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NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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(2017/C 151/01)

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These texts are available on:

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V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Raad van State — Netherlands) — A, B, C and D v Minister van Buitenlandse Zaken

(Case C-158/14) ([1])

(Reference for a preliminary ruling — Common Foreign and Security Policy (CFSP) — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Common Position 2001/931/CFSP — Framework Decision 2002/475/JHA — Regulation (EC) No 2580/2001 — Article 2(3) — Inclusion of the 'Liberation Tigers of Tamil Eelam (LTTE)' on the list of persons, groups and entities involved in terrorist acts — Question referred for a preliminary ruling concerning the validity of that inclusion — Compliance with international humanitarian law — Concept of 'terrorist act' — Actions by armed forces during periods of armed conflict)

(2017/C 151/02)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: A, B, C and D

Respondent: Minister van Buitenlandse Zaken

Operative part of the judgment

1. *It is not obvious, within the meaning of the case-law based on the judgments of 9 March 1994, TWD Textilwerke Deggendorf (C-188/92, EU:C:1994:90), and of 15 February 2001, Nachi Europe (C-239/99, EU:C:2001:101), that actions for annulment of Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 or the acts of the European Union preceding that implementing regulation and relating to the inclusion of the 'Liberation Tigers of Tamil Eelam (LTTE)' on the list referred to in Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, brought before the General Court of the European Union by persons in a situation such as that of the appellants in the main proceedings, would have been admissible.*

2. *As neither Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism nor Regulation No 2580/2001 precludes actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, from constituting 'terrorist acts' for the purposes of those acts of the European Union, the fact that the activities of the 'Liberation Tigers of Tamil Eelam (LTTE)' may constitute such actions does not affect the validity of Implementing Regulation No 610/2010 or that of the acts of the European Union preceding that implementing regulation and relating to the inclusion referred to in point 1 of the present operative part.*

([1]) OJ C 194, 24.6.2016.

Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV

(Case C-157/15) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Discrimination based on religion or belief — Workplace regulations of an undertaking prohibiting workers from wearing visible political, philosophical or religious signs in the workplace — Direct discrimination — None — Indirect discrimination — Female worker prohibited from wearing an Islamic headscarf)

(2017/C 151/03)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Applicants: Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding

Defendant: G4S Secure Solutions NV

Operative part of the judgment

Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.

By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain.

([1]) OJ C 205, 22.6.2015.

Judgment of the Court (Grand Chamber) of 14 March 2017 — Evonik Degussa GmbH v European Commission

(Case C-162/15 P) ([1])

(Appeal — Competition — Articles 101 TFEU and 102 TFEU — Regulation (EC) No 1/2003 — Article 30 — Commission decision finding an illegal cartel on the European hydrogen peroxide and perborate market — Publication of an extended non-confidential version of that decision — Rejection of a request for confidential treatment of certain information — Terms of reference of the hearing officer — Decision 2011/695/EU — Article 8 — Confidentiality — Protection of professional secrecy — Article 339 TFEU — Concept of 'business secrets or other confidential information' — Information from a request for leniency — Rejection of the request for confidential treatment — Legitimate expectation)

(2017/C 151/04)

Language of the case: German

Parties

Appellant: Evonik Degussa GmbH (represented by: C. Steinle, C. von Köckritz and A. Richter, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: G. Meessen, M. Kellerbauer and F. van Schaik, Agents)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 28 January 2015, Evonik Degussa v Commission (T-341/12, EU:T:2015:51) in so far as by that judgment the General Court held that the hearing officer was correct to decline competence to answer the objections, raised by Evonik Degussa GmbH on the basis of the observance of the principles of the protection of legitimate expectations and equal treatment, to the proposed publication of a detailed, non-confidential version of Commission Decision C (2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement against Akzo Nobel NV, Akzo Nobel Chemicals Holding AB, Eka Chemicals AB, Degussa AG, Edison SpA, FMC Corporation, FMC Foret SA, Kemira OYJ, L'Air Liquide SA, Chemoxal SA, Snia SpA, Caffaro Srl, Solvay SA/NV, Solvay Solexis SpA, Total SA, Elf Aquitaine SA and Arkema SA (Case COMP/F/38.620 — Hydrogen Peroxide and Perborate);*

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

3. *Annuls Commission Decision C(2012) 3534 final of 24 May 2012, rejecting a request for confidential treatment submitted by Evonik Degussa GmbH in so far as, by that decision, the hearing officer declined competence to answer the objections referred to in point 1 of the operative part of this judgment;*

4. *Orders Evonik Degussa GmbH and the European Commission to bear their own costs.*

([1]) OJ C 198, 15.6.2015.

Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Cour de cassation — France) — Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA, formerly Micropole Univers SA

(Case C-188/15) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Discrimination based on religion or belief — Genuine and determining occupational requirement — Meaning — Customer's wish not to have services provided by a worker wearing an Islamic headscarf)

(2017/C 151/05)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Asma Bougnaoui, Association de défense des droits de l'homme (ADDH)

Defendant: Micropole SA, formerly Micropole Univers SA

Operative part of the judgment

Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.

([1]) OJ C 221, 6.7.2015.

Judgment of the Court (First Chamber) of 15 March 2017 — Polynt SpA v New Japan Chemical, REACh ChemAdvice GmbH, Sitre Srl, European Chemicals Agency, Kingdom of the Netherlands, European Commission

(Case C-323/15 P) ([1])

(Appeal — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 57(f) — Authorisation — Substances of very high concern — Identification — Equivalent level of concern — Cyclohexane-1,2-dicarboxylic anhydride, cis-cyclohexane-1,2-dicarboxylic anhydride and trans-cyclohexane-1,2-dicarboxylic anhydride)

(2017/C 151/06)

Language of the case: English

Parties

Appellant: Polynt SpA (represented by: C. Mereu and M. Grunchard, avocats)

Other parties to the proceedings: New Japan Chemical (represented by: C. Mereu and M. Grunchard, avocats), REACh ChemAdvice GmbH (represented by: C. Mereu and M. Grunchard, avocats), Sitre Srl (represented by: C. Mereu and M. Grunchard, avocats), European Chemicals Agency (ECHA) (represented by: M. Heikkilä, C. Buchanan, W. Broere and T. Zbihlej, acting as Agents, and J. Stuyck, advocaat), Kingdom of the Netherlands (represented by: C. Schillemans and M. Bulterman, acting as Agents), European Commission (represented by: D. Kukovec and K. Mifsud-Bonnici, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Polynt SpA to bear its own costs and to pay those incurred by the European Chemicals Agency (ECHA);*

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

4. *Orders New Japan Chemical and REACh ChemAdvice GmbH to bear their own costs.*

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (First Chamber) of 15 March 2017 — Hitachi Chemical Europe GmbH, Polynt SpA v New Japan Chemical, REACh ChemAdvice GmbH, Sitre Srl, European Chemicals Agency, Kingdom of the Netherlands, European Commission

(Case C-324/15 P) ([1])

(Appeal — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 57(f) — Authorisation — Substances of very high concern — Identification — Equivalent level of concern — Hexahydromethylphthalic anhydride, hexahydro-4-methylphthalic anhydride, hexahydro-1-methylphthalic anhydride and hexahydro-3-methylphthalic anhydride)

(2017/C 151/07)

Language of the case: English

Parties

Appellants: Hitachi Chemical Europe GmbH, Polynt SpA (represented by: C. Mereu and M. Grunchard, avocats)

Other parties to the proceedings: New Japan Chemical (represented by: C. Mereu and M. Grunchard, avocats), REACh ChemAdvice GmbH (represented by: C. Mereu and M. Grunchard, avocats), Sitre Srl (represented by: C. Mereu and M. Grunchard, avocats), European Chemicals Agency (ECHA) (represented by: M. Heikkilä, C. Buchanan, W. Broere and T. Zbihlej, acting as Agents, and J. Stuyck, advocaat), Kingdom of the Netherlands (represented by: C. Schillemans and M. Bulterman, acting as Agents), European Commission (represented by: D. Kukovec and K. Mifsud-Bonnici, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Hitachi Chemical Europe GmbH and Polynt SpA to bear their own costs and to pay those incurred by the European Chemicals Agency (ECHA);*

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

4. *Orders New Japan Chemical and REACh ChemAdvice GmbH to bear their own costs.*

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (First Chamber) of 15 March 2017 — Stichting Woonlinie, Woningstichting Volksbelang, Stichting Woonstede v European Commission, Kingdom of Belgium, Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN)

(Case C-414/15 P) ([1])

(Appeal — State aid — Existing aid — Article 108(1) TFEU — Aid schemes in favour of social housing corporations — Regulation (EC) No 659/1999 — Articles 17, 18 and 19 — Assessment by the Commission of the compatibility with the internal market of an existing aid scheme — Proposal of appropriate measures — Commitments given by the national authorities in order to comply with EU law — Compatibility decision — Scope of judicial review — Legal effects)

(2017/C 151/08)

Language of the case: Dutch

Parties

Appellants: Stichting Woonlinie, Woningstichting Volksbelang, Stichting Woonstede (represented by: L. Hancher, E. Besselink and P. Glazener, advocaten)

Other parties to the proceedings: European Commission (represented by: S. Noë and P.J. Loewenthal, acting as Agents), Kingdom of Belgium, Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN) (represented by: M. Meulenbelt, advocaat)

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 12 May 2015, Stichting Woonlinie and Others v Commission (T-202/10 RENV, not published, EU:T:2015:287);*

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

3. *Reserves the costs.*

([1]) OJ C 337, 12.10.2015.

Judgment of the Court (First Chamber) of 15 March 2017 — Stichting Woonpunt, Woningstichting Haag Wonen, Stichting Woonbedrijf SWS.Hhvl v European Commission, Kingdom of Belgium, Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN)

(Case C-415/15 P) ([1])

(Appeal — State aid — Existing aid — Article 108(1) TFEU — Aid schemes in favour of social housing corporations — Regulation (EC) No 659/1999 — Articles 17, 18 and 19 — Assessment by the Commission of the compatibility with the internal market of an existing aid scheme — Proposal of appropriate measures — Commitments given by the national authorities in order to comply with EU law — Compatibility decision — Scope of judicial review — Legal effects)

(2017/C 151/09)

Language of the case: Dutch

Parties

Appellants: Stichting Woonpunt, Woningstichting Haag Wonen, Stichting Woonbedrijf SWS.Hhvl (represented by: L. Hancher, E. Besselink and P. Glazener, advocaten)

Other parties to the proceedings: European Commission (represented by: S. Noë and P.J. Loewenthal, acting as Agents), Kingdom of Belgium, Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN) (represented by: M. Meulenbelt, advocaat)

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 12 May 2015, Stichting Woonpunt and Others v Commission (T-203/10 RENV, not published, EU:T:2015:286);*

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

3. *Reserves the costs.*

([1]) OJ C 337, 12.10.2015.

Judgment of the Court (Seventh Chamber) of 16 March 2017 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Agenzia delle Entrate v Marci Identi

(Case C-493/15) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax — Article 4(3) TEU — Sixth Directive — State aid — Procedure discharging bankrupt natural persons from debts (esdebitazione) — Ineligibility of VAT debts)

(2017/C 151/10)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Agenzia delle Entrate

Defendant: Marci Identi

Operative part of the judgment

EU law, in particular Article 4(3) TEU and Articles 2 and 22 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and the rules on State aid, must be interpreted to the effect that it does not preclude value added tax debts from being declared irrecoverable under national legislation, such as that at issue in the main proceedings, providing for a bankruptcy discharge procedure by means of which a court may, under certain conditions, declare irrecoverable the debts of a natural person which have not been settled by the close of the bankruptcy proceedings initiated against that person.

([1]) OJ C 406, 7.12.2015.

Judgment of the Court (Second Chamber) of 15 March 2017 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor,

(Case C-528/15) ([1])

(Reference for a preliminary ruling — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection — Regulation (EU) No 604/2013 (Dublin III) — Article 28(2) — Detention for the purpose of transfer — Article 2(n) — Significant risk of absconding — Objective criteria — Absence of a legal definition)

(2017/C 151/11)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie

Defendants: Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor

Operative part of the judgment

Article 2(n) and Article 28(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) of that regulation.

([1]) OJ C 16, 18.1.2016.

Judgment of the Court (Second Chamber) of 15 March 2017 (request for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — Tele2 (Netherlands) BV, Ziggo BV, Vodafone Libertel BV v Autoriteit Consument en Markt (ACM)

(Case C-536/15) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/22/EC — Article 25(2) — Directory enquiry services and directories — Directive 2002/58/EC — Article 12 — Directories of subscribers — Making available personal data concerning subscribers for the purposes of the provision of publicly available directory enquiry services and directories — Subscriber's consent — Distinction on the basis of the Member State in which publicly available directory enquiry services and directories are provided — Principle of non-discrimination)

(2017/C 151/12)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Tele2 (Netherlands) BV, Ziggo BV, Vodafone Libertel BV

Defendant: Autoriteit Consument en Markt (ACM)

Intervening parties: European Directory Assistance NV

Operative part of the judgment

1. *Article 25(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that the concept of 'requests' in that article, covers also requests made by an undertaking, established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established, which requests the relevant information possessed by those undertakings in order to provide publicly available telephone directory enquiry services and directories in that Member State and/or in other Member States.*

2. *Article 25(2) of Directive 2002/22, as amended by Directive 2009/136, must be interpreted as precluding an undertaking which assigns telephone numbers to subscribers, and which is obliged under national legislation to request those subscribers' consent to the use of data relating to them for the purposes of supplying directory enquiry services and directories, from differentiating in the request for those subscribers' consent to that use according to the Member State in which the undertakings requesting the information referred to in that provision provide those services.*

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Tenth Chamber) of 15 March 2017 — European Commission v Kingdom of Spain

(Case C-563/15) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/98/EC — Articles 13 and 15 — Waste management — Protection of human health and the environment — Responsibility — Landfills)

(2017/C 151/13)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Pignataro-Nolin and E. Sanfrutos Cano, acting as Agents)

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

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, with regard to the landfills of Torremolinos (Malaga), Torrent de S'Estret (Andratx, Mallorca), Hoya de la Yegua de Arriba (Yaiza, Lanzarote), Barranco de Butihondo (Pájara, Fuerteventura), La Laguna-Tiscamanita (Tuineje, Fuerteventura), Lomo Blanco (Antigua, Fuerteventura), Montaña de Amagro (Galdar, Gran Canaria), Franja Costera de Botija (Galdar, Gran Canaria), Cueva Lapa (Galdar, Gran Canaria), La Colmena (Santiago del Teide, Tenerife), Montaña Los Giles (La Laguna, Tenerife), Las Rosas (Güimar, Tenerife), Barranco de Tejina (Guía de Isora, Tenerife), Llano de Ifara (Granadilla de Abona, Tenerife), Barranco del Carmen (Santa Cruz de La Palma, La Palma), Barranco Jurado (Tijarafe, La Palma), Montaña Negra (Puntagorda, La Palma), Lomo Alto (Fuencaliente, La Palma), Arure/Llano Grande (Valle Gran Rey, La Gomera), El Palmar — Taguluche (Hermigua, La Gomera), Paraje de Juan Barba (Alajeró, La Gomera), El Altito (Valle Gran Rey, La Gomera), Punta Sardina (Agulo, La Gomera), Los Llanillos (La Frontera, El Hierro), Faro de Orchilla (La Frontera, El Hierro), Montaña del Tesoro (Valverde, El Hierro), Arbancón (Castilla-La Mancha), Galve de Sorbe (Castilla-La Mancha), Hiendelaencina (Castilla-La Mancha), Tamajón (Castilla-La Mancha), El Casar (Castilla-La Mancha), Cardeñosa (Ávila), Miranda de Ebro (Burgos), Poza de la Sal (Burgos), Acebedo (León), Bustillo del Páramo (León), Cármenes (León), Gradefes (León), de Noceda del Bierzo (León), San Millán de los Caballeros (León), Santa María del Páramo (León), Villaornate y Castro (León), Cevico de La Torre (Palencia), Palencia (Palencia), Ahigal de los Aceiteros (Salamanca), Alaraz (Salamanca), Calvarrasa de Abajo (Salamanca), Hinojosa de Duero (Salamanca), Machacón (Salamanca), Palaciosrubios (Salamanca), Peñaranda de Bracamonte (Salamanca), Salmoral (Salamanca), Tordillos (Salamanca), Basardilla (Segovia), Cabezuela (Segovia), Almaraz del Duero (Zamora), Cañizal (Zamora), Casaseca de las Chanas (Zamora), La Serratilla (Abanilla), Las Rellanas (Santomera) and El Labradorcico (Águilas), the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular without risk to water, air, soil, animals or plants, and that the waste disposed of is treated by the municipalities themselves or by a dealer, an establishment or undertaking which carries out waste treatment operations or a private or public waste collector, in accordance with Articles 4 and 13 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives, the Kingdom of Spain has failed to fulfill its obligations under Articles 13 and 15(1) of that directive;*

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

([1]) OJ C 16, 18.1.2016.

Judgment of the Court (First Chamber) of 15 March 2017 (request for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Lucio Cesare Aquino v Belgische Staat

(Case C-3/16) ([1])

(Reference for a preliminary ruling — EU law — Rights conferred on individuals — Infringement by a court — Questions referred for a preliminary ruling — Reference to the Court — National court of last instance)

(2017/C 151/14)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicant: Lucio Cesare Aquino

Defendant: Belgische Staat

Operative part of the judgment

1. *The third paragraph of Article 267 TFEU must be interpreted as meaning that a court against whose decisions there is a judicial remedy under national law may not be regarded as a court adjudicating at last instance, where an appeal on a point of law against a decision of that court is not examined because of discontinuance by the appellant.*

2. *There is no need to answer Question 2.*

3. *The third paragraph of Article 267 TFEU must be interpreted as meaning that a court adjudicating at last instance may decline to refer a question to the Court for a preliminary ruling where an appeal on a point of law is dismissed on grounds of inadmissibility specific to the procedure before that court, subject to compliance with the principles of equivalence and effectiveness.*

([1]) OJ C 136, 18.4.2016.

Judgment of the Court (Sixth Chamber) of 16 March 2017 (request for a preliminary ruling from the Augstākās tiesas Administratīvo lietu departaments — Latvia) — Valsts ieņēmumu dienests v 'Veloserviss' SIA

(Case C-47/16) ([1])

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 220(2)(b) — Post-clearance recovery of import duties — Legitimate expectations — Conditions under which applicable — Error of the customs authorities — Obligation imposed on the importer to act in good faith and to verify the circumstances of the issue of the Form A certificate of origin — Means of proof — Report of the European Anti-Fraud Office (OLAF))

(2017/C 151/15)

Language of the case: Latvian

Referring court

Augstākās tiesas Administratīvo lietu departaments

Parties to the main proceedings

Applicant: Valsts ieņēmumu dienests

Defendant: 'Veloserviss' SIA

Operative part of the judgment

1. *Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 must be interpreted as meaning that an importer may not rely on a legitimate expectation, in accordance with that provision, in order to object to a post-clearance incurring of liability for import duties, submitting that he acted in good faith, unless three cumulative conditions are met. It is necessary, first of all, that those duties were not levied as a result of an error on the part of the competent authorities themselves, secondly, that that error was such that it could not reasonably have been detected by a person liable for payment acting in good faith and, finally, that that person complied with all the provisions laid down by the legislation in force as regards his customs declaration. Such a legitimate expectation is lacking, in particular, where, although there are clear reasons for doubting the accuracy of a Form A certificate of origin, an importer failed to obtain, using his best efforts, information concerning the circumstances of the issue of that certificate in order to verify whether those doubts were well founded. Such an obligation does not however mean that an importer is required, in general, to systematically verify the circumstances of the issue, by the customs authorities of the exporting country, of a Form A certificate of origin. It is for the referring court to determine, taking into account all of the specific facts of the dispute in the main proceedings, whether those three conditions are met in this case.*

2. *Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that, in a case such as that at issue in the main proceedings, it can be deduced from the information contained in an European Anti-fraud Office (OLAF) report that an importer may not rely on a legitimate expectation, in accordance with that provision, in order to object to a post-clearance incurring of liability for import duties. To the extent, however, that such a report contains only a general description of the situation at issue, which it is for the national court to determine, it cannot, on its own, suffice in order to show to the requisite legal standard that those conditions are indeed met in all respects, in particular as regards the relevant conduct of the exporter. In those circumstances, it is, in principle, for the customs authorities of the importing country to prove, by means of additional evidence, that the issue, by the customs authorities of the exporting country, of an incorrect Form A certificate of origin is attributable to an incorrect statement of the facts by the exporter. However, where the customs authorities of the importing country are unable to adduce that evidence, it is, as the case may be, for the importer to prove that that certificate was issued on the basis of a correct statement of the facts by the exporter.*

([1]) OJ C 111, 29.3.2016.

Judgment of the Court (Eighth Chamber) of 16 March 2017 (request for a preliminary ruling from the Handelsgericht Wien — Austria) — Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger registrierte Genossenschaft mbH (AKM) v Zürs.net Betriebs GmbH

(Case C-138/16) ([1])

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights in the information society — Directive 2001/29/EC — Right of communication of works to the public — Article 3(1) — Exceptions and limitations — Article 5(3)(o) — Broadcast of television programmes through a local cable network — National law laying down exceptions for installations allowing access to a maximum of 500 subscribers and for the retransmission of broadcasts of the public broadcaster in national territory)

(2017/C 151/16)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger registrierte Genossenschaft mbH (AKM)

Defendant: Zürs.net Betriebs GmbH

Operative part of the judgment

Article 3(1) 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 Article 11bis of the Berne Convention for the Protection of Literary and Artistic Works, in the version resulting from the Paris Act of 24 July 1971, as amended on 28 September 1979, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides that the simultaneous, full and unaltered transmission of programmes broadcast by the national broadcasting corporation, by means of cables on national territory, is not subject, under the exclusive right of communication to the public, to the requirement that authorisation be obtained from the author, provided that it is merely a technical means of communication and was taken into account by the author of the work when the latter authorised the original communication, this being a matter for the national court to ascertain.

Article 5 of Directive 2001/29, in particular paragraph 3(o) thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that a broadcast made by means of a communal antenna installation, when the number of subscribers connected to the antenna is no more than 500, is not subject, under the exclusive right of communication to the public, to the requirement that authorisation be obtained from the author, and as meaning that that legislation must, therefore, be applied consistently with Article 3(1) of that directive, this being a matter for the national court to ascertain.

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Seventh Chamber) of 16 March 2017 (request for a preliminary ruling from the Commissione Tributaria Provinciale di Torino — Italy) — Bimotor SpA v Agenzia delle Entrate — Direzione Provinciale II di Torino

(Case C-211/16) ([1])

(Reference for a preliminary ruling — Value added tax — Principle of fiscal neutrality — National legislation laying down a fixed maximum ceiling limiting the amount of refund or compensation of credit or excess value added tax)

(2017/C 151/17)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Torino

Parties to the main proceedings

Applicant: Bimotor SpA

Defendant: Agenzia delle Entrate — Direzione Provinciale II di Torino

Operative part of the judgment

The first paragraph of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which limits to a set maximum amount the compensation of certain tax debts by value added tax credits, for each taxation period, to the extent that national law provides in any event the possibility for the taxable person to recover the full value added tax credit within a reasonable period.

([1]) OJ C 251, 11.7.2016.

Judgment of the Court (Third Chamber) of 15 March 2017 (request for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — FlibTravel International SA, Léonard Travel International SA v AAL Renting SA and Others

(Case C-253/16) ([1])

(Reference for a preliminary ruling — Article 96 TFEU — Applicability — National legislation prohibiting taxi services from offering individual seats — National legislation prohibiting taxi services from predetermining their destination — National legislation prohibiting taxi services from touting for custom)

(2017/C 151/18)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellants: FlibTravel International SA, Léonard Travel International SA

Respondents: AAL Renting SA, Haroune Tax SPRL, Saratax SCS, Ryad SCRI, Taxis Bachir & Cie SCS, Abdelhamid El Barjraji, Abdelouahab Ben Bachir, Sotax SCRI, Mostapha El Hammouchi, Boughaz SPRL, Sahbaz SPRL, Jamal El Jelali, Mohamed Chakir Ben Kadour, Taxis Chalkis SCRL, Mohammed Gheris, Les délices de Fes SPRL, Abderrahmane Belyazid, E.A.R. SCS, Sotrans SPRL, B.M.A. SCS, Taxis Amri et Cie SCS, Aramak SCS, Rachid El Amrani, Mourad Bakkour, Mohamed Agharbiou, Omar Amri, Jmili Zouhair, Mustapha Ben Abderrahman, Mohamed Zahyani, Miltotax SPRL, Lextra SA, Ismail El Amrani, Farid Benazzouz, Imad Zoufri, Abdel-Ilah Bokhamy, Ismail Al Bouhali, Bahri Messaoud & Cie SCS, Mostafa Bouzid, BKN Star SPRL, M.V.S. SPRL, A.B.M.B. SCS, Imatrans SPRL, Reda Bouyaknouden, Ayoub Tahri, Moulay Adil El Khatir, Redouan El Abboudi, Mohamed El Abboudi, Bilal El Abboudi, Sofian El Abboudi, Karim Bensbih, Hadel Bensbih, Mimoun Mallouk, Abdellah El Ghaffouli, Said El Aazzoui

Operative part of the judgment

Article 96(1) TFEU must be interpreted as not applying to restrictions, such as those at issue in the main proceedings, imposed on taxi operators.

([1]) OJ C 260, 18.7.2016.

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 28 November 2016 — Giovanna Judith Kerr v Fazenda Pública

(Case C-615/16)

(2017/C 151/19)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Giovanna Judith Kerr

Defendant: Fazenda Pública

Question referred

[Must] the provision in Articles 135(1)(f) and 15(2) of Council Directive 2006/112/EC ([1]) … be interpreted as referring only to parties to contracts for the marketing of rights to use properties, or [may] it also be interpreted as referring equally to the activity carried on by the applicant, consisting in attracting clients and promoting services, so as to ensure that the business marketing those services completes the relevant sale, in accordance with instructions laid down in advance and limits on discounts and promotional gifts?

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

Appeal brought on 19 January 2017 by Birkenstock Sales GmbH against the judgment of the General Court (Fifth Chamber) delivered on 9 November 2016 in Case T-579/14 *Birkenstock Sales GmbH* v *European Union Intellectual Property Office (EUIPO)*

(Case C-26/17 P)

(2017/C 151/20)

Language of the case: German

Parties

Appellant: Birkenstock Sales GmbH (represented by: C. Menebröcker, Rechtsanwalt, and V. Töbelmann, Rechtsanwältin)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 9 November 2016 (Case T-579/14), in so far as it dismissed the appellant's action;

— grant the claims for registration of the goods in respect of which the appellant's action was dismissed at first instance before the General Court of the European Union;

— order EUIPO to pay the costs of the proceedings before the Court of Justice, the General Court and the Board of Appeal.

Grounds of appeal and main arguments

1. The appellant asks the Court to set aside the judgment of the General Court of 9 November 2016 in Case T-579/14 concerning IR mark No 1132742 in so far as it dismissed the appellant's action, and to grant the claims relating to the goods in respect of which the appellant's action was dismissed at first instance before the General Court.

2. The appellant first alleges infringement of Article 7(1)(b) of the European Trade Mark Regulation ([1]) on the ground that the General Court erred in applying the principles governing three-dimensional marks to the IR mark at issue. The appellant also claims that the General Court, in its assessment of the IR mark according to the principles governing three-dimensional marks, did not provide a definition of the 'standards and usual practices of the sector' in respect of the goods at issue, and finally that the General Court applied stricter criteria to the assessment of the overall impression of the IR mark than those provided for in Article 7(1)(b) of the Trade Mark Regulation.

3. The appellant further claims that the judgment of the General Court is contradictory in so far as it was there established that the distinctive character of a sign must be established on the basis of the sign itself, although the General Court considered questions of use in its assessment and, on the issue of whether a sign may be deemed to be used at the same time in a two-dimensional and in a three-dimensional way, referred to one of its own previous judgments.

4. Furthermore, the appellant alleges a distortion of facts, in so far as it was stated in the judgment under appeal that EUIPO was not required to substantiate its view that the IR mark did not depart significantly from the forms of use normal in the sector, given that the Board of Appeal based its arguments on facts shown by practical experience generally acquired in the marketing of the goods at issue, likely to be known by anyone.

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

Appeal brought on 23 January 2017 by Apcoa Parking Holdings GmbH against the order of the General Court (Seventh Chamber) made on 8 November 2016 in Joined Cases T-268/15 and T-272/15, Apcoa Parking Holdings GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-32/17 P)

(2017/C 151/21)

Language of the case: German

Parties

Appellant: Apcoa Parking Holdings GmbH (represented by: A. Lohmann, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court of Justice should:

1. Set aside the order of the General Court of the European Union (Seventh Chamber) of 8 November 2016 in Joined Cases T-268/15 and T-272/15;

2. Annul the decisions of the Fourth Board of Appeal of EUIPO (formerly OHIM) of 25 March 2015 in the appeal proceedings in Cases R 2062/2014-4 and R 2063/2014-4;

3. Order EUIPO to pay the costs.

Grounds of appeal and main arguments

According to the appellant, the order is based on a procedural error (first ground of appeal). Furthermore, it infringes EU law. The General Court failed to take account of essential factual circumstances (second ground of appeal). The General Court distorted certain facts (third ground of appeal). The order infringes the principle of the unitary character of the EU trade mark (fourth ground of appeal).

First ground of appeal: The General Court ruled on the actions without conducting a hearing. The appellant had, however, expressly requested that such a hearing be held.

A hearing was necessary because the action was neither manifestly inadmissible nor manifestly lacking any legal basis. The order is therefore based on a procedural error.

Second ground of appeal: The General Court's order infringes EU law. Contrary to the General Court's decision, there was no absolute ground for refusal within the meaning of Article 7(1)(c) of Regulation No 207/2009 ([1]) precluding registration of the marks at issue. The marks at issue do not concern descriptive indications.

The General Court failed to take account of relevant factual circumstances. It assumed that, for the relevant public in the United Kingdom, the English term 'parkway' means a parking area at a railway station. In doing so, the General Court overlooked the fact that that question had already been addressed by the United Kingdom Trademark Office, and indeed in a hearing, and, following a thorough assessment, that Office had rejected the existence of a descriptive indication. When the term is used in isolation, as it is in the mark at issue, it does not have the meaning that the General Court attributed to it. Identical trade marks comprising the word 'Parkway' have been registered following an extension of international registration in a number of Member States (including Ireland) and, as national applications, have been considered to merit protection and to be eligible for registration in the United Kingdom.

The General Court did not take any of this into account and merely indicated that, generally speaking, it is not bound by national decisions. In that regard, it overlooked the fact that, even though it is not bound, the General Court is not thereby released from its obligation to at least take account of and assess all relevant factual circumstances. National registrations of identical trade marks in Member States in the language area from which the designation at issue comes from are, in any event, relevant factual circumstances. A complete failure to take them into account constitutes an error in law.

Third ground of appeal: The meaning of the term 'Parkway' on which the General Court based its decision was taken from two dictionary sources. However, it cited them in an incomplete and distorted way. The General Court did not take account of the fact that a general meaning of the term 'Parkway', taken in isolation — such as that on which the General Court based its decision — could not be inferred from those sources. That was also clear in detail from the decision of the United Kingdom Trademark Office concerning the registrability of the mark in that territory. The same sources were also discussed by the United Kingdom Trademark Office. The latter concluded that the meaning listed in the dictionary did not preclude protection of that term as a trade mark. If the General Court had also assessed those sources correctly, it would have arrived at the same conclusion. Distortion of facts also constitutes an error of law.

Fourth ground of appeal: The order also infringes the principle of the unitary character of the EU trade mark. Even though there are no absolute grounds for refusal in any Member State, the General Court prevented the appellant from obtaining unitary protection for its marks in the European Union.

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

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 10 February 2017 — Jonathan Heintges v German Wings GmbH

(Case C-74/17)

(2017/C 151/22)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Jonathan Heintges

Defendant: German Wings GmbH

Questions referred

I. Is Article 12(1) of Regulation (EC) No 261/2004 ([1]) to be interpreted as meaning that the 'rights to further compensation' referred to therein cover only claims which are based on grounds which lie outside that regulation?

II. (a) If Question I. is answered in the negative, is Article 8 of Regulation (EC) No 261/2004 to be interpreted as meaning that, in the event that an airline does not provide the services provided for under Article 8(1) and (2), that provision gives rise to a separate claim for compensation on the part of the passenger by reason of the non-performance of the aforementioned services and, if so, does that claim also cover the reimbursement of the costs of alternative transportation organised by the passenger himself to his final destination?

(aa) If the answer to Question (a) is affirmative, is the claim for compensation relating to the replacement transportation organised by the passenger himself subject to the deduction under the second sentence of Article 12(1) of Regulation (EC) No 261/2004?

(b) If Question I. is answered in the affirmative and national law contains a rule under which a passenger has a claim against an airline, on the ground of breach of the obligation under Article 8 of the regulation, for reimbursement of the costs incurred by him by reason of the fact that he organised replacement transportation himself, is that claim for compensation under national law subject to the deduction under the second sentence of Article 12(1) of the regulation?

(c) If a deduction under the second sentence of Article 12(1) of Regulation (EC) No 261/2004 is affirmed, either in the context of Question II (a) or Question II (b), is Article 12 to be interpreted as meaning that the deduction automatically applies without it being necessary for the party obliged to pay the compensation to invoke that deduction?

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

Appeal brought on 9 February 2017 by Fiesta Hotels & Resorts, S.L. against the judgment of the General Court (Sixth Chamber) delivered on 30 November 2016 in Case T-217/15, Fiesta Hotels & Resorts v EUIPO — Residencial Palladium (Palladium Palace Ibiza Resort & Spa)

(Case C-75/17 P)

(2017/C 151/23)

Language of the case: Spanish

Parties

Appellant: Fiesta Hotels & Resorts, S.L. (represented by: J.-B. Devaureix and J.C. Erdozain López, abogados)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) and Residencia Palladium S.L.

Form of order sought

The appellant claims that the Court should:

— set aside, in full, the judgment of the General Court of 30 November 2016 in Case T-217/15;

— uphold, in full, the claims put forward at first instance;

— order the respondent and intervener to pay the costs.

Grounds of appeal and main arguments

1. The **first ground of appeal** is to the effect that the judgment under appeal is vitiated by an error of law in so far as it was held that, for the purposes of Article 8(4) of Council Regulation No 207/2009 ([1]) of 26 February 2009 on the European Union trade mark ('the Regulation'), the requirement of 'more than mere local' significance is satisfied irrespective of the geographical scale on which the proprietor of the mark relied on conducts its business. That interpretation ignores the literal meaning of the word 'local' and the purpose underlying Article 8(4) of the Regulation. The judgment under appeal contains the error of law alleged in so far as, when determining whether the alleged unregistered trade name had merely local, or other, significance, it took into account documents which had effect outside Spanish territory.

   Moreover, the fact that the services provided by the establishment for whose designation the mark or trade name is used are provided to an international public does not lead to the inference that the use of the sign is more than local.

   The conclusion reached in the judgment under appeal concerning the 'more than mere local' requirement, therefore, disregards the purpose of Article 8(4) of the Regulation. Accordingly, that judgment acknowledges that that requirement applied to the trade name relied on in opposition to the application for an EU trade mark does not depend on the local significance of the establishment that uses it but on the 'geographical dispersion of its clientele or the renown which it enjoys with the public at national, or even international, level'. By taking that view, the judgment under appeal goes beyond the restrictive purpose of Article 8(4) of the Regulation, since it allows simple proof of the break with the purely local by means of the mere use of the unregistered sign on the Internet or, in the circumstances of the present case, by the international character of the guests who stay at the establishment concerned.

2. By the **second ground of appeal** it is contended that the General Court erred in its judgment in holding that, for the purposes of Article 8(4) of the Regulation, in conjunction with Article 9(1)(d) of Ley 17/2001 de 7 de diciembre de Marcas (Law 17/2001 of 7 December 2001 on trade marks), in force in Spain, it is not necessary that the unregistered sign relied on should be well known, whereas the predominant view in the Spanish case-law on that point is to the contrary, that is to say, it requires not only use of the sign referred to but also that that use be well known in a substantial part of the territory of Spain.

3. The basis for the **third ground of appeal** is that the judgment under appeal is vitiated by an error in law in that the General Court found that Article 8(4)(b) of the EU trade mark Regulation is satisfied on the basis of the *Laguiole* judgment (paragraph 37), even though that judgment does not apply to the present case because the latter interprets Spanish, not French, law, as was the case in the *Laguiole* judgment, and the appellant drew the attention of the General Court to judgments of the Spanish Tribunal Supremo (Supreme Court) which clearly preclude an unregistered trade name from preventing the use of a more recent trade mark, without the defendant having relied on the Spanish law on unfair competition, which supposedly allows that possibility, a contention which the appellant disputed in a sufficiently reasoned way.

4. Lastly, in the **fourth ground of appeal**, the appellant argues that the judgment under appeal contains an error of law in the interpretation of the concept of 'intermediate marks', coined in accordance with the Spanish Ley de Marcas (Law on trade marks) and, in particular, that the judgment under appeal contains an error of law relating to Article 65 of the Regulation.

   The appellant contends that the judgment under appeal is vitiated by an error of law in that the abovementioned Article 65 of the Regulation does not prevent *stricto sensu* the examination of the legal issue which arises in the light of the legal argument put forward by the parties. Contrary to what is stated in the judgment under appeal, the appellant does not seek to alter the factual basis that the Board of Appeal took into consideration when making its decision but merely advances a legal basis which reveals the error of law made in the decision of EUIPO, which is the subject of the application.

The appellant relies on the principle of *iura novit curia*, by which the Courts, when taking a decision, must apply the legal rules which they consider appropriate and alter the legal basis of the application, on condition that the decision is in line with the issues of fact and law raised by the parties and the cause of action put forward is not altered or the issue for resolution otherwise changed. In this regard, the General Court should have assessed the appellant's submissions because not to do so would restrict the appellant's rights of defence and deprive it of its rights resulting from registration.

([1]) OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 13 February 2017 — SC Petrotel Lukoil SA, Maria Magdalena Georgescu v Ministerul Economiei, Ministerul Energiei, Ministerul Finanțelor Publice

(Case C-76/17)

(2017/C 151/24)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicants: SC Petrotel Lukoil SA, Maria Magdalena Georgescu

Defendants: Ministerul Economiei, Ministerul Energiei, Ministerul Finanțelor Publice

Questions referred

1. Do the provisions of Article 30 of TFEU preclude an interpretation to the effect that, when a taxpayer has in fact paid a charge having equivalent effect, he may request the recovery of the sums paid by way of that charge even though national legislation has designed a payment mechanism for that charge in such a way as to pass it on to the European consumer?

2. Is the recovery of sums collected in respect of a charge having equivalent effect, when those sums were in fact paid by the taxpayer (but not passed on to the consumer), compatible with EU law?

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 23 February 2017 — Rafael Ramón Escobedo Cortés v Banco de Sabadell, S.A.

(Case C-94/17)

(2017/C 151/25)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Rafael Ramón Escobedo Cortés

Respondent: Banco de Sabadell, S.A.

Questions referred

1. Do Articles 3, in conjunction with [point 1(e) of the annex], and 4(1) of Directive 93/13 ([1]) preclude a judicial interpretation that declares that a term in a loan agreement setting a rate of default interest that exceeds by more than 2 % the annual ordinary interest rate fixed in the agreement constitutes disproportionately high compensation imposed on the consumer who is late performing his obligation to pay and is, therefore, unfair?

2. Do Articles 3, in conjunction with [point 1(e) of the annex], 4(1), 6(1) and 7(1) of Directive 93/13 preclude a judicial interpretation that, when a term in a loan agreement that sets the rate of default interest is declared unfair, identifies, as the object of the review of unfairness, the fact that that rate exceeds the ordinary interest rate, on the grounds that it constitutes 'disproportionately high compensation imposed on the consumer who has not performed his obligations', and establishes as the consequence of the declaration of unfairness that that additional charge must cease to apply, so that only ordinary interest continues to accrue until the loan has been repaid?

3. If the second question were to be answered in the negative: must a declaration that a term setting a rate of default interest is void, because unfair, have other effects in order to be compatible with Directive 93/13, such as, for example, the total elimination of both ordinary and default interest, when the borrower fails to perform his obligation to make the loan repayments within the time-limits stipulated in the agreement, or the charging of statutory interest?

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

Request for a preliminary ruling from the Juzgado de lo Social No 2 de Terrassa (Spain) lodged on 22 February 2017 — Gardenia Vernaza Ayovi v Consorci Sanitari de Terrassa

(Case C-96/17)

(2017/C 151/26)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Terrassa

Parties to the main proceedings

Applicant: Gardenia Vernaza Ayovi

Defendant: Consorci Sanitari de Terrassa

Questions referred

1. Is the remedy provided by the legal system when a disciplinary dismissal is held to be unlawful and, in particular, the remedy under Article 96(2) of the Real Decreto Legislativo 5/2015 (Royal Legislative Decree 5/2015) of 30 October approving the consolidated text of the Ley del Estatuto Básico del Empleado Público (Law on the basic regulations relating to public servants), to be regarded as covered by the concept of 'employment conditions' under Clause 4(1) of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work (1) concluded by ETUC, UNICE and CEEP?

2. Would a situation, such as that provided for in Article 96(2) of the Real Decreto Legislativo 5/2015 (Royal Legislative Decree 5/2015) of 30 October approving the consolidated text of the Ley del Estatuto Básico del Empleado Público (Law on the basic regulations relating to public servants), in which the disciplinary dismissal of a permanent worker, when that dismissal is held to be wrongful, that is to say unlawful, always requires the reinstatement of the worker, but when the worker is subject to an indefinite or temporary contract performing the same duties as a permanent worker permits that worker not to be reinstated in return for compensation, be discriminatory under Clause 4(1) of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?

3. Would unequal treatment be justified in the same situation as in the question above, not in the light of the Directive but of Article 20 of the Charter of Fundamental Rights of the European Union?

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

Request for a preliminary ruling from the Tribunal de Contas (Portugal) lodged on 28 February 2017 — Secretaria Regional de Saúde dos Açores v Ministério Público

(Case C-102/17)

(2017/C 151/27)

Language of the case: Portuguese

Referring court

Tribunal de Contas

Parties to the main proceedings

Applicant: Secretaria Regional de Saúde dos Açores

Defendant: Ministério Público

Question referred

Must Article 58(4) of Directive No 2014/24/EU ([1]) of the European Parliament and of the Council of 26 February 2014 be interpreted as precluding national legislation, such as that described [that is, Article 40(3) and (5)(c) of Regional Legislative Decree No 27/2015/A of 29 December 2015], which, in the area of public procurement, allows a geographical criterion, requiring three public contracts to have been performed previously in the same autonomous region, to be imposed as a qualifying criterion?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
OJ 2014 L 94, p. 65.

Reference for a preliminary ruling from the High Court of Justice (Chancery Division) (United Kingdom) made on 8 March 2017 — Teva UK Ltd, Accord Healthcare Ltd, Lupin Ltd, Lupin (Europe) Ltd, Generics (UK) trading as 'Mylan' v Gilead Sciences Inc.

(Case C-121/17)

(2017/C 151/28)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Teva UK Ltd, Accord Healthcare Ltd, Lupin Ltd, Lupin (Europe) Ltd, Generics (UK) trading as 'Mylan'

Defendant: Gilead Sciences Inc.

Question referred

What are the criteria for deciding whether 'the product is protected by a basic patent in force' in Article 3(a) of Regulation No. 469/2009 ([1])?

([1]) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009, L 152, p. 1).

Reference for a preliminary ruling from Court of Appeal (Ireland) made on 9 March 2017 — David Smith v Patrick Meade, Philip Meade, FBD Insurance plc, Ireland, Attorney General

(Case C-122/17)

(2017/C 151/29)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: David Smith

Defendants: Patrick Meade, Philip Meade, FBD Insurance plc, Ireland, Attorney General

Questions referred

Where:-

i. the relevant provisions of national law provide for an exclusion for compulsory motor insurance in respect of persons for whom no fixed seats in a mechanically propelled vehicle have been provided,

ii. the relevant insurance policy provides that cover will be confined to passengers travelling in fixed seating and this policy was, factually, an approved policy of insurance for the purposes of that national law at the time of the accident,

iii. the relevant national provisions providing for such an exclusion from cover have already been adjudged to be contrary to EU law in an earlier decision of this Court (Case C-365/05 Farrell v. Whitty) and, accordingly, required to be disapplied, and

iv. the language of the national provisions is such that it does not permit of an interpretation conforming to the requirements of EU law,

then, in litigation between private parties and a private insurance company concerning a motor accident involving a serious injury to a passenger in 1999 who was not travelling in a fixed seat, where, by consent of the parties, the national Court joined the private insurance company and the State as defendants is the national court when disapplying the relevant provisions of national law also obliged to disapply the exclusion clause contained in the motor insurance policy or otherwise preclude an insurer from relying on the exclusion clause which was in force at the time so that the injured victim could then have recovered directly as against the insurance company on foot of that policy? Alternatively, would such a result amount in substance to a form of horizontal direct effect of a Directive against a private party in a manner prohibited by EU law?

Action brought on 10 March 2017 — European Commission v Republic of Poland

(Case C-127/17)

(2017/C 151/30)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— declare that, by imposing on transport companies a requirement to possess special permits in order to use certain public roads, the Republic of Poland has failed to fulfil its obligations under Articles 3 and 7 of Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, ([1]) in conjunction with points 3.1 and 3.4 of Annex I to that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Commission criticises the Republic of Poland on the ground that the circulation of vehicles complying with the maximum authorised axle weight, established at 10 tonnes (non-driving axle) and at 11.5 tonnes (driving axle) in points 3.1 and 3.4 respectively of Annex I to Directive 96/53/EC, is restricted on nearly 97 % of public roads situated in the territory of Poland, which is contrary to Article 3 of that directive. That restriction results from a combination of the following two factors:

(1) the circulation of vehicles with a maximum authorised axle weight of 11.5 tonnes is possible only on roads which form part of the trans-European network (TEN-T) and certain other national roads (Article 41(2) of the Law on Public Roads); and

(2) there is a requirement to possess a special permit allowing circulation on other roads (Article 64 et seq. of the Law on Road Traffic).

The Commission also criticises the Republic of Poland on the ground that it misinterpreted Article 7 of Directive 96/53/EC. According to the Republic of Poland's assessment, that provision allows a Member State to derogate from the general principle laid down in Article 3 of that directive by restricting the circulation of vehicles with a driving axle weight amounting to 11.5 tonnes. While it is true that specific examples are given in the second paragraph of Article 7 of places where the use of vehicles may lawfully be restricted (cities, small villages or places of special natural interest), that provision relates only to restrictions imposed on certain roads or on engineering structures on specified sections of road. According to the Commission, a Member State cannot reasonably rely on the possibility of introducing derogations in order to cover nearly 97 % of its road network.

Moreover, in accordance with Article 64(1) of the Law on Road Traffic, ([2]) in order to be able to use roads which are not part of the TEN-T, that is to say, nearly 97 % of the roads comprising the public road network, the owners of the vehicles concerned must apply to the appropriate bodies for a special permit and must obtain such a permit, a requirement which gives rise to the following difficulties:

— complicated administrative formalities necessitating contacts with various administrative bodies;

— the geographical area of validity of a permit is limited, which forces transport companies generally to apply for several permits for each route;

— the time necessary to obtain a permit and the cost thereof.

Lastly, on the basis of Article 64(2) of the Law on Road Traffic mentioned above, a Category IV permit for use of national roads by vehicles with a driving axle weight amounting to 11.5 tonnes cannot be used for the carriage of divisible loads.

Directive 96/53/EC does not permit this type of obstruction and difficulty in the area of freedom of circulation of vehicles. A company which does not agree to submit to those conditions will be liable to a ban on the use of roads. Such a rule is contrary to Article 3 of Directive 96/53/EC, under which, through the conditions laid down therein, Member States may not 'reject or prohibit' the use in their territories, in international traffic, of vehicles complying with the maximum weight values specified in Annex I to that directive.

([1]) OJ 1996 L 235, p. 59.

([2]) Announcement of the Speaker of the Sejm (Lower House of Parliament) of the Republic of Poland of 30 August 2012 laying down the consolidated text of the Law on Road Traffic, *Dziennik Ustaw* 2012, item 1137.

Action brought on 10 March 2017 — Republic of Poland v European Parliament and Council of the European Union

(Case C-128/17)

(2017/C 151/31)

Language of the case: Polish

Parties

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

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC; ([1])

— in the alternative, annul that directive in part, in so far as it concerns the establishment of national emission reduction commitments for 2030 onwards;

— order the European Parliament and the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

The Republic of Poland puts forward the following pleas in law against the contested directive:

1. **Breach of the principle of sincere cooperation (Article 4(3) TEU)**

The defendant institutions worked on the adoption of the contested directive in a non-transparent manner, treating the Member States unequally and imposing exclusively on certain Member States additional reduction commitments which were not justified by cost-efficiency considerations or the assumptions adopted for the methodology of commitment allocation. The imposition on Poland (and on two other Member States) — prior to the conclusion of a final agreement with the European Parliament — of new emission reduction levels aimed at meeting a more ambitious general reduction level had the effect of virtually excluding Poland from the negotiations which determined the final shape of the national emission reduction commitments from 2030 onwards.

In addition, the defendant institutions deprived Poland of the opportunity to effectively validate the data concerning Poland, which served as the basis for establishing the national emission reduction commitments from 2030 onwards, and thereby infringed Poland's right to have its position considered.

2. **Breach of the principles of openness and transparency (Article 15 TFEU) and failure to provide sufficient reasons (Article 296 TFEU).**

The Republic of Poland claims that the underlying assumptions that formed the basis for setting the national emission reduction commitments for 2030 onwards were not made available or published. No information was provided on the projection assumptions concerning the technological structure for individual sectors, although those assumptions were in turn used in the emission projections for 2030. In the absence of this information, in turn, it is impossible to validate the reliability of the emission projections that were adopted for 2030. Secondly, it is unclear which formula was used to calculate the general health objective of reducing mortality in the European Union into an emission reduction commitment for the European Union as a whole and for individual Member States.

As a consequence, the reasoning of the institutions which adopted the directive was not presented in a clear and unambiguous manner with regard to the abovementioned reduction commitments.

3. **Infringement of the obligation to carry out a proper analysis of the effect of the contested directive on individual Member States and to sufficiently assess the impact of its implementation.**

The Republic of Poland claims that, given the expected broad effects of the emission reduction commitments for 2030 and beyond on the economy and society of the Member States, the impact assessment prepared by the Commission is insufficient.

The impact assessment indicates a link between the achievement of the objectives of the directive and the structural changes aimed at reducing the share of carbon as a fuel in the energy and municipal and residential sector. However, the impact assessment does not include a detailed analysis of whether the expected effect of implementing the commitments will be significantly affected by a Member State's choice between different energy sources and the general structure of its energy supply. This is particularly important because confirmation of a significant effect would mean that the European Union legislature should have adopted the contested directive on a different legal basis, namely on the basis of Article 192(2) TFEU, instead of on the basis of Article 192(1) TFEU.

4. **Breach of the principle of proportionality (Article 5(4) TEU).**

The defendant institutions did not take into consideration the serious socio-economic costs that will be generated in Poland by implementing the obligations to reduce the emission of particular pollutants as from 2030. As a result of this, the implementation by Poland of the reduction commitments from 2030 onwards is liable to have serious negative socio-economic consequences for Poland. The expenditure incurred in order to implement those commitments may prove to be disproportionate to the expected effects.

It was not obviously necessary to set such high national emission reduction commitments for 2030 onwards in the directive in order to achieve the objectives set out in the directive.

5. **Breach of the principle of the equality of Member States (Article 4(2) TEU) and of the principle of balanced development (fourth indent of Article 191(3) TFEU, in conjunction with Article 191(2) TFEU).**

The emission reduction obligations imposed on individual Member States for the period from 2030 do not take into consideration the diverse economic situation, technological conditions and social conditions of the Member States, including the scale of the investments required in the different regions of the European Union. The reduction commitments were established using a standardised method, without regard to the real and diverse economic and social situation of individual Member States.

In addition, in establishing national emission reduction commitments for individual Member States for 2030 and onwards, the defendant institutions probably did not properly take into consideration the cross-border inflow of significant quantities of pollutants from areas in the immediate vicinity of the European Union into certain Member States, which may give rise to unequal treatment of Member States which have borders with third countries in comparison with States not concerned by the problem of the inflow of pollutants from outside the European Union.

([1]) OJ 2016 L 344, p. 1.

Appeal brought on 17 March 2017 by the European Union, represented by the Court of Justice of the European Union against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 10 January 2017 in Case T-577/14, Gascogne Sack Deutschland and Gascogne v European Union

(Case C-138/17 P)

(2017/C 151/32)

Language of the case: French

Parties

Appellant: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram and Á. M. Almendros Manzano, acting as agents)

Other parties to the proceedings: Gascogne Sack Deutschland GmbH, Gascogne, European Commission

Form of order sought

— set aside paragraph 1 of the operative part of the contested judgment;

— dismiss as unfounded Gascogne Sack Deutschland and Gascogne's claim, made at first instance, seeking a sum of EUR 187 571 for losses allegedly suffered as a result of making additional bank guarantee payments beyond a reasonable period;

— order Gascogne Sack Deutschland and Gascogne to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant relies on three grounds.

The first ground of appeal alleges an error of law in the interpretation of the concept of 'causal link', since the General Court found that the failure to give judgment within a reasonable period was the determining cause of the alleged material damage consisting in the payment of bank guarantee costs, although, according to settled case-law, an undertaking's own choice not to pay a fine during the proceedings before the judicature of the European Union is the determining cause of the payment of such costs.

The second ground of appeal alleges an error of law in the interpretation of the concept of harm, since the General Court refused to apply to the alleged material damage linked to the payment of bank guarantee costs the same condition as it had set out in respect of the alleged material damage linked to the payment of interest on the amount of the fine, namely that the applicants at first instance had to demonstrate that the financial burden linked to that latter payment was greater than the advantage that they drew from the failure to pay the fine.

The third ground of appeal alleges an error in law in determining the period during which the alleged material damage occurred as well as a failure to state reasons, since the General Court considered, without explaining the reason, that the period during which the alleged material damage consisting in the payment of the bank guarantee costs occurred could be different to the period in which it had placed the unlawful conduct which allegedly caused that harm.

Appeal brought on 22 March 2017 by Gascogne Sack Deutschland GmbH and Gascogne S.A. against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 10 January 2017 in Case T-577/14 Gascogne Sack Deutschland GmbH and Gascogne v European Union

(Case C-146/17 P)

(2017/C 151/33)

Language of the case: French

Parties

Appellants: Gascogne Sack Deutschland GmbH, Gascogne S.A. (represented by: F. Puel and E. Durand, avocats)

Other parties to the proceedings: European Union, represented by the Court of Justice of the European Union, European Commission

Form of order sought

The appellants claim that the Court should:

— set aside in part the contested judgment, notified by e-Curia to the appellants' legal advisers on 16 January 2017, by which the General Court, whilst recognising the infringement of the right to adjudication within a reasonable period in the cases which gave rise to the judgments of 16 November 2011, *Group Gascogne* v *Commission* (T-72/06) and *Sachsa Verpackung* v *Commission* (T-79/06) and the existence of material and non-material damage sustained by the applicants as a result of the infringement of the 'reasonable period' rule, ordered the Union to pay inadequate and incomplete compensation for the harm suffered;

— give final judgment on the financial compensation for material and non-material damage sustained by the appellants in the exercise of its unlimited jurisdiction, in accordance with the appellants' requests;

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

Pleas in law and main arguments

By the first ground of appeal, Gascogne claims that, by refusing to award compensation for the material damage sustained for a period prior to 30 May 2011, on the ground that it could not rule *ultra petita*, the General Court made a manifest error in law in the interpretation and application of that principle.

By the second ground of appeal, Gascogne argues that, by deciding to take as the starting point of the material damage, for the purpose of calculating that damage, the point determined by Gascogne in reverse on the basis of an excessive period which it estimated at 30 months, but which the General Court, for its part, estimated at 20 months, and by thus compensating the material damage sustained by Gascogne over a period of six months, although the General Court expressly ruled that the material damage sustained consists in the payment of bank guarantee costs in the course of the period during which the reasonable time for adjudicating was exceeded (namely a period of 20 months), the General Court formally contradicted itself and did not give effect to its findings.

By the third ground of appeal, Gascogne claims that, by applying different rules for calculating the material damage than those initially presented by the appellants, without the latter being able to give their opinion on the consequences that method of calculation may have, the General Court infringed the rights of defence.

By the fourth ground of appeal, the appellants claim that, by finding that it could not award compensation for the non-material damage sustained, the amount of which was proportionally too high by comparison to the fine imposed by the European Commission, on the ground that, according to case-law, the judicature of the Union cannot call into question, in full or in part, the amount of the fine by reason of the failure to adjudicate within a reasonable period, the General Court erred in law in the interpretation and application of that case-law.

By the fifth ground of appeal, the appellants claim that, by refusing to allow the request for compensation for non-material damage sustained, on the ground that, in the light of its scale, the award of the relief sought by the appellants would, in the present case, call into question the amount of the fine imposed on the latter, even though the provisions of Articles 256(1) and 340(2) TFEU seek specifically to enable any applicant who has sustained harm caused by the European institutions to obtain redress by bringing proceedings before the General Court, the General Court rendered redundant and infringed the provisions of Articles 256(1) and 340(2) TFEU, as well as the right to an effective remedy.

By the sixth ground of appeal, the appellants claim that, by awarding the appellants EUR 5 000 compensation for the non-material damage sustained, although the Court, first, considered that compensation for non-material damage could not call into question, even in part, the amount of the fine imposed by the Commission, and, second, expressly recognised the existence of non-material damage sustained by the appellants, which it was appropriate to compensate in the light of the 'extent of the failure to adjudicate within a reasonable period' and the 'the need to ensure that… the present action is effective', the General Court formally contradicted itself.

By the seventh ground of appeal, the appellants claim that, by ruling, without any supporting element, that, first, the finding that there has been a breach of the obligation to adjudicate within a reasonable time is, in the light of the object and gravity of that breach, sufficient to make good the reputational harm, and, second, compensation of EUR 5 000 is adequate reparation for the non-material damage sustained, the General Court failed in its duty to state reasons.

GENERAL COURT

Judgment of the General Court of 28 March 2017 — El-Qaddafi v Council

(Case T-681/14) ([1])

(Common foreign and security policy — Restrictive measures taken against Libya — Freezing of funds — Restrictions on the entry into and transit through the territory of the European Union — Retention of the applicant's name — Rights of the defence — Obligation to state reasons)

(2017/C 151/34)

Language of the case: English

Parties

Applicant: Aisha Muammer Mohamed El-Qaddafi (Muscat, Oman) (represented by: initially J. Jones QC, and subsequently by S. Bafadhel, Barrister)

Defendant: Council of the European Union (represented by: S. Kyriakopoulou and A. de Elera-San Miguel Hurtado, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for annulment, first, of Council Decision 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2014 L 183, p. 52), in so far as it maintains the applicant's name on the list in Annexes I and III to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53), and, secondly, of Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya (OJ 2014 L 183, p. 1), in so far as it maintains the applicant's name on the list in Annex II to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, in so far as it maintains the name of Ms Aisha Muammer Mohamed El-Qaddafi on the list in Annexes I and III to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya;*

2. *Annuls Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, in so far as it maintains the name of Ms El-Qaddafi on the list in Annex II to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya;*

3. *Orders the Council of the European Union to pay the costs.*

([1]) OJ C 431, 1.12.2014.

Judgment of the General Court of 30 March 2017 — Greece v Commission

(Case T-112/15) ([1])

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Regulation (EC) No 1782/2003 — Regulation (EC) No 796/2004 — Area-related aid scheme — Concept of permanent pasture — Obligation to state reasons — Proportionality — Flat-rate financial correction — Deduction of earlier correction)

(2017/C 151/35)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented initially by I. Chalkias, G. Kanellopoulos, E. Leftheriotou and A. Vasilopoulou, and subsequently by G. Kanellopoulos, E. Leftheriotou and A. Vasilopoulou, acting as Agents)

Defendant: European Commission (represented initially by D. Triantafyllou and A. Marcoulli, and subsequently by D. Triantafyllou, acting as Agents)

Re:

Action under Article 263 TFEU for annulment of Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 369, p. 71).

Operative part of the judgment

The Court:

1. *Annuls Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) as regards the amounts of correction of EUR 5 007 867.36, of deduction of EUR 2 318 055.75 and of financial impact of EUR 2 689 811.61, concerning expenditure incurred by the Hellenic Republic in the sector of Rural Development EAFRD Axis 2 (2007-2013, area related measures), for the 2009 financial year, in respect of the weaknesses regarding the Land Parcel Identification System (LPIS) and the on-the-spot checks (second pillar, 2008 claim year);*

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

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

([1]) OJ C 171, 26.5.2015.

Judgment of the General Court of 28 March 2017 — Deutsche Telekom v Commission

(Case T-210/15) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure for the application of the competition rules — Refusal to grant access — Duty to state reasons — Exception relating to the protection of the commercial interests of a third party — Exception relating to the protection of the purpose of inspections, investigations and audits — Overriding public interest — Consultation with third parties — Transparency — No response to a confirmatory request with the time limits)

(2017/C 151/36)

Language of the case: German

Parties

Applicant: Deutsche Telekom AG (Bonn, Germany) (represented by: A. Rosenfeld and O. Corzilius, lawyers)

Defendant: European Commission (represented initially by J. Vondung and A. Buchet, and subsequently by F. Erlbacher, P. Van Nuffel and A. Dawes, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of the Commission decision of 17 February 2015 refusing to grant the applicant access to documents relating to the procedure for abuse of dominant position with reference COMP/AT.40089 — Deutsche Telekom.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Deutsche Telekom AG is ordered to pay the costs.*

(1) OJ C 270, 17.8.2015.

Judgment of the General Court of 29 March 2017 — J & Joy v EUIPO — Joy-Sportswear (J AND JOY)

(Case T-387/15) (1)

(EU trade mark — Opposition proceedings — EU word mark J AND JOY — Earlier national figurative mark joy SPORTSWEAR — Relative grounds for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Assessment criteria — Composite mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 151/37)

Language of the case: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua, C. Pirenne and C. Smits, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Joy-Sportswear GmbH (Ottensoos, Germany), (represented by: T. Kiphuth, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 April 2015 (Case R 1352/2014-2) relating to opposition proceedings between Joy-Sportswear and J & Joy.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders J & Joy SA to pay the costs.*

(1) OJ C 381, 16.11.2015.

Judgment of the General Court of 29 March 2017 — J & Joy v EUIPO — Joy-Sportswear (JN-JOY)

(Case T-388/15) ([1])

(EU trade mark — Opposition proceedings — EU word mark JN-JOY — Earlier national figurative mark joy SPORTSWEAR — Relative grounds for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Assessment criteria — Composite mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 151/38)

Language of the case: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua, C. Pirenne and C. Smits, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Joy-Sportswear GmbH (Ottensoos, Germany) (represented by: T. Kiphuth, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 April 2015 (Case R 1353/2014-2) relating to opposition proceedings between Joy-Sportswear and J & Joy.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders J & Joy SA to pay the costs.*

([1]) OJ C 381, 16.11.2015.

Judgment of the General Court of 29 March 2017 — J & Joy v EUIPO — Joy-Sportswear (J&JOY)

(Case T-389/15) ([1])

(EU trade mark — Opposition proceedings — EU figurative mark J&JOY — Earlier national figurative mark joy SPORTSWEAR — Relative grounds for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Assessment criteria — Composite mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 151/39)

Language of the case: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua, C. Pirenne and C. Smits, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Joy-Sportswear GmbH (Ottensoos, Germany) (represented by: T. Kiphuth, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 April 2015 (Case R 1355/2014-2) relating to opposition proceedings between Joy-Sportswear and J & Joy.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders J & Joy SA to pay the costs.*

(1) OJ C 381, 16.11.2015.

Judgment of the General Court of 29 March 2017 — Netherlands v Commission

(Case T-501/15) (1)

(EAGF and EAFRD — Expenditure excluded from financing — Integrated administration and control system — Reductions and exclusions where the rules on cross-compliance are not observed — Minor non-compliance — Article 24(2) of Regulation (EC) No 73/2009 — Article 71(3) of Regulation (EC) No 1122/2009 — Burden of proof — Interpretation of Annex II to Regulation (EC) No 73/2009)

(2017/C 151/40)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman, B. Koopman and H. Stergiou, acting as Agents)

Defendant: European Commission (represented by: H. Kranenborg and D. Triantafyllou, acting as Agents)

Intervener in support of the applicant: United Kingdom of Great Britain and Northern Ireland (represented initially by C. Brodie, subsequently by J. Kraehling, finally by J. Kraehling and G. Brown, acting as Agents)

Re:

Application based on Article 263 TFEU seeking the annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, 39) to the extent that it concerns the expenditure made by the Kingdom of the Netherlands.

Operative part of the judgment

1. *The action is dismissed.*

2. *The Kingdom of the Netherlands is ordered to bear its own costs and to pay those incurred by the European Commission.*

3. *The United Kingdom of Great Britain and Northern Ireland is ordered to bear its own costs.*

(1) OJ C 346, 19.10.2015.

Judgment of the General Court of 28 March 2017 — Regent University v EUIPO — Regent's College (REGENT UNIVERSITY)

(Case T-538/15) ([1])

(EU trade mark — Invalidity proceedings — EU word mark REGENT UNIVERSITY — Earlier national figurative mark REGENT'S COLLEGE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2017/C 151/41)

Language of the case: English

Parties

Applicant: Regent University (Virginia Beach, Virginia, United States) (represented by: E. Himsworth QC and D. Wilkinson, Solicitor)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court: Regent's College (London, United Kingdom) (represented by: S. Malynicz QC)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 6 July 2015 (Case R 1859/2014-2) relating to invalidity proceedings between Regent's College and Regent University.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Regent University to pay the costs.*

([1]) OJ C 371, 9.11.2015.

Judgment of the General Court of 29 March 2017 — Alcohol Countermeasure Systems (International) v EUIPO — Lion Laboratories (ALCOLOCK)

(Case T-638/15) ([1])

(EU trade mark — Invalidity proceedings — EU word mark ALCOLOCK — United Kingdom word mark ALCOLOCK — Relative ground for refusal — Article 8(1)(a) and (b) and Article 53(1)(a) and (b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark)

(2017/C 151/42)

Language of the case: English

Parties

Applicant: Alcohol Countermeasure Systems (International) Inc. (Toronto, Canada) (represented by: E. Baud and P. Marchiset, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Lion Laboratories Ltd (Barry, United Kingdom)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 11 August 2015 (Case R 1323/2014-1) relating to invalidity proceedings between Lion Laboratories and Alcohol Countermeasure Systems (International).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alcohol Countermeasure Systems (International) Inc. to pay the costs.*

(1) OJ C 16, 18.1.2016.

Judgment of the General Court of 28 March 2017 — Portugal v Commission

(Case T-733/15) (1)

(Failure to comply with a judgment of the Court of Justice finding that a State has failed to fulfil its obligations — Penalty payment — Decision quantifying the penalty payment — Repeal of the contested national measure — Date on which the infringement was brought to an end)

(2017/C 151/43)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes and M. Figueiredo, acting as Agents, and L. Silva Morais, lawyer)

Defendant: European Commission (represented by: L. Nicolae and P. Costa de Oliveira, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment of Commission Decision Ares(2015)4178538 of 8 October 2015 requesting payment by the Portuguese Republic of the sum of EUR 580 000, corresponding to the quantified penalty payment, for the period from 25 June to 21 August 2014, in compliance with the judgment of 25 June 2014, *Commission* v *Portugal* (C-76/13, not published, EU:C:2014:2029).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 68, 22.2.2016.

Judgment of the General Court of 3 April 2017 — Germany v Commission

(Case T-28/16) (1)

(EAGF and EAFRD — Expenditure excluded from financing — Rural development — Land consolidation and village renewal — Criteria used for selection of operations — Principle of sincere cooperation — Subsidiarity — Legitimate expectations — Proportionality — Obligation to state reasons)

(2017/C 151/44)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented: initially by T. Henze and A. Lippstreu, and subsequently by T. Henze and D. Klebs, acting as Agents)

Defendant: European Commission (represented by: J. Aquilina and B. Eggers, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of Article 1 and the Annex of Commission Implementing Decision (EU) 2015/2098, of 13 November 2015, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 303, p. 35), in so far as the payments made by the agency responsible for payment in the Federal Republic of Germany under the European Agricultural Fund for Rural Development (EAFRD), in the total amount of EUR 7 719 920.30, are excluded from EU financing.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 98, 14.3.2016.

Judgment of the General Court of 30 March 2017 — Apax Partners UK v EUIPO — Apax Partners Midmarket (APAX PARTNERS)

(Case T-209/16) ([1])

(EU trade mark — Invalidity proceedings — Application for the EU word mark APAX PARTNERS — Earlier international word mark APAX — Relative ground for refusal — Likelihood of confusion — Similarity of the services — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2017/C 151/45)

Language of the case: English

Parties

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

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

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 17 February 2016 (Case R 1611/2014-2), relating to invalidity proceedings between Apax Partners Midmarket and Apax Partners UK.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 232, 27.6.2016.

Judgment of the General Court of 3 April 2017 — Cop v EUIPO — Conexa (AMPHIBIAN)

(Case T-215/16) ([1])

(EU trade mark — Invalidity proceedings — International registration designating the European Union — Figurative mark AMPHIBIAN — Absolute grounds for refusal — Distinctive character — Lack of descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 151/46)

Language of the case: German

Parties

Applicant: Cop Vertriebs-GmbH (Aresing, Germany) (represented by: H. Hofmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Conexa LLC (Dover, Delaware, United States) (represented by: H. Twelmeier, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 7 March 2016 (Case R 1984/2015-4) relating to invalidity proceedings between Cop and Conexa.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Cop Vertriebs-GmbH to pay the costs.*

([1]) OJ C 251, 11.7.2016.

Action brought on 23 February 2017 — Proximus v Council

(Case T-117/17)

(2017/C 151/47)

Language of the case: English

Parties

Applicant: Proximus SA/NV (Brussels, Belgium) (represented by: B. Schutyser, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Council notified to the applicant on 23 December 2016, to award the contract to another tenderer and not to the applicant;

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the methodology applied to evaluate the price of the offers does not allow to choose the most economically advantageous offer, which is required by European Union law.

Action brought on 22 February 2017 — Enosi Syntaxiouchon Tameiou Asfaliseon Michanikon kai Ergolipton v ECB

(Case T-124/17)

(2017/C 151/48)

Language of the case: Greek

Parties

Applicant: Enosi Syntaxiouchon Tameiou Asfaliseon Michanikon kai Ergolipton (Athens, Greece) (represented by: P. Miliarakis, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— hold this action to be admissible;·

— order the European Central Bank (ECB) to pay to the account of the Greek Engineers' and Public Contractors' Pension Fund (TSMEDE) sector/subsector for the current insurance provider EFKA the sum of: (a) EUR 1 606 539 086.28 with respect to the nominal value of the share capital of the former ETAA and (b) with respect to the sum of EUR 84 285 086.36 which related to bonds, with legal interest from the lodging of this action until payment (in the alternative, to order the ECB to pay the amount of compensation indicated by the requested expert's report);

— to instruct, in accordance with the provisions of the Rules of Procedure of the General Court, an expert's report on the determination of the exact amount of the loss sustained by the members of the applicant fund and in any event of the TSMEDE sector/subsector for the former ETAA and now EFKA;

— order the defendant to produce/disclose the agreement of 15 February 2012 with the Hellenic Republic,·and

— order the ECB to pay the costs.

Pleas in law and main arguments

In support of the action the applicant relies on the following pleas:

1. This action maintains that the non-contractual liability of the ECB is engaged to a social security institution, that is a financial institution, where there was no Private Sector Involvement (PSI), but Official Sector Involvement (OSI).

2. This action highlights the relationship of the Bank of Greece, as a member of the European System of Central Banks (ESCB), with the ECB and consequently the causal link with respect to OSI implementation by the Bank of Greece and the responsibility, by omission, of the ECB to control the application of OSI by a member of the ESCB. This action also highlights the responsibility of the ECB with respect to the operation of the Collective Action Clauses — CACs to the detriment of social security institutions.

3. This action maintains that the non-contractual liability of the ECB is engaged, with respect to the fact that it omitted to repeal, in good time and in any event as from 21 July 2011 (in the alternative, as from 26 October 2011), the Decision of 6 May 2010 (ECB 2010/3 -2010/268/EU), whereby it particularly guaranteed 'irrespective of any external credit assessment' (with reference to the assessments of Standard & Poor's, Fitch and Moody's rating agencies) the validity of Greek bonds. With a tragic delay the ECB only on 27 February 2012 repealed the Decision of 6 May 2010, by means of Decision (ECB) 2012/133/EU. Consequently, for a long period of time the ECB supported, by its omission, legitimate expectations in Greek bonds.

4. This action highlights the fact that by means of the invocation of OSI, the ECB excluded itself from the restructuring of Greek sovereign debt, as also by its interposition the European Central Banks were excluded. That exclusion is however contrary to the principle of equal treatment.

5. This action maintains that it is not possible for a Member State of the European Union and more particularly the Eurozone, to undertake *ex proprio motu* within its domestic legal order (Parliament — Council of Ministers –Ministerial Decisions) a unilateral restructuring of its sovereign debt, without the authorisation or tacit consent of the ECB; there would otherwise be financial chaos. In the present case there existed the tacit consent of the ECB, and consequently its non-contractual liability is engaged with respect to losses amounting to 53.5 %, a level that strikes at the heart of the right to property. It is manifest that there is a causal link between the responsibility, by omission, of the ECB for the losses at issue, the culpability of its agencies and its non-contractual liability.

Action brought on 11 March 2017 — Le Pen v Parliament

(Case T-161/17)

(2017/C 151/49)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Secretary-General of the European Parliament of 6 January 2017, adopted pursuant to Articles 33, 43, 62, 67 and 68 of Decision 2009/C 159/01 of the Bureau of the European Parliament of 19 May and 9 July 2008 'concerning implementing measures for the Statute for Members of the European Parliament', as amended, making a claim against the applicant for an amount of EUR 41 554 by way of sums unduly paid for parliamentary assistance and giving reasons for its recovery, and ordering the competent authorising officer, in cooperation with the accounting officer of that institution, to recover that amount in accordance with Article 68 of the implementing measures and Articles 66, 78, 79 and 80 of the Financial Regulation;

— annul Debit Note No 2017-22 of 11 January 2017 informing the applicant that a claim for EUR 41 554 has been made against her following the Secretary-General's decision of 6 January 2017 ordering the recovery of sums unduly paid for parliamentary assistance in accordance with Article 68 of the implementing measures and Articles 78, 79 and 80 of the Financial Regulation;

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

— order the European Parliament to pay Ms Le Pen the sum of EUR 50 000 by way of compensation for the recoverable costs.

Pleas in law and main arguments

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

1. First plea in law, alleging defects affecting the procedural legality of the contested measures. This plea is divided into five parts.

   — First part, alleging that the power to make financial decisions concerning Members rests with the Bureau of the European Parliament and not with the Secretary-General.

   — Second part, alleging that the Bureau of the European Parliament cannot alter the nature and scope of its powers. The Secretary-General has not provided evidence of any lawful delegation by the President of the Bureau of the Parliament of the power to adopt and notify the contested measures in order to settle financial issues concerning a Member.

   — Third part, alleging that the contested measures do not contain a sufficient statement of reasons, and that they are of an arbitrary nature.

   — Fourth part, alleging infringement of essential procedural requirements.

— Fifth part, alleging that the Secretary-General of the European Parliament did not personally examine the case-file.

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

— First part, alleging infringement of the principles of legitimate expectations and legal certainty.

— Second part, alleging that there are no facts to support the contested measures.

— Third part, alleging that the contested measures are vitiated by a misuse of powers.

— Fourth part, alleging that the contested measures are vitiated by an abuse of process.

— Fifth part, alleging that the contested measures are discriminatory and that there is *fumus persecutionis*.

— Sixth part, alleging a lack of independence on the part of OLAF.

Action brought on 8 March 2017 — EKETA v Commission

(Case T-166/17)

(2017/C 151/50)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the request made by the European Commission to EKETA to reimburse the amount of EUR 197 799,52 of the payment received by it for the SENSATION project, that request being made in the debit note 3241615291/29.11.2016, is unfounded with respect to the sum of EUR 191 039,55;

— declare that the sum of EUR 191 039,55 constitutes eligible costs and that EKETA is not obliged to repay that sum to the European Commission, and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

1. By this action, the Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) challenges the requests made by the Commission by means of its debit note 3241615291/29.11.2016, in relation to participation in the SENSATION project. By means of that debit note, the Commission requested that EKETA reimburse part of the payment received by it for the SENSATION project, a sum of EUR 197 799,52. The request follows an on-the-spot audit which was carried out by the European Commission at the applicant's premises.

2. In that context, the applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that, out of the above amount stated in the debit note, the sum of EUR 191 039,55 constitutes eligible costs and that EKETA is not obliged to repay that sum to the Commission.

3. EKETA maintains that the above amount of EUR 191 039,55 constitutes eligible staff costs, subcontracting costs and indirect costs, which the Commission wrongly rejected as being ineligible. The eligibility of the applicant's costs is demonstrated by the evidence that it submitted to the European Commission at the on-the-spot audit and in subsequent correspondence and that it submits to the General Court.

Action brought on 16 March 2017 — CBA Spielapparate- und Restaurantbetriebs v Commission

(Case T-168/17)

(2017/C 151/51)

Language of the case: German

Parties

Applicant: CBA Spielapparate- und Restaurantbetriebs GmbH (Vienna, Austria) (represented by: A. Schuster, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— uphold the action for annulment and annul the contested decision;

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

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of Commission Decision C (2017) 249 final of 13 January 2017 concerning the applicant's confirmatory application for access to documents under Regulation (EC) No 1049/2001. ([1])

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

1. Fist plea in law: infringement of essential procedural requirements, in particular a failure to state reasons

2. Second plea in law: infringement of the law of the Treaties

   The applicant submits that the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001 and applied by the Commission are unlawful, since they conflict with higher-ranking primary law, in particular with Articles 42 and 47 of the Charter of Fundamental Rights of the European Union.

   Furthermore, the primacy of application of higher-ranking primary law over conflicting secondary law also applies in EU law, with the result that, for this reason, too, the Commission should not have applied the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001.

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

Action brought on 17 March 2017 — Pethke v EUIPO

(Case T-169/17)

(2017/C 151/52)

Language of the case: German

Parties

Applicant: Ralph Pethke (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— annul Decision PERS-AFFECT-16-134 of 17 October 2016, by which the applicant was transferred from the post of Director of the Operations Department to another post with the Observatory and was demoted to the post of Senior Expert with effect from 17 October 2016;

— award compensation for the material and non-material damage suffered by the applicant by reason of the infringement of his rights; and

— order EUIPO to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: infringement of the provisions of the disciplinary code established by the Staff Regulations of Officials of the European Union ('the Staff Regulations')

   The applicant claims that his demotion from the post of Director of the Operations Department to that of Senior Expert without any career opportunity is not a legitimate transfer, but a punitive demotion that would have required prior disciplinary proceedings in the absence of any other legal basis. Through its actions, the defendant Office therefore infringed the provisions of Article 86 of the Staff Regulations and Annex IX thereto.

2. Second plea in law: unlawful transfer/misuse of powers

   The applicant submits that the conditions governing a legitimate transfer have not been satisfied. The demotion and transfer of the applicant is not in the interests of the service, the various (changing) reasons submitted for the applicant's transfer point to a misuse of powers and the equivalence principle required for a legitimate transfer has not been respected.

3. Third plea in law: infringement of the principle prohibiting arbitrary treatment and the prohibition of discrimination on grounds of the applicant's sex

   The applicant claims in this connection that his demotion and transfer, in order to raise the proportion of women in management, amounts to direct discrimination on grounds of his sex.

4. Fourth plea in law: infringement of the principle of proportionality

   The applicant maintains that his disciplinary transfer is a disproportionate measure in the course of the internal reorganisation of the Office.

5. Fifth plea in law: infringement of the right to good administration and of the duty of care — attack on the applicant's physical and psychological integrity — harassment

   In connection with the fifth plea in law, the applicant claims that his 'ambush-like' demotion constitutes an attack on his physical and psychological integrity and falls short of even a minimum standard of good administration.

   A claim for financial compensation in respect of the material and non-material damage has arisen for the applicant by reason of the actions and omissions of the Office.

Action brought on 15 March 2017 — EKETA v Commission

(Case T-177/17)

(2017/C 151/53)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the request made by the European Commission to EKETA to reimburse the amount of EUR 211 185,95 of the payment received by it for the ASK-IT project, that request being made in the debit note 3241615292/29.11.2016, is unfounded with respect to the sum of EUR 143 910,77;

— declare that the sum of EUR 143 910,77 constitutes eligible costs and that EKETA is not obliged to repay that sum to the European Commission, and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

1. By this action, the Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) challenges the requests made by the Commission by means of its debit note 3241615292/29.11.2016, in relation to participation in the ASK-IT project. By means of that debit note, the Commission requested that EKETA reimburse part of the payment received by it for the ASK-IT project, a sum of EUR 211 185,95. The request follows an on-the-spot audit which was carried out by the European Commission at the applicant's premises.

2. In that context, the applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that, out of the above amount stated in the debit note, the sum of EUR 143 910,77 constitutes eligible costs and that EKETA is not obliged to repay that sum to the Commission.

3. EKETA maintains that the above amount of EUR 143 910,77 constitutes eligible staff costs, subcontracting costs and indirect costs, which the Commission wrongly rejected as being ineligible. The eligibility of the applicant's costs is demonstrated by the evidence that it submitted to the European Commission at the on-the-spot audit and in subsequent correspondence and that it submits to the General Court.

Action brought on 21 March 2017 — Menta y Limón Decoración v EUIPO — Ayuntamiento de Santa Cruz de La Palma (Representation of a man in regional costume)

(Case T-183/17)

(2017/C 151/54)

Language in which the application was lodged: Spanish

Parties

Applicant: Menta y Limón Decoración, SL (Argame, Spain) (represented by: E. Estella Garbayo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ayuntamiento de Santa Cruz de La Palma (Santa Cruz de La Palma, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark (Representation of a man in regional costume) — EU trade mark No 10 822 013

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 9 January 2017 in Case R 510/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— uphold the first-instance decision of 28 January 2015 of EUIPO's Cancellation Division which rejected in its entirety Community mark No 10 822 013 applied for by the Ayuntamiento de Santa Cruz de La Palma;

— order the defendant to pay the costs of the present proceedings and also those of the appeal and invalidity proceedings.

Plea in law

— Infringement of Article 53(2)(d) Regulation No 207/2009.

Action brought on 20 March 2017 — EKETA v Commission

(Case T-189/17)

(2017/C 151/55)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the request made by the European Commission to EKETA to reimburse the amount of EUR 64 720,19 of the payment received by it for the HUMABIO project, that request being made in the debit note 3241615288/29.11.2016, is unfounded with respect to the sum of EUR 27 830,27;

— declare that the sum of EUR 27 830,27 constitutes eligible costs and that EKETA is not obliged to repay that sum to the European Commission, and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

1. By this action, the Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) challenges the requests made by the Commission by means of its debit note 3241615288/29.11.2016, in relation to participation in the HUMABIO project. By means of that debit note, the Commission requested that EKETA reimburse part of the payment received by it for the HUMABIO project, a sum of EUR 64 720,19. The request follows an on-the-spot audit which was carried out by the European Commission at the applicant's premises.

2. In that context, the applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that, out of the above amount stated in the debit note, the sum of EUR 27 830,27constitutes eligible costs and that EKETA is not obliged to repay that sum to the Commission.

3. EKETA maintains that the above amount of EUR 27 830,27constitutes eligible staff costs and indirect costs, which the Commission wrongly rejected as being ineligible. The eligibility of the applicant's costs is demonstrated by the evidence that it submitted to the European Commission at the on-the-spot audit and in subsequent correspondence and that it submits to the General Court.

Action brought on 22 March 2017 — EKETA v Commission

(Case T-190/17)

(2017/C 151/56)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the request made by the European Commission to EKETA to reimburse the amount of EUR 172 992,15f the payment received by it for the CATER project, that request being made in the debit note 3241615289/29.11.2016, is unfounded with respect to the sum of EUR 112 737,15;

— declare that the sum of EUR 112 737,15 constitutes eligible costs and that EKETA is not obliged to repay that sum to the European Commission, and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

1. By this action, the Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) challenges the requests made by the Commission by means of its debit note 3241615289/29.11.2016, in relation to participation in the CATER project. By means of that debit note, the Commission requested that EKETA reimburse part of the payment received by it for the CATER project, a sum of EUR 172 992,15. The request follows an on-the-spot audit which was carried out by the European Commission at the applicant's premises.

2. In that context, the applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that, out of the above amount stated in the debit note, the sum of EUR 112 737,15 constitutes eligible costs and that EKETA is not obliged to repay that sum to the Commission.

3. EKETA maintains that the above amount of EUR 112 737,15 constitutes eligible staff costs and indirect costs, which the Commission wrongly rejected as being ineligible. The eligibility of the applicant's costs is demonstrated by the evidence that it submitted to the European Commission at the on-the-spot audit and in subsequent correspondence and that it submits to the General Court.

Action brought on 27 March 2017 — CeramTec v EUIPO — C5 Medical Werks (Shade of pink)

(Case T-195/17)

(2017/C 151/57)

Language in which the application was lodged: English

Parties

Applicant: CeramTec (Plochingen, Germany) (represented by: A. Renck and E. Nicolás Gómez, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: C5 Medical Werks (Grand Junction, Colorado, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Figurative colour mark in pink — EU trade mark No 10 214 195

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 February 2017 in Case R 930/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings, should it intervene, to pay the costs.

Plea in law

— Infringement of Articles 59 and 83 of Regulation No 207/2009.

Action brought on 27 March 2017 — Naftogaz of Ukraine v Commission

(Case T-196/17)

(2017/C 151/58)

Language of the case: English

Parties

Applicant: NJSC Naftogaz of Ukraine (Kiev, Ukraine) (represented by: D. Mjaaland, A. Haga, P. Grzejszczak, and M. Krakowiak, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2016) 6950 of 28 October 2016 on review of the exemption of the Ostseepipeline-Anbindungsleitung from the requirements on third party access and tariff regulation granted under Directive 2003/55/EC; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the 2016 Commission Decision is null and void for lack of competence

   — Article 36(9) of Directive 2009/73/EC does not confer competence on the Commission to approve a decision of a regulatory authority amending an exemption granted pursuant to Article 36(1) which it has previously approved.

   — Alternatively, if the Commission has competence to approve such a decision, it only has such competence in limited situations, such as where there has been a material change of circumstances since the date of its previous approval decision. If the position were otherwise the principle of legal certainty would be undermined. The Commission was not entitled to adopt the Decision in the circumstances of the present case.

2. Second plea in law, alleging breach of Article 36(1) of Directive 2009/73/EC

— Alternatively, if the Commission was competent to adopt the Decision in principle, it could only lawfully do so if the criteria in Article 36(1) of Directive 2009/73 EC were fulfilled.

— The Decision has been adopted in breach of Article 36(1) (a). The Decision will not enhance competition in gas supply and will not enhance security of supply in Central and Eastern European countries of the EU and the Energy Community.

— The Decision has been adopted in breach of Article 36(1) (b). There is no investment risk since the relevant pipeline has been in operation since July 2011.

— The Decision has been adopted in Breach of Article 36(1) (e). The Decision is detrimental to competition, and to the effective functioning of the internal market in the EU and the Energy Community, as it is liable to increase the dominant position enjoyed by PJSC Gazprom and its affiliates in the relevant geographic market and to contribute to the portioning of the internal market along national lines.

3. Third plea in law, alleging failure to give reasons

— In breach of Article 296 of the TFEU, the Decision does not provide sufficient statement of reasons or evidence supporting the Commission's conclusions

4. Fourth plea in law, alleging breach of Article 216(2) of the TFEU

— According to Article 216(2) of the TFEU, international agreements concluded by the European Union are binding upon the institutions of the Union.

— In breach of Article 6 of the Treaty Establishing the Energy Community, the Decision is liable to destabilise the regulatory and market framework stimulating investment in gas networks, reduce security of supply and block the development of competition. In breach of Article 18 of the Energy Community Treaty, the Decision enables Gazprom to abuse its dominant position in the relevant market.

— In breach of Article 6(1) of the Energy Charter Treaty, the Decision has a detrimental effect on competition in the energy sector. In breach of Article 10 (1) of the Energy Charter, the Decision grants Gazprom as an investor preferential treatment and has an adverse effect on Naftogaz's investments in the Ukrainian gas transport system.

— In breach of Article 274 of the Association Agreement between the EU and Ukraine, the Decision was adopted without consulting or cooperating with Ukraine.

Action brought on 28 March 2017 — Abel and Others v Commission

(Case T-197/17)

(2017/C 151/59)

Language of the case: French

Parties

Applicants: Marc Abel (Montreuil, France) and 1438 other applicants (represented by: J. Assous, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the European Commission's conduct to be unlawful;

— acknowledge the harm sustained by the applicants as a result of the adoption of Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6);

— order the European Commission to pay EUR 1 000 by way of compensation for the non-material damage sustained by the applicants as a result of the adoption of such a regulation and one symbolic euro by way of compensation for the material damage;

— issue an injunction to the European Commission obliging it immediately to reduce the 'final conformity factor' created by Regulation (EU) 2016/646 back to 1 and to abandon the 'temporary conformity factor' fixed at 2.1;

— order the European Commission to pay all of 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 that the defendant made errors during the adoption of the regulation at issue, in the context of the exercise of the power delegated to it by the European Parliament and the Council by Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1), in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. Specifically in question are the following:

   — infringement of the rules, both primary and secondary, of EU environmental law;

   — infringement of subsidiary rules of EU law, such as the general principles of standstill, precaution, prevention, rectification at source and polluter-pays;

   — circumvention of procedural rules, in that the Commission was not entitled to use the regulatory procedure with scrutiny in order to amend an essential aspect of Regulation (EC) No 715/2007;

   — infringement of essential procedural requirements, in that the regulation at issue did not benefit from the democratic guarantees offered by recourse to the ordinary legislative procedure of joint decision-making by the European Parliament and the Council.

2. Second plea in law, alleging the existence of actual and certain damage and of a direct causal link between the conduct of the Commission and the damage alleged.

Action brought on 29 March 2017 — EKETA v European Commission

(Case T-198/17)

(2017/C 151/60)

Language of the case: Greek

Parties

Applicant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (Thessaloniki, Greece) (represented by: V. Christianos and S. Paliou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the request made by the European Commission to EKETA to reimburse the amount of EUR 38 241,00 of the payment received by it for the ACTIBIO project, that request being made in the debit note3241615335/ 29.11.2016, is unfounded with respect to the sum of EUR 9 353,56;

— declare that the sum of EUR 9 353,56 constitutes eligible costs and that EKETA is not obliged to repay that sum to the European Commission, and

— order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

1. By this action, the Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) challenges the requests made by the Commission by means of its debit note 3241615335/29.11.2016, in relation to participation in the ACTIBIO project. By means of that debit note, the Commission requested that EKETA reimburse part of the payment received by it for the ACTIBIO project, a sum of EUR 38 241,00. The request follows an on-the-spot audit which was carried out by the European Commission at the applicant's premises.

2. In that context, the applicant claims that the General Court of the European Union, under Article 272 TFEU, should declare that, out of the above amount stated in the debit note, the sum of EUR 9 353,56 constitutes eligible costs and that EKETA is not obliged to repay that sum to the Commission.

3. EKETA maintains that the above amount of EUR 9 353,56 constitutes eligible staff costs and indirect costs, which the Commission wrongly rejected as being ineligible. The eligibility of the applicant's costs is demonstrated by the evidence that it submitted to the European Commission at the on-the-spot audit and in subsequent correspondence and that it submits to the General Court.

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