Official Journal of the European Union

C 213

English edition

Information and Notices

Volume 60

3 July 2017

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(2017/C 213/01)

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These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

GENERAL COURT

Assignment of Judges to Chambers

(2017/C 213/02)

On 8 June 2017, the plenary meeting of the General Court decided, following the entry into office of Judge Mac Eochaidh, on a proposal of the President made in accordance with Article 13(2) of the Rules of Procedure, to amend the decision on the assignment of Judges to Chambers of 21 September 2016, ([1]) and to assign the Judges to Chambers for the period from 8 June 2017 to 31 August 2019 as follows:

First Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Valančius, Mr Nihoul, Mr Svenningsen and Mr Öberg, Judges.

First Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

(a) Mr Nihoul and Mr Svenningsen, Judges;

(b) Mr Valančius and Mr Öberg, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Prek, President of the Chamber, Mr Buttigieg, Mr Schalin, Mr Berke and Ms Costeira, Judges.

Second Chamber, sitting with three Judges:

Mr Prek, President of the Chamber

(a) Mr Schalin and Ms Costeira, Judges;

(b) Mr Buttigieg and Mr Berke, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Frimodt Nielsen, President of the Chamber, Mr Kreuschitz, Mr Forrester, Ms Półtorak and Mr Perillo, Judges.

Third Chamber, sitting with three Judges:

Mr Frimodt Nielsen, President of the Chamber

(a) Mr Forrester and Mr Perillo, Judges;

(b) Mr Kreuschitz and Ms Półtorak, Judges.

([1]) OJ 2016 C 392, p. 2.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Schwarcz, Mr Iliopoulos, Mr Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

Fourth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber

(a) Ms Schwarcz and Mr Iliopoulos, Judges;

(b) Ms Calvo-Sotelo Ibáñez-Martín and Ms Reine, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Gratsias, President of the Chamber, Ms Labucka, Mr Dittrich, Mr Ulloa Rubio and Mr Xuereb, Judges.

Fifth Chamber, sitting with three Judges:

Mr Gratsias, President of the Chamber

(a) Mr Dittrich and Mr Xuereb, Judges;

(b) Ms Labucka and Mr Ulloa Rubio, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Berardis, President of the Chamber, Mr Papasavvas, Mr Spielmann, Mr Csehi and Ms Spineau-Matei, Judges.

Sixth Chamber, sitting with three Judges:

Mr Berardis, President of the Chamber

(a) Mr Papasavvas and Ms Spineau-Matei, Judges;

(b) Mr Spielmann and Mr Csehi, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Ms Kancheva, Mr Bieliūnas, Ms Marcoulli and Mr Kornezov, Judges.

Seventh Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber

(a) Mr Bieliūnas and Mr Kornezov, Judges;

(b) Mr Bieliūnas and Ms Marcoulli, Judges;

(c) Ms Marcoulli and Mr Kornezov, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Collins, President of the Chamber, Ms Kancheva, Mr Bieliūnas, Mr Barents and Mr Passer, Judges.

Eighth Chamber, sitting with three Judges:

Mr Collins, President of the Chamber

(a) Mr Barents and Mr Passer, Judges;

(b) Ms Kancheva and Mr Barents, Judges;

(c) Ms Kancheva and Mr Passer, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr da Silva Passos, Ms Kowalik-Bańczyk and Mr Mac Eochiadh, Judges.

Ninth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber

(a) Mr Madise and Mr da Silva Passos, Judges;

(b) Ms Kowalik-Bańczyk and Mr Mac Eochiadh, Judges.

The two Chambers composed of four Judges shall sit with a fifth Judge, by the inclusion of a Judge from one of the other two Chambers composed of four Judges, excluding the President of the Chamber, designated for a year in accordance with the order laid down in Article 8 of the Rules of Procedure. The Seventh Chamber shall therefore be enlarged by the addition of one Judge from the Eighth Chamber and the Eighth Chamber by the addition of a Judge from the Seventh Chamber.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 4 May 2017 (request for a preliminary ruling from the Krajowa Izba Odwoławcza — Poland) — Esaprojekt sp. z o.o. v Województwo Łódzkie,

(Case C-387/14) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Principles of equal treatment, non-discrimination and transparency — Technical and/or professional abilities of economic operators — Article 48(3) — Possibility to rely on the capacities of other entities — Article 51 — Possibility to supplement the tender — Article 45(2)(g) — Exclusion from participation in a public contract for serious misconduct)

(2017/C 213/03)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Applicant: Esaprojekt sp. z o.o.

Defendant: Województwo Łódzkie

Third party: Konsultant Komputer sp. z o.o.

Operative part of the judgment

1. *Article 51 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 concerning the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in conjunction with Article 2 thereof, must be interpreted as precluding an economic operator from submitting to the contracting authority, in order to prove that it satisfies the conditions for participating in a public tender procedure, documents which were not included in its initial bid, such as a contract performed by another entity and the undertaking of the latter to place at the disposal of that operator the capacities and resources necessary for the performance of the contract concerned after the expiry of the time limit laid down for submitting tenders for a public contract.*

2. *Article 44 of Directive 2004/18, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2 of that directive, must be interpreted as meaning that it does not allow an economic operator to rely on the capacities of another entity, within the meaning of Article 48(3) of that directive, by combining the knowledge and experience of two entities which, individually, do not have the capacities required for the performance of a particular contract, where the contracting authority considers that the contract concerned cannot be divided, in that it must be performed by a single operator, and that such exclusion of the possibility to rely on the experience of several economic operators is related and proportionate to the subject matter of the contract which must be performed by a single operator.*

3. *Article 44 of Directive 2004/18, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2 of that directive, must be interpreted as meaning that it does not allow an economic operator, which has individually participated in an award procedure for a public contract, to rely on the experience of a group of undertakings of which it was a member, in connection with another public contract, if it has not actually and directly participated in the performance of the latter.*

4. *Article 45(2)(g) of Directive 2004/18, which allows the exclusion of an economic operator from participation in a public contract, in particular if it is guilty of 'serious misrepresentation' for making false declarations when submitting the information requested by the contracting authority, must be interpreted as meaning that it may be applied where the operator concerned is guilty of a certain degree of negligence, that is to say negligence of a nature which may have a decisive effect on decisions concerning exclusion, selection or award of a public contract, irrespective of whether there is a finding of wilful misconduct on the part of that operator.*

5. *Article 44 of Directive 2004/18, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2 of that directive, must be interpreted as meaning that it allows an economic operator to rely on experience derived from two or more contracts treated as a single contract, unless the contracting authority has excluded such a possibility pursuant to requirements which are related and proportionate to the subject matter and purpose of the public contract concerned.*

([1]) OJ C 431, 1.12.2014.

Judgment of the Court (Fifth Chamber) of 4 May 2017 — RFA International, LP v European Commission

(Case C-239/15 P) ([1])

(Appeal — Dumping — Imports of ferrosilicon originating in Russia — Rejection of applications for a refund of anti-dumping duties paid)

(2017/C 213/04)

Language of the case: English

Parties

Appellant: RFA International, LP (represented by: B. Evtimov, advokat, E. Borovikov, avocat, and D. O'Keeffe, Solicitor)

Other party to the proceedings: European Commission (represented by: J.-F. Brakeland, P. Němečková and A. Stobiecka-Kuik, Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders RFA International, LP to pay the costs.*

([1]) OJ C 270, 17.8.2015.

Judgment of the Court (Fourth Chamber) of 4 May 2017 — European Commission v Grand Duchy of Luxembourg

(Case C-274/15) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Value added tax — Directive 2006/112/EC — Article 132(1)(f) — Exemption from VAT of supplies of services by independent groups of persons to their members — Article 168(a) and Article 178(a) — Right of deduction for the members of the group — Article 14(2)(c) and Article 28 — Actions of a member in his own name and on behalf of the group)

(2017/C 213/05)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac and C. Soulay, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: D. Holderer, acting as Agent, F. Kremer and P.-E. Partsch, avocats, and B. Gasparotti, acting as expert)

Operative part of the judgment

The Court:

1. *Declares that by providing for the value added tax (VAT) regime applicable to independent groups of persons, as defined, first, in Article 44(1)(y) of the consolidated text of the loi du 12 février 1979 concernant la taxe sur la valeur ajoutée (Law of 12 February 1979 on value added tax), read in conjunction with Article 2(a) and Article 3 of the règlement grand-ducal du 21 janvier 2004 relatif à l'exonération de la TVA des prestations de services fournies à leurs membres par des groupements autonomes de personnes (Grand-Ducal Regulation of 21 January 2004 on the exemption from VAT of supplies of services by independent groups of persons to their members), second, in Article 4 of that regulation, read in conjunction with circulaire administrative n°707, du 29 janvier 2004 (administrative circular No 707 of 29 January 2004), in so far as it comments on Article 4 of that regulation, and, third, in the note of 18 December 2008 drafted by the working group within the comité d'observation des marchés (Market Observation Committee, COBMA) with agreement from the administration de l'Enregistrement et des Domaines (Registration and Land Authority), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2(1)(c), Article 132(1)(f), Article 168(a), Article 178(a), Article 14(2)(c) and Article 28 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;*

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

3. *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 270, 17.8.2017.

Judgment of the Court (Third Chamber) of 4 May 2017 (request for a preliminary ruling from the Obvodní soud pro Prahu — Czech Republic) — Marcela Pešková, Jiří Peška v Travel Service a.s.

(Case C-315/15) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Scope — Exemption from the obligation to pay compensation — Collision between an aircraft and a bird — Notion of 'extraordinary circumstances' — Notion of 'reasonable measures' to avoid extraordinary circumstances or the consequences thereof)

(2017/C 213/06)

Language of the case: Czech

Referring court

Obvodní soud pro Prahu

Parties to the main proceedings

Applicants: Marcela Pešková, Jiří Peška

Defendant: Travel Service a.s.

Operative part of the judgment

1. *Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read in the light of recital 14 thereof, must be interpreted as meaning that a collision between an aircraft and a bird is classified under the concept of 'extraordinary circumstances' within the meaning of that provision.*

2. *Article 5(3) of Regulation No 261/2004, read in the light of recital 14 thereof, must be interpreted as meaning that cancellation or delay of a flight is not due to extraordinary circumstances when that cancellation or delay is the result of the use by the air carrier of an expert of its choice to carry out fresh safety checks necessitated by a collision with a bird after those checks have already been carried out by an expert authorised under the applicable rules.*

3. *Article 5(3) of Regulation No 261/2004, read in the light of recital 14 thereof, must be interpreted as meaning that the 'reasonable measures' which an air carrier must take in order to reduce or even prevent the risks of collision with a bird and thus be released from its obligation to compensate passengers under Article 7 of Regulation No 261/2004 include control measures preventing the presence of such birds provided that, in particular at the technical and administrative levels, such measures can actually be taken by that air carrier, that those measures do not require it to make intolerable sacrifices in the light of the capacities of its undertaking and that that carrier has shown that those measures were actually taken as regards the flight affected by the collision with a bird, it being for the referring court to satisfy itself that those conditions have been met.*

4. *Article 5(3) of Regulation No 261/2004, read in the light of recital 14 thereof, must be interpreted as meaning that, in the event of a delay to a flight equal to or in excess of three hours in arrival caused not only by extraordinary circumstances, which could not have been avoided by measures appropriate to the situation and which were subject to all reasonable measures by the air carrier to avoid the consequences thereof, but also in other circumstances not in that category, the delay caused by the first event must be deducted from the total length of the delay in arrival of the flight concerned in order to assess whether compensation for the delay in arrival of that flight must be paid as provided for in Article 7 of that regulation.*

([1]) OJ C 414, 14.12.2015.

Judgment of the Court (Third Chamber) of 4 May 2017 (request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg te Brussel — Belgium) — Criminal proceedings against Luc Vanderborght

(Case C-339/15) ([1])

(Reference for a preliminary ruling — Article 56 TFUE — Freedom to provide services — Provision of oral and dental care — National legislation prohibiting, in absolute terms, advertising for oral and dental care services — Existence of a cross-border element — Protection of public health — Proportionality — Directive 2000/31/EC — Information society service — Advertising via an internet site — Member of a regulated profession — Professional rules — Directive 2005/29/EC — Unfair trading practices — National provisions relating to health — National provisions governing regulated professions)

(2017/C 213/07)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg te Brussel

Party in the main proceedings

Luc Vanderborght

Operative part of the judgment

1. *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive') must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which protects public health and the dignity of the profession of dentist, first, by imposing a general and absolute prohibition of any advertising relating to the provision of oral and dental care services and, secondly, by establishing certain requirements of discretion with regard to signs of dental practices;*

2. *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services, inasmuch as it prohibits any form of electronic commercial communications, including by means of a website created by a dentist;*

3. *Article 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a general and absolute prohibition of any advertising relating to the provision of oral and dental care services.*

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (Ninth Chamber) of 4 May 2017 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-502/15) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Articles 3 to 5 and 10 — Annex I, Sections A, B and D — Urban waste-water treatment — Collecting systems — Secondary or equivalent treatment — More stringent treatment of discharges into sensitive areas)

(2017/C 213/08)

Language of the case: English

Parties

Applicant: European Commission (represented by: K. Mifsud-Bonnici and E. Manhaeve, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: J. Kraehling, Agent, and by S. Ford, Barrister)

Operative part of the judgment

The Court:

1. *Declares that, by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, that directive;*

2. *Declares that, by not putting in place secondary treatment for the urban waste water in the Ballycastle agglomeration and by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4 of, and Section B of Annex I to, Directive 91/271;*

3. *Declares that, by not ensuring that urban waste water entering collecting systems from the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of Directive 91/271, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 5 of, and Section B of Annex I to, that directive;*

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

5. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

(1) OJ C 16, 18.1.2016.

Judgment of the Court (First Chamber) of 4 May 2017 (request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Commissioners for Her Majesty's Revenue & Customs v Brockenhurst College

(Case C-699/15) (1)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Exemptions — Supply of restaurant and entertainment services by an educational establishment to a limited public in return for consideration)

(2017/C 213/09)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue & Customs

Defendant: Brockenhurst College

Operative part of the judgment

Article 132(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that activities carried out in circumstances such as those at issue in the main proceedings, consisting in students of a higher education establishment supplying, for consideration and as part of their education, restaurant and entertainment services to third parties, may be regarded as supplies 'closely related' to the principal supply of education and accordingly be exempt from value added tax (VAT), provided that those services are essential to the students' education and that their basic purpose is not to obtain additional income for that establishment by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT, which it is for the national court to determine.

(1) OJ C 78, 29.2.2016.

Judgment of the Court (Second Chamber) of 4 May 2017 (request for a preliminary ruling from the Augstākās tiesas — Latvia) — Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA 'Rīgas satiksme'

(Case C-13/16) ([1])

(Reference for a preliminary ruling — Directive 95/46/EC — Article 7(f) — Personal data — Conditions for the lawful processing of personal data — Concept of 'necessity for the realisation of the legitimate interests of a third party' — Request for disclosure of personal data of a person responsible for a road accident in order to exercise a legal claim — Obligation on the controller to grant such a request — No such obligation)

(2017/C 213/10)

Language of the case: Latvian

Referring court

Augstākās tiesas

Parties to the main proceedings

Applicant: Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde

Defendant: Rīgas pašvaldības SIA 'Rīgas satiksme'

Operative part of the judgment

Article 7(f) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as not imposing the obligation to disclose personal data to a third party in order to enable him to bring an action for damages before a civil court for harm caused by the person concerned by the protection of that data. However, Article 7(f) of that directive does not preclude such disclosure on the basis of national law.

([1]) OJ C 111, 29.3.2016.

Judgment of the Court (First Chamber) of 4 May 2017 (request for a preliminary ruling from the Cour de cassation — France) — Oussama El Dakkak, Intercontinental SARL v Administration des douanes et des droits indirects

(Case C-17/16) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 1889/2005 — Controls of cash entering or leaving the European Union — Article 3(1) — Natural person entering or leaving the European Union — Obligation to declare — International transit area of a Member State's airport)

(2017/C 213/11)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Oussama El Dakkak, Intercontinental SARL

Defendant: Administration des douanes et des droits indirects

Operative part of the judgment

Article 3(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community must be interpreted to the effect that the obligation to declare laid down in that provision is applicable in the international transit area of an airport of a Member State.

(1) OJ C 90, 7.3.2016.

Judgment of the Court (Second Chamber) of 4 May 2017 (request for a preliminary ruling from the Landgericht Stralsund — Germany) — HanseYachts AG v Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Compagnie Generali IARD SA

(Case C-29/16) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 27 — Lis pendens — Court first seised — Point 1 of Article 30 — Concept of 'document instituting the proceedings' or 'equivalent document' — Application for proceedings to preserve or establish, prior to any legal proceedings, evidence of facts on which a subsequent action could be based)

(2017/C 213/12)

Language of the case: German

Referring court

Landgericht Stralsund

Parties to the main proceedings

Applicant: HanseYachts AG

Defendants: Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Compagnie Generali IARD SA

Operative part of the judgment

Article 27(1) and point 1 of Article 30 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning, in cases of lis pendens, that the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced cannot constitute the date on which, within the meaning of point 1 of Article 30 of that regulation, a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure was 'deemed to be seised'.

(1) OJ C 136, 18.4.2016.

Judgment of the Court (Eighth Chamber) of 4 May 2017 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — proceedings brought by A Oy

(Case C-33/16) (1)

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 148(d) — Exemption — Supply of services to meet the direct needs of vessels used for navigation on the high seas — Loading and unloading of cargo by a subcontractor on behalf of an intermediary)

(2017/C 213/13)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

A Oy

Intervening party: Veronsaajien oikeudenvalvontayksikkö

Operative part of the judgment

1. *Article 148(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that loading and unloading of cargo are services supplied for the direct needs of the cargo of the vessels referred to in Article 148(a) thereof.*

2. *Article 148(d) of Directive 2006/112 must be interpreted as meaning that, first, not only supplies of services concerning loading or unloading cargo onto or from a vessel covered by Article 148(a) of that directive which take place at the end of the commercial chain of such a service may be exempt, but also supplies of services made at an earlier stage, such as services supplied by a subcontractor to an economic operator which then re-invoices them to a freight forwarder or transporter and, second, services for loading and unloading of cargo supplied to the holders of that cargo, such as the exporter or importer may also be exempt.*

([1]) OJ C 111, 29.3.2016.

Judgment of the Court (Seventh Chamber) of 4 May 2017 — Comercializadora Eloro, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-71/16 P) ([1])

(Appeal — EU trade mark — Application for registration of a figurative mark including word element 'ZUMEX' — Opposition of the proprietor of word mark JUMEX — Regulation (EC) No 207/2009 — Article 15(1), second subparagraph, (b) and Article 42(2) — Evidence of use — Use in the European Union — Article 76(2) — Additional evidence of use produced out of time before the Board of Appeal — Discretion of the European Union Intellectual Property Office (EUIPO))

(2017/C 213/14)

Language of the case: Spanish

Parties

Appellant: Comercializadora Eloro, SA (represented by: J.L. de Castro Hermida, abogado)

Other parties to the proceedings: European Union Intellectual Property Office (represented by: S. Palmero Cabezas, acting as Agent), Zumex Group, SA (represented by: M.C. March Cabrelles, abogada)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Comercializadora Eloro, SA to pay the costs.*

([1]) OJ C 191, 30.5.2016.

Judgment of the Court (Seventh Chamber Chamber) of 4 May 2017 — European Commission v Hellenic Republic

(Case C-98/16) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Free movement of capital — Article 63 TFEU — Article 40 of the EEA Agreement — Inheritance taxes — Bequest in favour of not-for-profit bodies — Application of a preferential rate to bodies existing or legally constituted in Greece and to similar bodies outside Greece on a reciprocal basis — Different treatment — Restriction — Justification)

(2017/C 213/15)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: M. Tassopoulou and V. Karra, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force legislation which provides for a preferential rate of inheritance tax for bequests made in favour of not-for-profit bodies which are established in other Member States of the European Union or the European Economic Area on a reciprocal basis, the Hellenic Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the European Economic Area Agreement of 2 May 1992;*

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

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Seventh Chamber) of 4 May 2017 — August Storck KG v European Union Intellectual Property Office (EUIPO)

(Case C-417/16 P) ([1])

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 7(1)(b) — Absolute grounds for refusal — Figurative mark — Representation of a white and blue square-shaped packaging — Distinctive character)

(2017/C 213/16)

Language of the case: English

Parties

Appellant: August Storck KG (represented by: I. Rohr and P. Goldenbaum, Rechtsanwältinnen)

Other party to the proceedings: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders August Storck KG to pay the costs.*

([1]) OJ C 428, 21.11.2016.

Order of the Court of 27 April 2017 (reference for a preliminary ruling from the Tribunalul Specializat Mureş (Romania)) — Michael Tibor Bachmann v FAER IFN SA

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

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Consumer protection — Directive 93/13/EEC — Article 2(b) — Unfair terms in consumer contracts — Notion of 'consumer' — Natural person having concluded an agreement for novation with a credit institution in order to meet repayment obligations to that institution in respect of credit obtained by a commercial company)

(2017/C 213/17)

Language of the case: Romanian

Referring court

Tribunalul Specializat Mureş (Romania)

Parties to the main proceedings

Applicant: Michael Tibor Bachmann

Defendant: FAER IFN SA

Operative part of the order

Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a natural person who, following a novation agreement, has undertaken by contract to repay to a lending institution loans originally granted to a company for purposes inherent in that company's business activity, where that natural person has no evident link with that company but acted in that way on the basis of his links, outside his trade, business or profession, with the person who controlled that company and also with the person who signed contracts ancillary to the original loan contracts (contracts of guarantee, contracts providing immovable property as security/mortgages).

([1]) OJ C 38, 6.2.2017.

Request for a preliminary ruling from the Verwaltungsgericht Minden (Germany) lodged on 25 January 2017 — Daher Muse Ahmed v Bundesrepublik Deutschland

(Case C-36/17)

(2017/C 213/18)

Language of the case: German

Referring court

Verwaltungsgericht Minden

Parties to the main proceedings

Applicant: Daher Muse Ahmed

Defendant: Bundesrepublik Deutschland

By order of 5 April 2017, the Court of Justice of the European Union (Third Chamber) ruled that the provisions and principles 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 ([1]) which govern, directly or indirectly, the time limits for lodging an application for a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one Member State after being granted the benefit of subsidiary protection by another Member State.

([1]) OJ 2013 L 180, p. 31.

Appeal brought on 16 February 2017 by Redpur GmbH against the judgment of the General Court (Seventh Chamber) delivered on 15 December 2016 in Case T-227/15, Redpur GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-86/17 P)

(2017/C 213/19)

Language of the case: German

Parties

Appellant: Redpur GmbH (represented by: S. Schiller, Rechtsanwalt)

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

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the General Court's judgment of 15 December 2016 in Case T-227/15 and reject the opposition;

— order EUIPO to pay the costs incurred by the present appellant in these proceedings;

— order Redwell Manufaktur GmbH to pay the costs incurred by the present appellant in the proceedings before the Opposition Division and the Board of Appeal of EUIPO.

Grounds of appeal and main arguments

Applicant for an EU trade mark: Appellant

EU trade mark concerned: Word mark 'Redpur' for goods in Class 11 — EU trade mark registration application No 10 934 305

Proprietor of the mark or sign cited in the opposition proceedings: Other party to the proceedings

Marks or signs cited in the opposition proceedings: EU word and figurative mark No 004769717 'redwell INFRAROT HEIZUNGEN' for goods in Class 11; Austrian word mark with registration No 232549 'Redwell' for goods in Class 11; International word mark (WIPO) with registration No 914971, 'Redwell' for goods in Class 11 and Company Names in Austria 'REDWELL Manufaktur GmbH' for heating systems and room heaters, in particular infrared heating and infrared heating systems

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Plea in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 ([1])

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

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 6 March 2017 — Angela Irmgard Diedrich and Others v Société Air France SA

(Case C-112/17)

(2017/C 213/20)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Angela Irmgard Diedrich, Thorsten Diedrich, Angel Wendy Mara Diedrich

Defendant: Société Air France SA

The case was removed from the register of the Court by order of the Court of 6 April 2017.

Request for a preliminary ruling from the Commissione tributaria provinciale di Roma (Italy) lodged on 10 March 2017 — Luigi Bisignani v Agenzia delle Entrate -Direzione Provinciale 1 di Roma

(Case C-125/17)

(2017/C 213/21)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma

Parties to the main proceedings

Applicant: Luigi Bisignani

Defendant: Agenzia delle Entrate -Direzione Provinciale 1 di Roma

Question referred

In so far as they permit the retention in national law of restrictions, in force at 31 December 1993, of movements of capital from or to third countries, in order to prevent potential losses of revenue for the Member States and permit the gathering of evidence of the irregularity or illegality of transactions that appear to be incompatible with, or in breach of, tax legislation and, on the basis of the principles of subsidiarity and proportionality under Article 5 of the Treaty on European Union, distinguishing between taxpayers who do not find themselves in the same situation as regards their place of residence or as regards the place where their capital is invested, do Article 64 of the Treaty on the functioning of the European Union (TFEU), in conjunction with the preceding Article 63 and subsequent Article 65 thereof, as well as Council Directive 2011/16/EU, ([1]) preclude national provisions that, in accordance with Article 9(1)(c) and (d) of Law No 97 of 6 August 2013 (European Law 2013), at least as interpreted by both parties, definitively abolished (rather than reframed) the tax offence established and penalised under Articles 4 and 5 of Decree-Law No 167 of 28 June 1990, converted, with amendments into Law No 227 of 4 August 1990, without, moreover, distinguishing the various cases of capital movement between Member States of the Union from those between the latter and States or territories with preferential tax regimes?

([1]) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 March 2017 — Peugeot Deutschland GmbH v Deutsche Umwelthilfe eV

(Case C-132/17)

(2017/C 213/22)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Peugeot Deutschland GmbH

Defendant: Deutsche Umwelthilfe eV

Question referred

Does a person who runs a video channel on the YouTube internet service on which internet users can view short advertising videos for new passenger car models operate an audiovisual media service within the meaning of Article 1(1)(a) of Directive 2010/13/EU? ([1])

([1]) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale Calabria (Italy) lodged on 22 March 2017 — Lloyd's of London v Agenzia Regionale per la Protezione dell'Ambiente della Calabria

(Case C-144/17)

(2017/C 213/23)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale Calabria

Parties to the main proceedings

Applicant: Lloyd's of London

Defendant: Agenzia Regionale per la Protezione dell'Ambiente della Calabria

Question referred

'Do the principles laid down by EU competition rules, as set out in the Treaty on the Functioning of the European Union (TFEU), and the principles deriving therefrom, such as the independence and confidentiality of tenders, preclude national legislation, as interpreted by case-law, which allows the simultaneous participation, in the same tendering procedure launched by a contracting authority, of several syndicates, members of Lloyd's of London, whose tenders are underwritten by a single person, namely the General Representative for the Member State concerned?'

Request for a preliminary ruling from the Landgericht München I (Germany) lodged on 24 March 2017 — Bastei Lübbe GmbH & Co. KG v Michael Strotzer

(Case C-149/17)

(2017/C 213/24)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Bastei Lübbe GmbH & Co. KG

Defendant: Michael Strotzer

Questions referred

1. Should Article 8(1) and (2), in conjunction with Article 3(1), of Directive 2001/29/EC ([1]) be interpreted as meaning that 'effective and dissuasive sanctions for infringements of the right to make works available to the public' are still provided for even when the owner of an Internet connection used for copyright infringements through file-sharing is excluded from liability to pay damages if the owner of that Internet connection can name at least one family member who, besides him or her, might have had access to that Internet connection, without providing further details, established through appropriate investigations, as to when and how the Internet was used by that family member?

1. Should Article 3(2) of Directive 2004/48/EC ([2]) be interpreted as meaning that 'effective measures for the enforcement of intellectual property rights' are still provided for even when the owner of an Internet connection used for copyright infringements through file-sharing is excluded from liability to pay damages if the owner of that Internet connection can name at least one family member who, besides him or her, might have had access to that Internet connection, without providing further details, established through appropriate investigations, as to when and how the Internet was used by that family member?

([1]) 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 (OJ 2001 L 167, p. 10).

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

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 24 March 2017 — Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA

(Case C-152/17)

(2017/C 213/25)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Consorzio Italian Management and Catania Multiservizi SpA

Defendant: Rete Ferroviaria Italiana SpA

Questions referred

(1) Is the interpretation of national law that excludes review of prices in contracts relating to 'special sectors', particularly as regards those with a different object from those to which the Directive 2004/17 ([1]) refers, but that are connected with those sectors by an instrumental link, compatible with EU law (in particular, Article 3(3) TEU, Articles 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter of Fundamental Rights of the European Union) and Directive 2004/17?

(2) Is Directive 2004/17 (if it should be considered that exclusion of revision of prices in all contracts concluded and applied within 'special sectors' arises directly therefrom) compatible with the principles of the European Union (in particular Articles 3(1) TEU, 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter of Fundamental Rights of the European Union), 'in the light of the unfairness, disproportionality, and distortion of contractual balance and, therefore, of the rules governing an efficient market'?

([1]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 3 April 2017 — Morgan Stanley & Co International plc v Ministre de l'Économie et des Finances

(Case C-165/17)

(2017/C 213/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Morgan Stanley & Co International plc

Respondent: Ministre de l'Économie et des Finances

Questions referred

1. In circumstances where expenditure of a branch established in one Member State is exclusively used for the transactions of its principal establishment established in another Member State, must the provisions of Article 17(2), (3) and (5) and Article 19(1) of the Sixth Directive 77/388/EEC, ([1]) incorporated in Articles 168, 169 and 173 to 175 of Directive 2006/112/EC, ([2]) be interpreted to the effect that the Member State in which the branch is registered is to apply to that expenditure the branch's deductible proportion, determined according to the transactions carried out in the Member State in which it is registered and according to the rules applicable in that State, or to apply the proportion applicable to the principal establishment, or to deduct a specific proportion combining the rules applicable in the Member States in which the branch and the principal establishment are registered, with regard in particular to a possible option mechanism for imposing value added tax on transactions?

2. What rules should be applied in the specific case where expenditure borne by the branch is used both for transactions in the Member State where it is registered and for transactions of the principal establishment, particularly as regards the concept of general costs and the proportion of tax deductible?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

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

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 10 April 2017 — Nachalnik na Mitnitsa Varna v Saksa OOD

(Case C-185/17)

(2017/C 213/27)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna — Bulgaria

Parties to the main proceedings

Appellant on a point of law: Nachalnik na Mitnitsa Varna

Respondent in the appeal on a point of law: Saksa OOD

Questions referred

1. Does the rule provided for in the explanatory notes in table 3 of standard EN 590 (now EN 590:2014), which states that the 'EU Common Customs Tariff definition of gas oil may not apply to the grades defined for use in arctic or severe winter climates', mean that, in respect of that type of fuel, it is possible that the general rules contained in additional note 2(d) and (e) to Chapter 27 of the Common Customs Tariff do not apply for the purposes of tariff classification of the goods?

2. If the answer to the first question is in the affirmative, and if it is established that the goods in respect of which customs duties arise correspond to the definition of diesel for use in 'arctic or severe winter climates' in accordance with the criteria set out in Standard EN 590, must that fuel be classified under tariff subheading 2710 19 43 of the Combined Nomenclature, which corresponds to 'gas oils', or must the general rules contained in additional note 2(d) and (e) to Chapter 27 of the Common Customs Tariff apply?

3. If the answer to the first question is in the affirmative, what are the criteria to be used to determine when the definition of gas oil under the Customs Tariff of the European Union should apply and when it is necessary to use the requirements and test methods in accordance with standard EN 590, for the purposes of the tariff classification of the goods?

4. Are the methods and analysis indicators set out in additional note 2(d) and (e) to Chapter 27 of the Common Customs Tariff sufficient in order to characterise a product fully and accurately as a 'gas oil', or is it necessary to take into consideration all of the product's characteristic chemical indicators?

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 25 April 2017 — Nova Kreditna banka Maribor, d.d. v Republic of Slovenia

(Case C-215/17)

(2017/C 213/28)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Appellant: Nova Kreditna banka Maribor, d.d.

Respondent: Republic of Slovenia

Questions referred

1. In the light of an approach based on minimum harmonisation, must Article 1(2)(c), third indent, of Directive 2003/98, as amended by Directive 2013/37 (consolidated version), be interpreted as meaning that national legislation may permit unrestricted (absolute) access to all information in copyright and consultancy contracts, even when the information is categorised as a business secret, and the legislation at issue stipulates this solely in relation to institutions under dominant State influence, but not also for other entities subject to the obligation; and is the interpretation also influenced by Regulation (EU) No 575/2013 in relation to the provisions on the disclosure of information, particularly in the sense that access to public sector information within the meaning of Directive 2003/98 may not be more extensive than is provided for by the uniform rules on the disclosure of information laid down by the regulation?

2. Must Regulation No 575/2013, viewed in terms of the rules on disclosure of information on the commercial activity of banks, and more specifically Articles 446 and 432(2) in Part Eight thereof, be interpreted as meaning that the latter provisions preclude legislation of a Member State which compels a bank that is, or was, under the dominant influence of a public-law entity, to disclose information on contracts provided for consultancy and legal services and services of an intellectual nature, and more specifically information concerning the type of transaction concluded, the contractual partner (in the case of a legal person: the corporate or business name, registered office and business address), the value of the contract, the amount of the individual payments for the abovementioned services, the date on which the contract was concluded, the duration of the business relationship and similar information contained in the annexes to the contract — all information that came into existence during the period of dominant influence — without providing for any exception to that requirement, and with no possibility of balancing the public interest in accessing the data against the bank's interest in safeguarding its business secrets, in circumstances in which there are no cross-border elements?

Appeal brought on 27 April 2017 by Plásticos Españoles, S.A. (ASPLA) and Armando Álvarez, S. A. against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 17 February 2017 in Case T-40/15, ASPLA and Armando Álvarez v European Union

(Case C-222/17 P)

(2017/C 213/29)

Language of the case: Spanish

Parties

Appellants: Plásticos Españoles, S.A. (ASPLA) and Armando Álvarez, S.A. (represented by: S. Moya Izquierdo and M. Troncoso Ferrer, lawyers)

Other party to the proceedings: European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of General Court of the European Union of 17 February 2017 in Case T-40/15 and order the European Union to pay the appellants EUR 3 495 038,66, together with the corresponding compensatory and late-payment interest, by way of compensation due as a result of the General Court's infringement of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

Pleas in law and main arguments

1. Failure to state adequate reasons and error of law in calculating the appropriate length of time between the end of the written part of the procedure and the opening of the oral part of the procedure.

2. Error of law as regards the assessment of the interest on the fine as damage.

3. Error of law in the application of the principle that a court is prohibited from adjudicating *ultra petita*.

4. Infringement of the appellants' rights of defence in relation to the evaluation of the material damage suffered.

5. Error of law in that the judgment under appeal contains a manifest contradiction in relation to the period in respect of which compensation had to be paid.

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 2 May 2017 — Érdem Deha Altiner, Isabel Hanna Ravn v Udlændingestyrelsen (Danish Immigration Service)

(Case C-230/17)

(2017/C 213/30)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Érdem Deha Altiner, Isabel Hanna Ravn

Defendant: Udlændingestyrelsen

Questions referred

Does Article 21 of the Treaty on the Functioning of the European Union, read in conjunction and by analogy with the Free Movement Directive ([1]) preclude a Member State from refusing to grant a derived right of residence to a third-country national who is a family member of a Union citizen who is a national of that Member State and who has returned to that Member State after having exercised his or her right of free movement, where the family member does not enter the Member State's territory or submit an application for a right of residence as a natural extension of the Union citizen's return?

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

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 10 May 2017 — E

(Case C-240/17)

(2017/C 213/31)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: E

Other parties to the proceedings: Maahanmuuttovirasto

Questions referred

1. Is Article 25(2) of the Convention implementing the Schengen Agreement to be interpreted as meaning that the obligation to consult among Contracting States has legal effects that can be relied on by third-country national in a situation in which a Contracting State imposes an entry ban for the entire Schengen Area and order his return to his home country on the ground that he constitutes a threat to public order and public safety?

2. If Article 25(2) of Convention applies to the imposition of an entry ban, must the consultations begin before the imposition of the entry ban or may the consultation start only after the imposition of the ban when the decision to deport that person and to impose an entry ban has been taken?

3. If the consultations may begin only afterwards, when the decision to return that person and to impose an entry ban has been taken, does the fact that negotiations between Contracting States are on-going and that the other Contracting State has not indicated its intention to withdraw the residence permit of the third-country national prevent the decision to deport the third country national and the imposition of an entry ban with respect to the entire Schengen Area from taking effect?

4. How is a Contracting State to proceed in circumstances in which the Contracting State which granted the residence permit, despite repeated requests, has not expressed its views regarding the withdrawal of the residence permit granted to a third country national?

GENERAL COURT

Judgment of the General Court of 3 May 2017 — Sotiropoulou and Others v Council

(Case T-531/14) ([1])

(Non-contractual liability — Economic and monetary policy — Decisions addressed to a Member State with a view to remedying an excessive deficit situation — Reduction in and withdrawal of pension rights in Greece — Sufficiently serious infringement of a rule of law conferring rights on individuals)

(2017/C 213/32)

Language of the case: Greek

Parties

Applicants: Leïmonia Sotiropoulou (Patras, Greece) and the 63 other applicants whose names are listed in the annex to the judgment (represented by: K. Chrysogonos, lawyer)

Defendant: Council of the European Union (represented by: A. de Gregorio Merino, E. Chatziioakeimidou and E. Dumitriu-Segnana, acting as Agents)

Intervener in support of the defendant: European Commission (represented by: J.-P. Keppenne and M. Konstantinidis, acting as Agents)

Re:

Action on the basis of Article 268 TFEU seeking compensation for the loss allegedly suffered by the applicants as a result of the adoption of the decisions of the Council addressed to the Hellenic Republic in activation of the mechanism provided for in Article 126 TFEU.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Leïmonia Sotiropoulou and the other applicants whose names are listed in the annex to the judgment to pay the costs;*

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

([1]) OJ C 351, 6.10.2014.

Judgment of the General Court of 12 May 2017 — Costa v Parliament

(Joined Cases T-15/15 and T-197/15) ([1])

(Rules governing emoluments of Members of the Parliament — Old-age pension — Suspension — Recovery — Rule against overlapping — Rules on payment of expenses and allowances to Members of the European Parliament — Reference to national legislation — Article 12(2a)(v) of the Regulation on life-annuities of Members of the Italian Chamber of Deputies — Allowance received for exercising the function of President of an Italian Port Authority — Legitimate expectations)

(2017/C 213/33)

Language of the case: Italian

Parties

Applicant: Paolo Costa (Venice, Italy) (represented by: G. Orsoni and M. Romeo, lawyers)

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

Re:

Two actions based on Article 263 TFEU seeking annulment of the decisions of the Bureau of the Parliament of 20 October 2014 and of 9 February 2015 concerning, respectively, suspension of the provisional retirement pension of the applicant and recovery of the sum of EUR 49 770,42 paid in that respect, as well as annulment of debit note 2015-239 of 23 February 2015 concerning that recovery.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Paolo Costa to pay the costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 81, 9.3.2015.

Judgment of the General Court of 16 May 2017 — Landeskreditbank Baden-Württemberg v ECB

(Case T-122/15) ([1])

(Economic and monetary policy — Prudential supervision of credit institutions — Article 6(4) of Regulation (EU) No 1024/2013 — Article 70(1) of Regulation (EU) No 468/2014 — Single supervisory mechanism — Competences of the ECB — Decentralised exercise by the national authorities — Assessment of the size of a credit institution — Need for direct supervision by the ECB)

(2017/C 213/34)

Language of the case: German

Parties

Applicant: Landeskreditbank Baden-Württemberg — Förderbank (Karlsruhe, Germany) (represented by: initially by A. Glos, K. Lackhoff and M. Benzing, and subsequently by A. Glos and M. Benzing, lawyers)

Defendant: European Central Bank (ECB) (represented by: E. Koupepidou, R. Bax and A. Riso, and subsequently by E. Koupepidou and R. Bax, acting as Agents, assisted by H.-G. Kamann, lawyer)

Intervener in support of the defendant: European Commission (represented by W. Mölls and K.-P. Wojcik, acting as Agents)

Re:

Action pursuant to Article 263 TFEU for annulment of Decision ECB/SSM/15/1 of the ECB of 5 January 2015, taken pursuant to Article 6(4) and Article 24(7) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63), by which the ECB refused to recognise the applicant as a less significant entity within the meaning of Article 6(4) of that regulation.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Landeskreditbank Baden-Württemberg — Förderbank to bear its own costs and to pay those incurred by the European Central Bank.*

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

([1]) OJ C 178, 1.6.2015.

Judgment of the General Court of 11 May 2017 — Barqawi v Council

(Case T-303/15) ([1])

(Common Foreign and Security Policy — Restrictive measures adopted against Syria — Freezing of funds — Manifest error of assessment)

(2017/C 213/35)

Language of the case: French

Parties

Applicant: Ahmad Barqawi (Dubai, United Arab Emirates) (represented by: J.-P. Buyle and L. Cloquet, lawyers)

Defendant: Council of the European Union (represented initially by: G. Étienne and N. Rouam, subsequently by: G. Étienne and S. Kyriakopoulou, and finally by: S. Kyriakopoulou, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Council Implementing Decision (CFSP) 2015/383 of 6 March 2015 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2015 L 64, p. 41) and of Council Implementing Regulation (EU) 2015/375 of 6 March 2015 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2015 L 64, p. 10), insofar as the applicant's name has been entered in the list of persons and entities to which the restrictive measures apply.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Decision (CFSP) 2015/383 of 6 March 2015 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) 2015/375 of 6 March 2015 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria inasmuch as they relate to Mr Ahmad Barqawi;*

2. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Mr Barqawi.*

([1]) OJ C 245, 27.7.2015.

Judgment of the General Court of 11 May 2017 — Abdulkarim v Council

(Case T-304/15) ([1])

(Common Foreign and Security Policy — Restrictive measures adopted against Syria — Freezing of funds — Manifest error of assessment)

(2017/C 213/36)

Language of the case: French

Parties

Applicant: Mouhamad Wael Abdulkarim (Dubai, United Arab Emirates) (represented by: J.-P. Buyle and L. Cloquet, lawyers)

Defendant: Council of the European Union (represented initially by: G. Étienne and N. Rouam, subsequently by: G. Étienne and S. Kyriakopoulou, and finally by: S. Kyriakopoulou, acting as Agents)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of Council Implementing Decision (CFSP) 2015/383 of 6 March 2015 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2015 L 64, p. 41) and of Council Implementing Regulation (EU) 2015/375 of 6 March 2015 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2015 L 64, p. 10), insofar as the applicant's name has been entered in the list of persons and entities to which the restrictive measures apply.

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Decision (CFSP) 2015/383 of 6 March 2015 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) 2015/375 of 6 March 2015 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria inasmuch as they relate to Mr Mouhamad Wael Abdulkarim;*

2. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Mr Abdukarim.*

(1) OJ C 245, 27.7.2015.

Judgment of the General Court of 11 May 2017 — KK v EASME

(Case T-376/15) (1)

(Horizon 2020 — the Framework Programme for Research and Innovation — Call for proposals in respect of the 2014-2015 work programme — Programme to support innovation within SMEs — EASME decision declaring a proposal ineligible — 'Single submission' rule — Evaluation review procedure — E-portal for filing proposals temporarily inaccessible — Error of assessment — Infringement of the procedural rules — Non-contractual liability)

(2017/C 213/37)

Language of the case: French

Parties

Applicant: KK (represented by: J.-P. Spitzer, lawyer)

Defendant: Executive Agency for Small and Medium-sized Enterprises (EASME) (represented by: A. Pallares Allueva and E. Fierro Sedano, acting as Agents, and A. Duron and D. Waelbroeck, lawyers)

Re:

Action on the basis of Article 263 TFEU seeking the annulment of the decision of EASME of 15 June 2015 rejecting the proposal submitted by the applicant in response to the Call for proposals and related activities under the 2014-15 work programmes under Horizon 2020 — the Framework Programme for Research and Innovation (2014-20) and under the Research and Training Programme of the European Atomic Energy Community (2014-18) complementing Horizon 2020 (OJ 2013 C 361, p. 9) and, in addition, seeking compensation for the loss which the applicant allegedly suffered as a result of that rejection.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders KK to pay the costs.*

(1) OJ C 243, 4.7.2016.

Judgment of the General Court of 16 May 2017 — Metronia v EUIPO — Zitro IP (TRIPLE O NADA)

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

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

(2017/C 213/38)

Language of the case: Spanish

Parties

Applicant: Metronia, SA (Madrid, Spain) (represented by: A. Vela Ballesteros, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the Court: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 15 February 2016 (Case R 2605/2014-4) concerning opposition proceedings between Zitro IP and Metronia.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Metronia, SA to pay the costs.*

([1]) OJ C 211, 13.6.2016.

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-71/16 P) ([1])

(Appeal — Civil service — EIB staff — Reports procedure — Career development report — 2007 appraisal procedure — Errors of law — Appeal manifestly unfounded)

(2017/C 213/39)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented initially by G. Nuvoli and F. Martin, and subsequently by G. Nuvoli and G. Faedo, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (sitting as a single judge) of 18 December 2015, De Nicola v EIB (F 82/12, EU:F:2015:166), seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and shall pay those incurred by the European Investment Bank (EIB) in the present proceedings.*

(1) OJ C 118, 4.4.2016.

Order of the General Court of 3 May 2017 — De Nicola v EIB

(Case T-73/16 P) (1)

(Appeal — Civil service — EIB staff — Psychological harassment — Non-contractual liability — Errors of law — Appeal manifestly unfounded)

(2017/C 213/40)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented initially by G. Nuvoli and T. Gilliams, and subsequently by G. Nuvoli and G. Faedo, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (sitting as a single judge) of 18 December 2015, *De Nicola* v *EIB* (F-37/12, EU:F:2015:162), seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Carlo De Nicola shall bear his own costs and shall pay those incurred by the European Investment Bank (EIB) in the present proceedings.*

(1) OJ C 118, 4.4.2016.

Action brought on 20 February 2017 — Computer Market v EUIPO (COMPUTER MARKET)

(Case T-111/17)

(2017/C 213/41)

Language of the case: English

Parties

Applicant: Computer Market (Sofia, Bulgaria) (represented by: B. Dimitrova, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements 'COMPUTER MARKET' — Application for registration No 14 688 477

Contested decision: Decision of the Second Board of Appeal of EUIPO of 13 December 2017 in Case R 1778/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

— Infringement of Article 60(1) of Regulation No 207/2009.

Action brought on 6 April 2017 — Amplexor Luxembourg v Commission

(Case T-211/17)

(2017/C 213/42)

Language of the case: French

Parties

Applicant: Amplexor Luxembourg Sàrl (Bertrange, Luxemburg) (represented by J.-F. Steichen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— accept the present application as formally correct;

— annul the decision of the Publications Office of the European Union of 13 February 2017 as to its substance;

— accordingly, cancel the call for tenders No 10651;

— order the defendant to pay all the costs;

— reserve for the applicant all other rights, pleas and actions.

Pleas in law and main arguments

This action seeks the annulment of the decision of the Publications Office of the European Union of 13 February 2017 in so far as it places the applicant in second position in the call for tenders No AO 10651 — Processing of notices for publication in the Supplement to the Official Journal of the European Union (OJ S) (OJ 2016/S 143-258115).

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

1. The first plea in law alleges infringement of the rules and principles of EU law in so far as the Publications Office, by offering to tenderers which were not its contracting partners at the time of the submission the chance to benefit from greater funding in order to finance take-over costs, manifestly infringed the principle of equality. According to the applicant, such an approach, besides being gravely discriminatory, seriously undermines both the *raison d'être* and the foundations of public procurement procedures.

2. The second plea in law alleges misuse of power.

Action brought on 20 April 2017 — SE v Council

(Case T-231/17)

(2017/C 213/43)

Language of the case: French

Parties

Applicant: SE (represented by: N. de Montigny, lawyer)

Defendant: Council of the European Union

Form of order sought

Declare and annul,

— the decision of the Individual Entitlements Unit of 22 June 2016 refusing acknowledgement, concerning his granddaughter, of his dependent child;

— insofar as necessary, the express decision of 24 January 2017 rejecting the claim made on 19 September 2016;

in so doing,

— declare that the applicant's granddaughter is dependent upon him under the third subparagraph of Article 2(2) of Annex VII to the Staff Regulations with effect from 13 June 2016;

— grant the applicant's granddaughter the benefit of the Joint Sickness Insurance Scheme (JSIS) through the applicant with effect from 13 June 2016;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an error of law and errors of assessment and interpretation of the third subparagraph of Article 2(2) of Annex VII to the Staff Regulations of Officials committed by the Council by adopting the contested decisions.

2. Second plea in law, alleging infringement of the principle of sound administration.

3. Third plea in law, alleging infringement of Article 24 of the Charter of Fundamental Rights.

Action brought on 20 April 2017 — Portugal v Commission

(Case T-233/17)

(2017/C 213/44)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, P. Estêvão and J. Saraiva de Almeida, acting as Agents)

Defendant: European Commission

Form of order sought

— annul Commission implementing decision C(2017) 766 of 14 January 2017, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in so far it excludes from financing the expenditure declared by Portugal under the 'POSEI — specific supply arrangements' (EUR 1 288 044,79), and 'direct payments pertaining to the 2010 marketing year' (EUR 830 326,12);

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the provision in Article 11 of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90), relating to the substantive requirements for formal communication laid down in that article.

2. Second plea in law, alleging infringement of Article 8 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009, L 30, p. 16).

3. Third plea in law, alleging infringement of Article 23 of Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union (OJ 2006, L 42, p. 1).

Action brought on 24 April 2017 — ViaSat v Commission

(Case T-245/17)

(2017/C 213/45)

Language of the case: English

Parties

Applicant: ViaSat, Inc. (Carlsbad, California, United States) (represented by: E. Righini, J. Ruiz Calzado, and A. Aresu, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible;

— declare the failure to act of the Commission, pursuant to Article 265(3) TFEU;

— in the alternative, annulling, in whole or in part, pursuant to Article 263(2) and (4) TFEU, the decision of the Commission contained in two letters sent to the applicant of 14 and 21 February 2017;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, raised in support of the action for failure to act, and alleging that the Commission failed to adopt a decision preventing a different use of the 2 GHz Band

   — The Commission has unlawfully failed to decide that the use of 2 GHz mobile satellite service spectrum on a primarily terrestrial-based network constitutes a fundamental change in the use of the 2 GHz Band that is harmonised and tendered at EU level through a Union selection procedure. The Commission should have taken responsibility and acted to adopt a decision to prevent NRAs from authorising Inmarsat to use the 2 GHz Band primarily for Air-To-Ground purposes, instead of primarily for a mobile satellite services ('MSS') satellite network in accordance with the EU's MSS decisions.

2. Second plea in law, in support of the action for failure to act, alleging that the Commission has failed to take action to prevent the fragmentation of the Internal Market

   — The Commission has a duty to exercise its powers in order to prevent the risk of fragmentation of the internal market for pan-European mobile satellite services that provide universal connectivity, which would be caused if certain national regulatory authorities ('NRAs') decide — on their own motions — to allow a specific company to use the 2 GHz Band for a new purpose. Indeed, the failure to exercise this duty in response to the applicant's request to act Letter and the requests for guidance by NRAs have increased the risk that some Member States authorise use of the 2 GHz Band for new purposes.

3. Third plea in law, raised alternatively in support of the action for annulment, alleging errors of interpretation.

— The Commission's decision contained in the above-mentioned letters of 14 and 21 February 2017 should be annulled because the Commission erred in interpreting i) the provisions defining its powers in the area of the MSS spectrum harmonisation; ii) the scope of its duty to ensure full compliance with the general principles of EU public procurement law applicable to this case; iii) its duties to prevent divergence among the decisions adopted by Member States and ensure that the Internal Market for pan-European mobile satellite services that provide universal connectivity is not fragmented, and iv) the scope of its duty of sincere cooperation to assist Member States in carrying out the tasks that flow from the Treaties.

Action brought on 2 May 2017 — Labiri v EESC

(Case T-256/17)

(2017/C 213/46)

Language of the case: French

Parties

Applicant: Vassiliki Labiri (Brussels, Belgium) (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Economic and Social Committee (EESC)

Form of order sought

Declare and rule that,

— the decision of the EESC not to perform in good faith point 3 of the amicable settlement agreement reached between the parties is annulled;

— the EESC shall pay the applicant the sum of EUR 250 000;

— the defendant shall pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 266 TFEU, insofar as the contested decision, according to which it is impossible for the defendant to execute an agreement made as part of an amicable settlement in Case F-33/15, *Labiri* v *EESC*, constitutes a failure to execute a decision of the Court of Justice of the European Union. Such an unlawful failure to execute the agreement thus reached constitutes, moreover, an infringement of the duty of care to the applicant, the duty to cooperate in good faith provided for in Article 4(3) TEU, the [principle] of performance in good faith of agreements freely entered into between parties and the principle of sound administration and the duty of assistance flowing from Article 24 of the Staff Regulations of Officials.

2. Second plea in law, alleging a misuse of powers, consisting more specifically of an abuse of process, insofar as the defendant never intended to perform in good faith the agreement reached between the parties and signed that agreement only in order to achieve the discontinuance of Case F-33/15.

Action brought on 3 May 2017 — Arbuzov v Council

(Case T-258/17)

(2017/C 213/47)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kyiv, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as it relates to Sergej Arbuzov;

— order the Council of the European Union to bear its own costs and pay those incurred by Sergej Arbuzov.

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 breach of the right to good administration

   — The applicant bases his application inter alia on the fact that the Council of the European Union did not proceed with proper care when adopting Decision (CFSP) 2017/381 of 3 March 2017, since it did not, before adopting the contested decision, address the applicant's arguments and the evidence presented by him which supported his case, and proceeded essentially on the basis of a brief summary by the Ukraine Chief Public Prosecutor's office without requiring any additional information on the progress of the investigation in Ukraine.

2. Second plea in law, alleging breach of the applicant's right to property

   — The applicant submits in this respect that the restrictions adopted with respect to him are disproportionate and unnecessary and breach the guarantees of international law protection of his right to property.

Action brought on 8 May 2017 — Ogrodnik v EUIPO — Aviario Tropical (Tropical)

(Case T-276/17)

(2017/C 213/48)

Language in which the application was lodged: English

Parties

Applicant: Tadeusz Ogrodnik (Chorzów, Poland) (represented by: A. von Mühlendahl, H. Hartwig, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Aviario Tropical, SA (Loures, Portugal)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'Tropical' — EU trade mark No 3 435 773

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 February 2017 in Case R 2125/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— dismiss the appeal brought by Aviário Tropical, SA, against the decision of the Defendant's Cancellation Division of 15 July 2013 in Case 6029 C;

— order EUIPO and Aviário Tropical, SA, if it should intervene in these proceedings, to pay the costs.

Plea in law

— Infringement of article 53(1)(a) of Regulation No 207/2009 in conjunction with Article 8(1)(b) of Regulation No 207/2009.

Action brought on 10 may 2017 — Bank of New York Mellon v EUIPO — Nixen Partners (NEXEN)

(Case T-278/17)

(2017/C 213/49)

Language in which the application was lodged: English

Parties

Applicant: The Bank of New York Mellon Corp. (New York, New York, United States) (represented by: A. Klett and K. Schlüter, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Nixen Partners (Paris, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'NEXEN' — Application for registration No 13 374 152

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 23 February 2017 in Case R 1570/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision of February 23, 2017 in case R 1570/2016-2 and reject the opposition;

— order EUIPO to bear the costs of the proceedings as well as of the proceeding in front of the Board of Appeal and at the Opposition Division, including all necessary expenses of the Applicant in these proceedings.

Pleas in law

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

Action brought on 11 May 2017 — Hermann Bock v EUIPO (Push and Ready)

(Case T-279/17)

(2017/C 213/50)

Language of the case: German

Parties

Applicant: Hermann Bock GmbH (Verl, Germany) (represented by: S. Maaßen and V. Schoene, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements 'Push and Ready' — Application for registration No 14 758 205

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 23 January 2017 in Case R 1279/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, which it received on 1 March 2017, by which the Board of Appeal confirmed that figurative mark No 014758205 was not eligible for registration, and remit the case back to EUIPO for re-examination.

Plea in law

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

Action brought on 9 May 2017 — GE.CO.P. v Commission

(Case T-280/17)

(2017/C 213/51)

Language of the case: Italian

Parties

Applicant: GE.CO.P. Generale Costruzioni e Progettazioni SpA (Rome, Italy) (represented by: G. Naticchioni, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should, after declaring unlawful the adoption by the European Commission — Office for Infrastructure and Logistics, Luxembourg — of the decision of 7 March 2017 by which the applicant, GE.CO.P. SpA, was excluded for a period of two years from European tendering procedures and the measure was published, annul that decision and all of the acts which stem from it or are conditional upon it, including those of which the applicant is unaware, and order the Commission to pay the costs relating to the present proceedings.

Pleas in law and main arguments

The contested measure concerns the termination by the Commission of its own motion, on 5 August 2015, of the public works contract No 09bis/2012/OIL — Lot 1 concerning renovation works on two buildings, referred to as the 'Foyer européen' located in Luxembourg, awarded to GE.CO.P.

In support of the action, the applicant alleges infringement of Article 8 of Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ 2015 L 286, p. 1), as well as infringement of Article 41 of the Charter of Fundamental Rights of the European Union.

The applicant claims in this regard that the contested decision was not preceded by a proper adversarial procedure. The applicant claims that it was not informed of the commencement of the exclusion procedure and was therefore not in a position to defend itself in the context of the procedure and put forward arguments in its favour before the adjudicating body.

Had the applicant been in a position to defend itself, it would have put forward arguments in its defence which would most likely have resulted in a change in the adjudicating body's opinion on the matter and a different outcome to the overall proceedings, more favourable to GE.CO.P.

Action brought on 8 May 2017 — Swemac Innovation v EUIPO — Swemac Medical Appliances (SWEMAC)

(Case T-287/17)

(2017/C 213/52)

Language in which the application was lodged: English

Parties

Applicant: Swemac Innovation AB (Linköping, Sweden) (represented by: G. Nygren, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Swemac Medical Appliances AB (Linköping, Sweden)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'SWEMAC' — EU trade mark No 6 326 177

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 24 February 2017 in Case R 3000/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and reinstate the EUTM number 006326177 to full validity, including goods and services in classes 10: 'Surgical and medical apparatus and instruments' and 42 'Research and development services relating to surgical and medical apparatus and instruments';

— order the other party to pay the costs of the Applicant before EUIPO and the Boards of Appeal, EUR 1 000; and

— order EUIPO and the other party to pay the costs of the Applicant before the General Court.

Pleas in law

— Infringement of Article 53(1)(c) of Regulation No 207/2009;

— Infringement of Article 8 of Regulation No 207/2009.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-197/17

(Official Journal of the European Union C 151 of 15 May 2017)

(2017/C 213/53)

The Official Journal notice concerning Case T-197/17, *Abel and Others* v *Commission* should read as follows:

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 1 428 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 L 171, 2007, 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.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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