present case, there is no fear of improper third-party influence over the deliberations of the ECB.

— Additionally, the ECB has not sufficiently weighed and taken into consideration the public interest in access to the information.

— Finally, it is not for the ECB to assess how the public debate can be enriched; rather, that is a role for the press as part of the 'watchdog function' which the European Court of Human Rights has recognised it as possessing.

(1) 2004/258/EC: Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 24 February 2017 — Institute for Direct Democracy in Europe v Parliament

(Case T-118/17)

(2017/C 121/65)

Language of the case: English

Parties

Applicant: Institute for Direct Democracy in Europe (Brussels, Belgium) (represented by: E. Plasschaert and E. Montens, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament's decision of December 15th 2016, inasmuch it (i) suspends the payment of the 2017 grant, including the payment of the pre-financing, (ii) limits the pre-financing amount for the 2017 grant to 33 % of the maximum grant amount and (iii) makes the payment of the pre-financing amount conditional on the presentation of a first demand guarantee, and, as a consequence, article I.4.1 of the grant award decision FINS-2017-28 appended to this decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

a) *With respect to the decision to suspend the payment of the 2017 grant including the pre-financing amount for IDDE*

1. First plea in law, alleging that the decision breaches the principal of good administration and violates the rights of the defence of IDDE. In particular, the decision was not taken by fair and impartial authority and IDDE was not properly heard nor granted an effective possibility to comment and dispute the accusations directed at it.

2. Second plea in law, alleging that the decision breaches article 208(1) first sentence of the Rules of Application to the Financial Regulation, article 8(a) of the decision of the Bureau of the European Parliament and article II.13.2 of the Grant Award decision. In particular, the payment of the 2017 grant cannot be suspended based on unverified allegations unrelated to said decision and pertaining allegedly only to the 2015 grant award decision. In addition, the payment of the 2017 grant can only be suspended for reasons of verifications which in present matter have already been performed and have been concluded without any of the alleged suspicions and allegations being definitively confirmed. In consequence, the suspension must be lifted. Finally, the alleged suspicions and presumptions are not sufficient to justify any suspension of the payment.

3. Third plea in law, alleging that the decision breaches the principle of proportionality. In particular, the scope of the measure taken, i.e. the suspension of the payment of the 2017 grant, including its pre-payment, is totally disproportional in comparison to the alleged suspicions and irregularities, even if these would be confirmed.

b) *with respect to the decision limit the pre-financing at 33 % of the maximum grant amount and to make the payment of the pre-financing amount conditional upon the presentation of a first demand bank guarantee*

1. First plea in law, alleging that the decision breaches the principal of good administration and violates the rights of the defence of IDDE.

2. Second plea in law, alleging that the decision breaches the requirement to provide a statement of reasons, the rights of the defence and the article 6 of the decision of the Bureau of the European Parliament, article 134 of the financial regulation and article 206 of the Rules of application of the financial regulation.

3. Third plea in law, alleging that the decision breaches the principles of equality of treatment and of proportionality. IDDE has been prejudicially discriminated against in comparison to other foundations and parties which are in objectively similar situations.

Action brought on 20 February 2017 — M&T Emporia Ilektrikon-Ilektronikon Eidon v. EUIPO (fluo.)

(Case T-120/17)

(2017/C 121/66)

Language of the case: English

Parties

Applicant: M&T Emporia Ilektrikon-Ilektronikon Eidon AE (Thessaloniki, Greece) (represented by: A. Spyridonos, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word element 'fluo' — Application for registration No 14 664 486

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 December 2016 in Case R 863/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in the part that it has rejected the trade mark in question and allow the trade mark to be registered for all the goods of class 9 of the Nice classification applied for;

— order EUIPO to pay the overall costs of the proceedings of all instances.

Plea in law

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

Action brought on 22 February 2017 — Devin v EUIPO — Haskovo (DEVIN)

(Case T-122/17)

(2017/C 121/67)

Language in which the application was lodged: English

Parties

Applicant: Devin AD (Devin, Bulgaria) (represented by: B. Van Asbroeck, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Haskovo Chamber of Commerce and Industry (Haskovo, Bulgaria)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'DEVIN' — EU trade mark No 9 408 865

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 December 2016 in Case R 579/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the Cancellation Division's decision dated 29 January 2016 in the case No 9 559;

— entirely or at least partially reject the Cancellation Applicant's application for invalidity of the EU trade mark 'DEVIN' No 9408865 for all the designated goods in class 32;

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

Pleas in law

— Infringement of Article 52(1)(a) in conjunction with Article 7(1)(c) of Regulation No 207/2009;

— To the extent that the Board of Appeal has not infringed Article 7(1)(c), infringement of Article 7(3) of Regulation No 207/2009.

Action brought on 27 February 2017 — Consorzio IB Innovation v Commission

(Case T-126/17)

(2017/C 121/68)

Language of the case: Italian

Parties

Applicant: Consorzio IB Innovation (Bentivoglio, Italy) (represented by: A. Masutti and P. Manzini, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the Commission's interpretation and application of the CONTAIN and ICARGO Grant Agreements when accepting the auditor's report are incorrect in relation to all of the aspects highlighted in the action;

— consequently, declare that the applicant's interpretation and application of the CONTAIN and ICARGO Grant Agreements are correct;

— order the Commission to pay all of the costs.

Pleas in law and main arguments

The present action arises within the context of the issues connected with Case T-84/17, *Consorzio IB Innovation* v *Commission*. In that action, the applicant was contesting the decision of the European Commission Directorate-General for Research and Innovation of 30 November 2016 (ref: Ares 2016-6711369), whereby the Commission found that Consorzio IB Innovation ('IBI') was under an obligation to repay EUR 294 925,43 in relation to Contract No 261679-CONTAIN and EUR 155 482,91 in relation to Contract No 288383-ICARGO, and to verify whether there were systemic errors in relation to a series of subsequent contracts.

The applicant questions the Commission's interpretation of the contracts in question.

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

1. First plea in law, alleging an incorrect and contradictory interpretation of the terms 'beneficiary' and 'third parties', in breach of the Grant Agreements (GAs) and of the General Conditions (GCs) contained in Annex II to the General Agreements.

   — The applicant claims in this regard that a consortium is not a single entity, but rather a group of undertakings or a 'collective entity', and that it is not stated in the GAs or in the GCs contained in Annex II to the General Agreements that an undertaking included in the consortium is a third party in relation to a beneficiary of the GA concerned if the two persons have distinct legal personalities.

2. Second plea in law, alleging infringement of Article 9 of the CONTAIN and ICARGO GAs by both the auditor and the Commission as regards the law applicable to those contracts, and application of rules that do not form part of the contracts and are not legally binding.

   — The applicant claims in this regard that the auditor's report, accepted by the Commission, is based on an interpretation of the GAs which is not substantiated either by the wording of those agreements or by the legal rules applicable to them. Rather, that report relies solely on an 'instruction manual' prepared by the Commission's services. That document, drawn up unilaterally, cannot, it submits, take precedence over the rules agreed between the contracting parties.

3. Third plea in law, alleging misinterpretation and misapplication of Article II.15.2.c of Annex II to the CONTAIN and ICARGO GAs.

   — The applicant claims in this regard that the system for reporting the indirect costs relating to certain in-house IBI consultants who teleworked cannot be regarded as correct.

4. Fourth plea in law, alleging that the request for review of contracts not subject to the audit is not based on any contractual provision.

   — The applicant claims in this regard that it is not at all clear which contractual clause of the ICARGO and CONTAIN Gas, including all annexes thereto, confers on the Commission the right to ask IBI for a structured and detailed audit of all the agreements in which IBI has participated within the context of the Seventh Framework Programme. The Commission, acting on the assumption that the errors found by the audit are systemic, is asking IBI to indicate whether the list is complete and, as appropriate, to supplement it with the missing projects and to verify whether such systemic errors are present in the financial reports relating to those projects.

Action brought on 1 March 2017 — Polskie Górnictwo Naftowe i Gazownictwo v Commission

(Case T-130/17)

(2017/C 121/69)

Language of the case: Polish

Parties

Applicant: Polskie Górnictwo Naftowe i Gazownictwo S.A. (Warsaw, Poland) (represented by: M. Jeżewski, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision C(2016)6950 of the European Commission of 28 October 2016 amending the conditions for exemption from the obligation to apply certain requirements of EU law to the OPAL gas pipeline;

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

Pleas in law and main arguments

In support of the action, the applicant relies on 16 pleas in law.

1. First plea in law, alleging infringement of fundamental rights and an incorrect assessment of the application initiating proceedings concerning the amendment of the current exemption of the OPAL gas pipeline from the obligation to apply certain requirements of EU law, granted in 2009 pursuant to a decision by the German Federal Grid Agency.

2. Second plea in law, alleging that the Commission is not competent to adopt a decision amending the exemption of the OPAL gas pipeline from the obligation to apply certain requirements of EU law.

3. Third plea in law, alleging misinterpretation of the conditions of eligibility for exemption of a gas infrastructure laid down in Article 36(1) of Directive 2009/73/EC, read in conjunction with Article 2(17) of that directive.

4. Fourth plea in law, alleging misinterpretation of the conditions of eligibility for exemption of a gas infrastructure laid down in Article 36(1)(b) of Directive 2009/73/EC, read in conjunction with Article 2(33) of that directive.

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

   — The investment concerning the construction of the OPAL gas pipeline was finally realised and completed on 13 July 2011, with the result that it is no longer possible to speak of the continued existence of any such risks.

5. Fifth plea in law, alleging misinterpretation of the conditions of eligibility for exemption of a gas infrastructure laid down in Article 36(1)(a) and (e) of Directive 2009/73/EC and, as a result, an incorrect finding that the amendment of the regulatory exemption for the OPAL gas pipeline does not have a negative impact on competition in the gas market.

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

7. Seventh plea in law, alleging that the need to comply with the content of Article 102 TFEU was not taken into consideration by the German Federal Grid Agency when it adopted the exemption decision pursuant to Article 36 of Directive 2009/73/EC.

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

9. Ninth plea in law, alleging infringement of the principle of proportionality.

10. Tenth plea in law, alleging a failure to provide a statement of reasons for an act within the meaning of Article 296 TFEU and Article 263 TFEU.

11. Eleventh plea in law, alleging that users of natural gas in the Republic of Poland are exposed to the risk of a lack of gas supply, which constitutes infringement of the Treaty objective of activity intended to ensure energy security and the principle of energy solidarity, as well as infringement of Article 7 of the Treaty [on the Functioning of the European Union] through the adoption of a decision which is contrary to other European Union policies.

12. Twelfth plea in law, alleging privileged treatment of infrastructures covered by the exemption, the status of which is incompatible with EU law.

13. Thirteenth and fourteenth pleas in law, alleging infringement of, respectively, Articles 274 and 254 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.

14. Fifteenth plea in law, alleging infringement of Article 7 TFEU through the adoption of a decision which is contrary to other European Union policies.

15. Sixteenth plea in law, based on Article 277 TFEU, alleging that Article 2(33) of Directive 2009/73/EC, read in conjunction with Article 36(1) of that directive, is rendered inapplicable as a result of the arbitrary introduction of a discriminatory division between infrastructure that may be subject to the regulatory exemption and other infrastructure not qualifying for that exemption.

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