Official Journal of the European Union

C 249

English edition

Information and Notices

Volume 60

31 July 2017

Contents

EN

For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2017/C 249/01)

Last publication

OJ C 239, 24.7.2017

Past publications

OJ C 231, 17.7.2017

OJ C 221, 10.7.2017

OJ C 213, 3.7.2017

OJ C 202, 26.6.2017

OJ C 195, 19.6.2017

OJ C 178, 6.6.2017

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 30 May 2017 — Safa Nicu Sepahan Co. v Council of the European Union

(Case C-45/15 P) ([1])

(Appeal — Action for damages — Common foreign and security policy (CFSP) — Restrictive measures against the Islamic Republic of Iran — List of persons and entities subject to the freezing of funds and economic resources — Material damage — Non-material damage — Error of assessment in respect of the amount of compensation — None — Cross-appeal — Conditions governing the incurring of the European Union's non-contractual liability — Obligation to substantiate the restrictive measures — Sufficiently serious breach)

(2017/C 249/02)

Language of the case: English

Parties

Appellant: Safa Nicu Sepahan Co. (represented by: A. Bahrami, avocat)

Other party to the proceedings: Council of the European Union (represented by: R. Liudvinaviciute-Cordeiro, M. Bishop and I. Gurov, acting as Agents)

Intervener in support of the Council of the European Union: United Kingdom of Great Britain and Northern Ireland (represented by: M. Gray, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeals brought by Safa Nicu Sepahan Co. and the Council of the European Union;*

2. *Orders Safa Nicu Sepahan Co. and the Council of the European Union to bear their own costs;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 118, 13.4.2015.

Judgment of the Court (Third Chamber) of 8 June 2017 (request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil — Slovenia) — Medisanus d. o.o. v Splošna Bolnišnica Murska Sobota

(Case C-296/15) ([1])

(Reference for a preliminary ruling — Public procurement — Medicinal products for human use — Directive 2004/18/EC — Article 2 and Article 23(2) and (8) — Articles 34 and 36 TFEU — Public contract for supplying a hospital — National legislation requiring that hospitals are to be supplied as a matter of priority with medicinal products obtained from national plasma — Principle of equal treatment)

(2017/C 249/03)

Language of the case: Slovenian

Referring court

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil

Parties to the main proceedings

Applicant: Medisanus d.o.o.

Defendant: Splošna Bolnišnica Murska Sobota

Operative part of the judgment

Article 2 and Article 23(2) and (8) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, and Article 34 TFEU read in conjunction with Article 36 TFEU, must be interpreted as precluding a clause in the tender specifications for a public contract which, in accordance with the law of the Member State to which the contracting authority belongs, requires medicinal products derived from plasma, which are the subject matter of the public procurement at issue, to be obtained from plasma collected in that Member State.

([1]) OJ C 346, 19.10.2015.

Judgment of the Court (Fifth Chamber) of 31 May 2017 (request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles — Belgium) — Criminal proceedings against U

(Case C-420/15) ([1])

(Reference for a preliminary ruling — Article 45 TFEU — Freedom of movement for workers — Obligation to register a vehicle belonging to a person resident in Belgium and intended to be used in Italy)

(2017/C 249/04)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Party in the main, criminal proceedings

U

Operative part of the judgment

Article 45 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the case in the main proceedings, in accordance with which a worker residing there is required to register in that Member State a motor vehicle which he owns, but which is already registered in another Member State and is intended essentially for use in that latter State.

([1]) OJ C 346, 19.10.2015.

Judgment of the Court (First Chamber) of 1 June 2017 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — proceedings brought by Gert Folk

(Case C-529/15) ([1])

(Reference for a preliminary ruling — Environmental liability — Directive 2004/35/EC — Article 17 — Temporal scope of application — Operation of a hydroelectric power plant put into operation before the period for transposing that directive had expired — Article 2(1)(b) — Concept of 'environmental damage' — National law excluding all damage covered by an authorisation — Article 12(1) — Access to justice in environmental matters — Locus standi — Directive 2000/60/EC — Article 4(7) — Direct effect)

(2017/C 249/05)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Gert Folk

Operative part of the judgment

1. *Article 17 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009, must be interpreted as meaning that, subject to investigations which are for the national court, that directive applies ratione temporis to the environmental damage that occurred after 30 April 2007 but which was caused by the operation of a facility authorised in accordance with the law governing matters relating to water and put into operation before that date;*

2. *Directive 2004/35, as amended by Directive 2009/31, and in particular Article 2(1)(b) thereof, must be interpreted as precluding a provision of national law which excludes, generally and automatically, that damage which has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the;*

3. *In the event that an authorisation has been granted pursuant to national provisions without an examination whether the conditions laid down in Article 4(7)(a) to (d) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy have been complied with, a national court is not required to itself verify whether the conditions laid down in that article are satisfied in order to determine whether environmental damage within the meaning of Article 2(1)(b) of Directive 2004/35, as amended by Directive 2009/31, has arisen;*

4. *Article 12 and 13 of Directive 2004/35, as amended by Directive 2009/31, must be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that directive.*

([1]) OJ C 406, 7.12.2015.

Judgment of the Court (Second Chamber) of 8 June 2017 (request for a preliminary ruling from the Amtsgericht Wuppertal — Germany) — proceedings brought by Mircea Florian Freitag

(Case C-541/15) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Freedom to move and reside in the Member States — Individual having the nationality of both the Member State in which he resides and the Member State in which he was born — Change of surname in the Member State of birth not carried out during a period of habitual residence — Name corresponding to birth name — Application for the entry of that name in the civil register of the Member State of residence — Rejection of that application — Reason — Name not acquired during a period of habitual residence — Existence of other procedures in national law to have that name recognised)

(2017/C 249/06)

Language of the case: German

Referring court

Amtsgericht Wuppertal

Parties to the main proceedings

Mircea Florian Freitag

Operative part of the judgment

Article 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, unless there are other provisions of national law which effectively allow the recognition of that name.

([1]) OJ C 48, 8.2.2016.

Judgment of the Court (Fifth Chamber) of 1 June 2017 (request for a preliminary ruling from the Hessisches Finanzgericht — Germany) — Wallenborn Transports SA v Hauptzollamt Gießen

(Case C-571/15) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — External transit procedure — Goods transported through a free port located in a Member State — Legislation of that Member State excluding free ports from its national fiscal territory — Removal from customs supervision — Incurrence of a customs debt and chargeability of VAT)

(2017/C 249/07)

Language of the case: German

Referring court

Hessisches Finanzgericht

Parties to the main proceedings

Applicant: Wallenborn Transports SA

Defendant: Hauptzollamt Gießen

Operative part of the judgment

1. *The first paragraph of Article 61 and the first subparagraph of Article 71(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2007/75/EC of 20 December 2007, must be interpreted as meaning that the reference to 'one of the arrangements or situations referred to' in Article 156 of that directive includes free zones.*

2. *Article 71(1) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that the removal of goods from customs supervision in a free zone does not give rise to the chargeable event or make import value added tax chargeable if those goods did not enter the economic network of the European Union, this being a matter for the referring court to determine.*

3. *The second subparagraph of Article 71(1) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that, when a customs debt arises by virtue of Article 203 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, and no value added tax debt is consequently incurred, on account of the circumstances of the dispute in the main proceedings, Article 204 of the latter regulation may not be applied for the sole purpose of providing a basis for charging value added tax.*

([1]) OJ C 90, 7.3.2016.

Judgment of the Court (Fifth Chamber) of 8 June 2017 (request for a preliminary ruling from the Rechtbank van eerste aanleg, West-Vlaanderen, afdeling Brugge — Belgium) — Maria Eugenia Van der Weegen, Miguel Juan Van der Weegen, Anna Pot, acting as successors in title to Johannes Van der Weegen, deceased, Anna Pot v Belgische Staat

(Case C-580/15) ([1])

(Reference for a preliminary ruling — Article 56 TFEU — Article 36 of the Agreement on the European Economic Area — Tax legislation — Income tax — Tax exemption reserved to interest payments by banks complying with certain statutory conditions — Indirect discrimination — Banks established in Belgium and banks established in another Member State)

(2017/C 249/08)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg, West-Vlaanderen, afdeling Brugge

Parties to the main proceedings

Applicants: Maria Eugenia Van der Weegen, Miguel Juan Van der Weegen, Anna Pot, acting as successors in title to Johannes Van der Weegen, deceased, Anna Pot

Defendant: Belgische Staat

Operative part of the judgment

Article 56 TFEU and Article 36 of the Agreement on the European Economic Area of 2 May 1992 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for a national tax exemption system, to the extent that that system, although applicable without distinction to income from savings deposits held with banking service providers established in Belgium or in another Member State of the European Economic Area, imposes conditions for access to the Belgian banking market on service providers established in other Member States, this being a matter for the referring court to verify.

([1]) OJ C 38, 1.2.2016.

Judgment of the Court (Fifth Chamber) of 8 June 2017 — Schniga GmbH v Community Plant Variety Office (CPVO), Brookfield New Zealand Ltd, Elaris SNC

(Case C-625/15 P) ([1])

(Appeal — Community plant variety rights — Application for a Community plant variety right — Apple variety 'Gala Schnitzer' — Technical examination — Test guidelines issued by the Administrative Council of the Community Plant Variety Office (CPVO) — Regulation (EC) No 1239/95 — Article 23(1) — Powers of the President of the CPVO — Addition of a distinctive characteristic on completion of the technical examination — Stability of the characteristic during two growing cycles)

(2017/C 249/09)

Language of the case: English

Parties

Appellant: Schniga GmbH (represented by: R. Kunze and G. Würtenberger, Rechtsanwälte)

Other parties to the proceedings: Community Plant Variety Office (CPVO) (represented by: M. Ekvad and F. Mattina, acting as Agents), Brookfield New Zealand Ltd, Elaris SNC (represented by: M. Eller, avvocato)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 10 September 2015, Schniga v CPVO — Brookfield New Zealand and Elaris (Gala Schnitzer) (T-91/14 and T-92/14, not published, EU:T:2015:624);*

2. *Annuls the decisions of the Board of Appeal of the Community Plant Variety Office (CPVO) of 20 September 2013 relating to the grant of a Community plant variety right for the Gala Schnitzer apple variety (Cases A 003/2007 and A 004/2007);*

3. *Orders the Community Plant Variety Office to bear its own costs and to pay those incurred by Schniga GmbH;*

4. *Orders Brookfield New Zealand Ltd and Elaris SNC to bear their own costs.*

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Second Chamber) of 8 June 2017 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — W. F. Gözze Frottierweberei GmbH, Wolfgang Gözze v Verein Bremer Baumwollbörse

(Case C-689/15) ([1])

(Reference for a preliminary ruling — Intellectual property — EU trade mark — Regulation (EC) No 207/2009 — Articles 9 and 15 — Filing of the cotton flower sign by an association — Registration as an individual trade mark — Licences to use the mark granted to cotton textile manufacturers affiliated with the association — Application for a declaration of invalidity or revocation — Concept of 'genuine use' — Essential function of indicating origin)

(2017/C 249/10)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicants: W. F. Gözze Frottierweberei GmbH, Wolfgang Gözze

Defendant: Verein Bremer Baumwollbörse

Operative part of the judgment

1. *Article 15(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that the affixing of an individual EU trade mark, by the proprietor or with his consent, on goods as a label of quality is not a use as a trade mark that falls under the concept of 'genuine use' within the meaning of that provision. However, the affixing of that mark does constitute such genuine use if it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality. In that case, the proprietor of the mark is entitled to prevent, pursuant to Article 9(1)(b) of that regulation, the affixing by a third party of a similar sign on identical goods, if that affixing creates a likelihood of confusion on the part of the public.*

2. *Article 52(1)(a) and Article 7(1)(g) of Regulation No 207/2009 must be interpreted as meaning that an individual mark cannot be declared invalid, on the basis of a joint application of those provisions, because the proprietor of the mark fails to ensure, by carrying out periodic quality controls at its licensees, that expectations relating to the quality which the public associates with the mark are being met.*

3. *Regulation No 207/2009 must be interpreted as meaning that its provisions on collective EU trade marks may not be applied mutatis mutandis to individual EU trade marks.*

([1]) OJ C 118, 4.4.2016.

Judgment of the Court (Fifth Chamber) of 8 June 2017 (request for a preliminary ruling from the Tribunale Ordinario di Venezia — Italy) — Vinyls Italia SpA, in liquidation v Mediterranea di Navigazione SpA

(Case C-54/16) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Insolvency proceedings — Regulation (EC) No 1346/2000 — Articles 4 and 13 — Acts detrimental to all the creditors — Conditions in which the act in question may be challenged — Act subject to the law of a Member State other than the State of the opening of proceedings — Act which is not open to challenge on the basis of that law — Regulation (EC) No 593/2008 — Article 3(3) — Law chosen by the parties — Location of all the elements of the situation concerned in the State of the opening of proceedings — Effect)

(2017/C 249/11)

Language of the case: Italian

Referring court

Tribunale Ordinario di Venezia

Parties to the main proceedings

Applicant: Vinyls Italia SpA, in liquidation

Defendant: Mediterranea di Navigazione SpA

Operative part of the judgment

1. *Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that the form and the time-limit in which a person benefiting from an act that is detrimental to all the creditors must raise an objection under that article, in order to challenge an action to have that act set aside in accordance with the lex fori concursus, and the question whether that article may also be applied by the competent court of its own motion, if necessary, after the time-limit allowed to the party concerned has expired, fall within the procedural law of the Member State on whose territory the dispute is pending. That law must not, however, be less favourable than the law governing similar domestic situations (principle of equivalence) and must not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness), that being a matter for the referring court to determine;*

2. *Article 13 of Regulation No 1346/2000 must be interpreted to the effect that the party bearing the burden of proof must show that, where the lex causae makes it possible to challenge an act regarded as being detrimental, the conditions to be met in order for that challenge to be upheld, which differ from those of the lex fori concursus, have not actually been fulfilled;*

3. *Article 13 of Regulation No 1346/2000 may be validly relied upon where the parties to a contract, who have their head offices in a single Member State on whose territory all the other elements relevant to the situation in question are located, have designated the law of another Member State as the law applicable to that contract, provided that those parties did not choose that law for abusive or fraudulent ends, that being a matter for the referring court to determine.*

([1]) OJ C 156, 2.5.2016.

Judgment of the Court (First Chamber) of 31 May 2017 — Dimosia Epicheirisi Ilektrismou AE (DEI) v European Commission

(Case C-228/16 P) ([1])

(Appeal — State aid — Decision to take no further action — Refusal by the European Commission to continue to examine the applicant's complaint — Lack of aid at the end of the preliminary examination stage — Purely confirmatory decision — Legal conditions for the withdrawal of a decision to take no further action)

(2017/C 249/12)

Language of the case: Greek

Parties

Appellant: Dimosia Epicheirisi Ilektrismou AE (DEI) (represented by: E. Bourtzalas, avocat, A. Oikonomou, E. Salaka, C. Synodinos and C. Tagaras, dikigoroi, and by D. Waelbroeck, avocat,)

Other party to the proceedings: European Commission (represented by: A. Bouchagiar and É. Gippini Fournier, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 9 February 2016, DEI v Commission (T-639/14, not published, EU:T:2016:77);*

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

3. *Reserves the costs.*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Ninth Chamber) of 8 June 2017 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Sharda Europe BVBA v Administración del Estado, Syngenta Agro SA

(Case C-293/16) ([1])

(Reference for a preliminary ruling — Agriculture — Placing of plant protection products on the market — Directive 2008/69/EC — Article 3(2) — Procedure for re-evaluation, by the Member States, of authorised plant protection products — Time limit — Divergence between the different language versions)

(2017/C 249/13)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Sharda Europe BVBA

Defendants: Administración del Estado, Syngenta Agro SA

Operative part of the judgment

The first subparagraph of Article 3(2) of Commission Directive 2008/69/EC of 1 July 2008 amending Council Directive 91/414/EEC to include clofentezine, dicamba, difenoconazole, diflubenzuron, imazaquin, lenacil, oxadiazon, picloram and pyriproxyfen as active substances, must be interpreted as meaning that the date of 31 December 2008 to which it refers corresponds, for an already authorised plant protection product containing one of the active substances listed in the Annex to that directive, to the deadline by which all the active substances contained in that plant protection product, other than those listed in the Annex to Directive 2008/69, must have been included on the list in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, in order for an obligation to carry out the re-evaluation of that product, provided for in the first subparagraph of Article 3 (2), to arise.

([1]) OJ C 305, 22.8.2016.

Judgment of the Court (Eighth Chamber) of 8 June 2017 — Dextro Energy GmbH & Co. KG v European Commission

(Case C-296/16 P) ([1])

(Appeal — Consumer protection — Regulation (EC) No 1924/2006 — Health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health — Dismissal of the application to include certain claims despite the positive advice of the European Food Safety Authority (EFSA))

(2017/C 249/14)

Language of the case: German

Parties

Appellant: Dextro Energy GmbH & Co. KG (represented by: M. Hagenmeyer and T. Teufer, lawyers)

Other party to the proceedings: European Commission (represented by: S Grünheid and K. Herbout-Borczak, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Dextro Energy GmbH & Co. KG to pay the costs.*

([1]) OJ C 287, 8.8.2016.

Judgment of the Court (Ninth Chamber) of 1 June 2017 (request for a preliminary ruling from the Sąd Okręgowy w Warszawie — Poland) — Piotr Zarski v Andrzej Stadnicki

(Case C-330/16) ([1])

(Reference for a preliminary ruling — Combating late payments in commercial transactions — Directive 2011/7/EU — Commercial lease contracts of indefinite duration — Late rent payments — Contracts concluded before the period for transposing that directive had expired — National rules — Exclusion of such contracts from the temporal scope of that directive)

(2017/C 249/15)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Appellant: Piotr Zarski

Respondent: Andrzej Stadnicki

Operative part of the judgment

Article 12(4) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions must be interpreted as meaning that the Member States may exclude from the scope of that directive late payments in the performance of a contract concluded before 16 March 2013, even where those late payments occur after that date.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Fifth Chamber) of 8 June 2017 (request for a preliminary ruling from the Monomeles Protodikeio Athinon — Greece) — OL v PQ

(Case C-111/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — International child abduction — Hague Convention of 25 October 1980 — Regulation (EC) No 2201/2003 — Article 11 — Application for return — Concept of 'habitual residence' of an infant — Child born, as agreed by her parents, in a Member State other than that where they were habitually resident — Child continuing to reside for the first months of her life in the Member State of her birth — Mother's decision not to return to the Member State where the couple had been habitually resident)

(2017/C 249/16)

Language of the case: Greek

Referring court

Monomeles Protodikeio Athinon

Parties to the main proceedings

Applicant: OL

Defendant: PQ

Operative part of the judgment

Article 11(1) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in a situation, such as that in the main proceedings, where a child has been born and has lived continuously with her mother for several months, in accordance with the joint wishes of her parents, in a Member State other than that where those parents were habitually resident before her birth, the initial intention of the parents with respect to the return of the mother, together with the child, to the latter Member State cannot allow the conclusion that that child was 'habitually resident' there, within the meaning of that regulation.

Consequently, in such a situation, the refusal of the mother to return to the latter Member State together with the child cannot be considered to be a 'wrongful removal or retention' of the child, within the meaning of Article 11(1).

([1]) OJ C 144, 8.5.2017.

Order of the Court (Ninth Chamber) of 8 June 2017 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Lg Costruzioni Srl v Area — Azienda Regionale per l'edilizia abitativa

(Case C-110/16) ([1])

(Reference for a preliminary ruling — Public works contract — Directive 2004/18/EC — Article 7 — Evaluation and determination of the technical capacities of the economic operators — Article 53(2) of the Rules of Procedure of the Court — Manifest inadmissibility)

(2017/C 249/17)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Lg Costruzioni Srl

Defendant: Area — Azienda Regionale per l'Edilizia Abitativa

In the presence of: TE.SV.AM. Srl, Alvit Srl, Igit SpA, Planarch Srl, Francesco Auteri

Operative part of the order

The request for a preliminary ruling made by the Consiglio di Stato (Council of State, Italy), by decision of 19 January 2016, is manifestly inadmissible.

([1]) OJ C 175, 17.5.2016.

Order of the Court (First Chamber) of 11 May 2017 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — SC Exmitiani SRL v Direcția Generală a Finanțelor Publice Cluj

(Case C-286/16) ([1])

(Reference for a preliminary ruling — Activity of passenger road transport services — Tax — Facts prior to the accession of Romania to the European Union — Manifest lack of jurisdiction of the Court)

(2017/C 249/18)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: SC Exmitiani SRL

Defendant: Direcția Generală a Finanțelor Publice Cluj

Re:

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania).

([1]) OJ C 296, 16.8.2016.

Order of the Court (Tenth Chamber) of 7 June 2017 — Holistic Innovation Institute, SLU v European Commission

(Case C-411/16 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court — Research projects financed by the European Union — Seventh Framework programme for research and technological development (2007-2013) — Project eDIGIREGION — Decision of the European Commission to refuse the applicant's participation — Action for annulment and a declaration of liability)

(2017/C 249/19)

Language of the case: Spanish

Parties

Appellant: Holistic Innovation Institute, SLU (represented by: J.J. Marín López, abogado)

Other party to the proceedings: European Commission (represented by: R. Lyal, acting as Agent, and J. Rivas Andrés, avocat)

Operative part of the order

1. *The appeal is dismissed.*

2. *Holistic Innovation Institute, SLU shall pay the costs.*

([1]) OJ C 364, 3.10.2016.

Order of the Court (Sixth Chamber) of 4 May 2017 (request for a preliminary ruling from the Nejvyšší soud České republiky — Czech Republic) — Jitka Svobodová v Česká republika — Okresní soud v Náchodě

(Case C-653/16) ([1])

(Reference for a preliminary ruling — Factual and regulatory background to the dispute in the main proceedings — Absence of sufficient information — Manifest inadmissibility — Article 53(2) and Article 94 of the Rules of Procedure of the Court)

(2017/C 249/20)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: Jitka Svobodová

Defendant: Česká republika — Okresní soud v Náchodě

In the presence of: Česká republika — Ministerstvo spravedlnosti ČR

Re:

The application for a preliminary ruling brought by the Nejvyšší soud (Supreme Court, Czech Republic), by decision of 2 December 2016, is manifestly inadmissible.

([1]) OJ C 78, 13.3.2017.

Order of the Court (Sixth Chamber) of 11 May 2017 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Bericap Záródástechnikai Cikkeket Gyártó Bt. v Nemzetgazdasági Minisztérium

(Case C-53/17) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Aid granted by Member States — Derogations from the prohibition of aid — Aid capable of being regarded as compatible with the internal market — Regulation (EC) No 800/2008 — Definition of micro, small and medium-sized enterprises — Linked enterprises — Enterprises exercising their activities on the same market and forming part of a global group of enterprises owned by the members of one single family — Concept of 'group of natural persons acting jointly')

(2017/C 249/21)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Bericap Záródástechnikai Cikkeket Gyártó Bt.

Defendant: Nemzetgazdasági Minisztérium

Operative part of the order

Article 3(3) of Annex I to Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles [107 TFEU and 108 TFEU] (General block exemption Regulation) must be interpreted as meaning that enterprises may be regarded as 'linked', within the meaning of that provision, where it is clear from the analysis of both the legal and economic relations existing between them that they constitute, through a natural person or a group of natural persons acting jointly, a single economic unit, even though they do not formally feature any of the relationships referred to in the first subparagraph of Article 3(3) of that annex. Natural persons who work together in order to influence the commercial decisions of the enterprises concerned, with the result that those enterprises cannot be regarded as being economically independent of one another, are to be regarded as acting jointly for the purposes of the fourth subparagraph of Article 3(3) of that annex. Whether such a condition is satisfied will depend on the circumstances of the individual case and is not necessarily conditional on the existence of contractual relations between those persons or even on a finding that they intended to circumvent the definition of micro, small or medium-sized enterprises within the meaning of Annex I to Regulation No 800/2008.

([1]) OJ C 144, 8.5.2017.

Order of the Court (Sixth Chamber) of 14 June 2017 (request for a preliminary ruling from the Rayonen sad Varna — Bulgaria) — Todor Iliev v Blagovesta Ilieva

(Case C-67/17) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(2)(a) — Scope — Matters excluded — Rights in property arising out of a matrimonial relationship — Dissolution of the marriage — Liquidation of property acquired during the marriage)

(2017/C 249/22)

Language of the case: Bulgarian

Referring court

Rayonen sad Varna

Parties to the main proceedings

Applicant: Todor Iliev

Defendant: Blagovesta Ilieva

Operative part of the order

Article 1(2)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State but domiciled in another Member State — after a divorce has taken place, does not come within the scope of that regulation but comes rather within the scope of matrimonial property regimes and, consequently, within the scope of the exclusions listed in Article 1(2)(a) of that regulation.

([1]) OJ C 112, 10.4.2017.

Appeal brought on 30 December 2016 by Capella EOOD against the judgment delivered by the General Court (Eighth Chamber) on 12 May 2016 in Case T-750/14, Ivo-Kermartin GmbH v European Union Intellectual Property Office

(Case C-687/16 P)

(2017/C 249/23)

Language of the case: German

Parties

Appellant: Capella EOOD (represented by: C. Pfitzer, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office

By order of 7 June 2017, the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 18 January 2017 by For Tune sp. z o.o. against the judgment of the General Court (First Chamber) delivered on 8 November 2016 in Case T-579/15: For Tune sp. z o.o. v European Union Intellectual Property Office

(Case C-23/17 P)

(2017/C 249/24)

Language of the case: English

Parties

Appellant: For Tune sp. z o.o. (represented by: K. Popławska, adwokat)

Other party to the proceedings: European Union Intellectual Property Office

By order of 15 June 2017 the Court of Justice (Sixth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 20 March 2017 — Manuela Maturi and Others v Fondazione Teatro dell'Opera di Roma

(Case C-142/17)

(2017/C 249/25)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Manuela Maturi, Laura Di Segni, Isabella Lo Balbo, Maria Badini, Loredana Barbanera

Defendant: Fondazione Teatro dell'Opera di Roma

Question referred

Is the national legislation referred to in Article 3(7) of Decree Law No 64 of 30 April 2010, converted into Law No 100 of 29 June 2010, according to which *'for workers in the performing arts belonging to the category of dancers, the retirement age is fixed for men and women at the forty-fifth year of chronological age, with the use, for workers to whom the contributory or mixed system applies in full, of the transformation coefficient referred to in Article 1(6) of the Law of 8 August 1995, No 335, relative to the higher age. For the two years following the date of entry into force of this provision, the workers referred to in this paragraph employed on contracts of indefinite duration, who have reached or passed the retirement age, are afforded the option, renewable annually, of remaining in service. This option must be exercised through a formal application to be presented to the ENPALS within two months of the date of entry into force of this provision, or at least three months before pension rights are fully vested, without prejudice to the maximum retirement age of forty-seven years for women and fifty-two for men'*, contrary to the principle of non-discrimination on grounds of sex, as laid down in Directive 2006/54 ([1]) and in the Charter of Fundamental Rights of the European Union (Article 21)?

([1]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 20 March 2017 — Catia Passeri v Fondazione Teatro dell'Opera di Roma

(Case C-143/17)

(2017/C 249/26)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Catia Passeri

Respondent: Fondazione Teatro dell'Opera di Roma

Question referred

Are the provisions of national law in Article 3(7) of Decree Law No 64 of 30 April 2010, converted into Law No 100 of 29 June 2010, according to which *'for workers in the performing arts belonging to the category of dancers, the retirement age is fixed for men and women at the forty-fifth year of chronological age, with the use, for workers to whom the contributory or mixed system applies in full, of the transformation coefficient referred to in Article 1(6) of the Law of 8 August 1995, No 335, relative to the higher age. For the two years following the date of entry into force of this provision, the workers referred to in this paragraph employed on contracts of indefinite duration, who have reached or passed the retirement age, are afforded the option, renewable annually, of remaining in service. This option must be exercised through a formal application to be presented to the ENPALS within two months of the date of entry into force of this provision, or at least three months before pension rights are fully vested, without prejudice to the maximum retirement age of forty-seven years for women and fifty-two for men'*, contrary to the principle of non-discrimination on grounds of sex, laid down in Directive 2006/54 ([1]) and in the Charter of Fundamental Rights of the European Union (Article 21)?

([1]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 21 April 2017 — Heinrich Denker v Gemeinde Thedinghausen

(Case C-206/17)

(2017/C 249/27)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant and Appellant on a point of law: Heinrich Denker

Defendant and Respondent on a point of law: Gemeinde Thedinghausen

Other party to the proceedings: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht (The Representative of the Federal interest before the Bundesverwaltungsgericht)

Question referred

Is Article 11 of Directive 2011/92/EU ([1]) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) to be interpreted as precluding a provision of national law under which an irregularity in connection with public participation in the procedure for the preparation of a building development plan by way of municipal by-law is regarded as irrelevant if, notwithstanding notice of the complaints procedure having been given, no complaint regarding that irregularity is made to the municipality within one year of the publication of the plan, and the provisions of Directive 2011/92/EU on public participation apply to that plan?

([1]) OJ 2012 L 26, p. 1.

Request for a preliminary ruling from the Curtea de Apel Bacău (Romania) lodged on 24 April 2017 — SC Topaz Development SRL v Constantin Juncu, Raisa Juncu, née Cernica

(Case C-211/17)

(2017/C 249/28)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Appellant: SC Topaz Development SRL

Respondents: Constantin Juncu, Raisa Juncu, née Cernica

Questions referred

1. Are Article 3(2) and Article 4(1) of [Directive 93/13/EEC] ([1]) to be interpreted and applied to the effect that, in circumstances like those in the main proceedings — as submitted by the applicant at first instance, appellant on appeal ('the appellant') who referred to national case-law (judgment in cassation No 1646 of 18 April of the Înalta Curte de Casație și Justiție, Secția comercială (Supreme Court of Cassation, Commercial Division) and civil appellate judgment No 466 of the Curtea de Apel Bacău (Bacău Court of Appeal), Case 3364/110/2014), that is, that proof of the negotiated nature of all the clauses of the preliminary contract of sale concluded by the parties is evidenced by the mere fact that the respondents acting as consumers had agreed to those clauses, by signing the preliminary contract drafted in advance by the property developer and subsequently authentified by a notary — in principle, the presumption that the clauses drafted in advance by the trader were not of a negotiated nature had been rebutted?

2. Do clauses of the same nature in preliminary contracts of sale drafted in advance by property developers who are, as is the appellant, traders, and in particular points 3.2.2. and 7.1 of the preliminary contract of sale concluded by the parties to the dispute, containing a 'fourth-degree' forfeiture clause and a penalty clause exclusively in favour of the promisor-vendor, fall, in principle, within the scope of the clauses listed in paragraphs d), e), f) and i) of the Annex to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts?

3. Is Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted and applied to the effect that, if the answer to the second question referred to the Court is in the affirmative, national courts may not amend (are prohibited from amending) the clauses held to be unfair, namely, by holding that the 'fourth-degree' forfeiture clause may operate under other conditions than those expressly provided for in the preliminary contract (for example, not in the event of any late or missed payment whatsoever regardless of the amount, but only for late or missed payments of a specified amount that the court, case by case, considers to be substantial), and to reduce (limit) the amount of the penalty clause to the amount paid as a deposit by the promisee-purchaser until such time as the forfeiture clause is triggered? In such cases, may the national courts limit themselves merely to ruling that those clauses do not apply to the consumer in question?

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

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 28 April 2017 — Medtronic GmbH v Finanzamt Neuss

(Case C-227/17)

(2017/C 249/29)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Medtronic GmbH

Defendant: Finanzamt Neuss

Question referred

Is the combined nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff as amended by Commission Implementing Regulation (EU) 2015/1754 ([1]) of 6 October 2015 to be interpreted as meaning that spinal fixation systems ([2]) as described in more detail in the order fall under subheading 9021 90 90?

([1]) OJ 2015 L 285, p. 1.
([2]) Wirbelsäulenfixationssysteme der Marke CD Horizon SOLERA Spinal System.

Appeal brought on 11 May 2017 by Bank Tejarat against the judgment of the General Court (First Chamber) delivered on 14 March 2017 in Case T-346/15: Bank Tejarat v Council

(Case C-248/17 P)

(2017/C 249/30)

Language of the case: English

Parties

Appellant: Bank Tejarat (represented by: S. Zaiwalla, P. Reddy, A. Meskarian, Solicitors, M. Brindle QC, T. Otty, R. Blakeley, Barristers)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

— allow this appeal and set aside paragraphs 1 and 2 of the Court's order contained in the second judgment;

— allow the Bank's re-listing application;

— annul the contested measures insofar as they apply to the Bank; and

— order the Council to pay the costs of the appeal and the costs of the proceedings before the General Court.

Pleas in law and main arguments

The General Court erred in law in that it wrongly attributed no and/or insufficient weight to the evidence adduced by the Bank and thereby distorted the key evidence relevant to the question as to whether the allegations in the contested reasons were substantiated by the Council.

Regardless of the outcome of the first ground of appeal, the General Court erred in law in that it distorted the key evidence relevant to the question as to whether the allegations in the contested reasons were substantiated by the Council and/or erroneously placed the burden of proof of the Bank.

In respect of both the first and second grounds of appeal, had the General Court applied the correct principles and/or had it not distorted the evidence referred to above, it would have annulled the contested measures.

The General Court erred in law in holding that the Council was entitled to re-list the Bank on the basis of reasons that could and should have been advanced prior to the first judgment and that the Council's conduct did not violate Article 266 TFEU as well as the principles of res judicata and/or legal certainty and/or finality and/or effectiveness and/or the right to effective judicial protection and/or the Bank's rights under Article 47 of the EU Charter and/or under Article 6 and Article 13 ECHR and/or its rights to good administration and/or the principle of proportionality.

Request for a preliminary ruling from the Tartu Maakohus (Estonia) lodged on 19 May 2017 — Collect Inkasso OÜ, ITM Inkasso OÜ, Bigbank AS v Rain Aint, Lauri Palm, Raiko Oikimus, Egle Noor, Artjom Konjarov

(Case C-289/17)

(2017/C 249/31)

Language of the case: Estonian

Referring court

Tartu Maakohus

Parties to the main proceedings

Applicants: Collect Inkasso OÜ, ITM Inkasso OÜ, Bigbank AS

Defendants: Rain Aint, Lauri Palm, Raiko Oikimus, Egle Noor, Artjom Konjarov

Questions referred

1.1. Must Article 17(a) of Regulation (EC) No 805/2004 ([1]) of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims be interpreted as meaning that all the information listed in Article 17(a) of the Regulation must be clearly stated in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing? Specifically, is certification of a judgment as a European Enforcement Order under Articles 3(1)(b), 6(1)(c) and 17(a) of the regulation excluded if the debtor has not been notified of the address of the institution to which to respond but he has been notified of all the other information listed in Article 17(a)?

1.2. Must Article 18(1)(b) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims be interpreted as meaning that, if the proceedings in the Member State of origin do not meet the procedural requirements as set out in Articles 17 of Regulation (EC) No 805/2004, for such non-compliance to be cured all the information listed in Article 18(1)(b) must have been notified to the debtor in due time in or together with the judgment? Specifically, is the issue of a European Enforcement Order excluded if the debtor has not been notified of the address of the institution with which a challenge must be lodged but he has been notified of all the other information listed in Article 18(1)(b)?

([1]) OJ 2004 L 143, p. 15.

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 22 May 2017 — EUflight.de GmbH v TUIfly GmbH

(Case C-292/17)

(2017/C 249/32)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: EUflight.de GmbH

Defendant: TUIfly GmbH

Question referred

Is a flight cancellation still caused by an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/04 ([1]) when the circumstances (here, 'wildcat strike' or 'wave of illness') only indirectly affect the flight in question in that they prompted the air carrier to reschedule its entire flight plan and the new schedule includes the scheduled cancellation of that specific flight? Can an air carrier avoid liability under Article 5(3) of Regulation (EC) No 261/04 where the flight in question, had it not been rescheduled, could have been operated because the crew planned for that flight would have been available if it had not been assigned to other flights through rescheduling?

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

Appeal brought on 6 June 2017 by the Hellenic Republic against the judgment of the General Court (Eighth Chamber) delivered on 30 March 2017 in Case T-112/15, *Hellenic Republic* v *European Commission*

(Case C-341/17 P)

(2017/C 249/33)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: G. Kanellopoulos, A. Vasilopoulou and E. Leftheriotou)

Other party to proceedings: European Commission

Re:

The appellant asks the Court to uphold its claims that the judgment of the General Court of the European Union of 30 March 2017 in Case T-112/15 should be set aside in so far as that judgment dismissed its action, to uphold the action brought on 2 March 2015 by the Hellenic Republic, to annul the decision of the European Commission 2014/950/EU of 19 December 2014 in so far as that decision excludes from European Union financing expenditure incurred by the Hellenic Republic in respect of area aid for the claim year 2008 and which corresponds to: (a) 10 % of the whole amount of expenditure incurred for pasture-related aid, (b) 5 % of the whole amount of expenditure incurred for additional coupled aid and (c) 5 % of the whole amount of the expenditure incurred in respect of rural development, and to order the Commission to pay the costs.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on 6 grounds:

A. With respect to that part of the judgment under appeal which is concerned with the first plea in law relating to the 10 % financial correction in relation to area aid for pastures (paragraphs 23-106 of the judgment under appeal) three grounds of appeal are relied on.

   The first ground of appeal is based on the misinterpretation and misapplication of the provision of Article 2 of Commission Regulation (EC) No 796/2004 of 21 April 2004 on the definition of pasture, on the misinterpretation and misapplication of the provisions of Article 296 TFEU and on the insufficient and erroneous statement of reasons in the judgment under appeal.

   The second ground of appeal is based on the misinterpretation and misapplication of the provisions of Article 296 TFEU, and an insufficient statement of reasons, with respect to the ruling in the judgment under appeal, whereby the claims of the Hellenic Republic in relation to the lawfulness of the statement of reasons in the Commission decision were rejected.

   Further, by means of the third ground of appeal it is claimed that the judgment under appeal infringed the principle of proportionality in conjunction with misinterpretation and misapplication of the provisions of Article 296 TFEU and an insufficient statement of reasons.

B. With respect to that part of the judgment under appeal which concerns the second plea in law of the action in relation to the 5 % financial correction in the sector of additional coupled area aid (paragraphs 107-137 of the judgment under appeal), two grounds of appeal are relied on. The first (the fourth ground of appeal) is based on the misinterpretation and misapplication of Article 31 of Regulation 1290/2005 and of Article 11 of Regulation 885/2006, and the erroneous, insufficient and contradictory statement of reasons in the judgment under appeal, while, by the second of the two, it is claimed that the relevant ruling of the judgment under appeal depends on a misapplication of the principle of proportionality in conjunction with the misinterpretation and misapplication of the provisions of Article 296 TFEU and an insufficient and contradictory statement of reasons.

C. Last, with respect to that part of the judgment under appeal which concerns the third plea in law of the action in relation to the 5 % financial correction in the sector of rural development (paragraphs 138-168 of the judgment under appeal) it is claimed (the sixth ground of appeal) that the judgment under appeal, in so far as the claims of the Hellenic Republic were partly dismissed, is marked by a complete absence of reasons.

GENERAL COURT

Judgment of the General Court of 13 June 2017 — Ball Beverage Packaging Europe v EUIPO — Crown Hellas Can (Cans)

(Case T-9/15) ([1])

(Community design — Invalidity proceedings — Registered Community design representing three cans — Earlier design — Ground for invalidity — Individual character — Different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002 — Group of articles constituting a single unit — Scope of the description of the registered Community design — Obligation to state reasons — Replacement of a party to the proceedings)

(2017/C 249/34)

Language of the case: German

Parties

Applicant: Ball Beverage Packaging Europe Ltd (Luton, United Kingdom), authorised to replace Ball Europe GmbH (represented by: A. Renck, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Crown Hellas Can SA (Athens, Greece) (represented by: N. Coulson and J. Koepp, Solicitors)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 8 September 2014 (Case R 1408/2012-3), relating to invalidity proceedings between Crown Hellas Can and Ball Europe.

Operative part of the judgment

The Court:

1. *Grants Ball Beverage Packaging Europe Ltd leave to substitute itself for Ball Europe GmbH as applicant.*

2. *Dismisses the action.*

3. *Orders Ball Beverage Packaging Europe to pay the costs, including the costs necessarily incurred by Crown Hellas Can SA for the purposes of the proceedings before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 89, 16.3.2015.

Judgment of the General Court of 15 June 2017 — Kiselev v Council

(Case T-262/15) ([1])

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on entry into the territories of the Member States — Natural person actively supporting or implementing actions undermining or threatening Ukraine — Obligation to state reasons — Manifest error of assessment — Freedom of expression — Proportionality — Rights of defence)

(2017/C 249/35)

Language of the case: English

Parties

Applicant: Dmitrii Konstantinovich Kiselev (Korolev, Russia) (represented by: J. Linneker, Solicitor, T. Otty, Barrister, and B. Kennelly QC)

Defendant: Council of the European Union (represented by: V. Piessevaux and J.-P. Hix, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking the annulment of (i) Council Decision (CFSP) 2015/432 of 13 March 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 47) and Council Implementing Regulation (EU) 2015/427 of 13 March 2015 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 1), (ii) Council Decision (CFSP) 2015/1524 of 14 September 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 157) and Council Implementing Regulation (EU) 2015/1514 of 14 September 2015 implementing Regulation No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 30), and (iii) Council Decision (CFSP) 2016/359 of 10 March 2016 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 37) and Council Implementing Regulation (EU) 2016/353 of 10 March 2016 implementing Regulation No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 1), in so far as those measures apply to the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Dmitrii Konstantinovich Kiselev to pay the costs.*

([1]) OJ C 294, 7.9.2015.

Judgment of the General Court of 15 June 2017 — Fakro v EUIPO — Saint Gobain Cristalería (climaVera)

(Case T-457/15) ([1])

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

(2017/C 249/36)

Language of the case: English

Parties

Applicant: Fakro sp. z o.o. (Nowy Sącz, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Saint Gobain Cristalería, SL (Madrid, Spain) (represented by E. Bayo de Gispert, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 12 May 2015 (Case R 2095/2014-2) relating to opposition proceedings between Saint Gobain Cristalería and Fakro.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Fakro sp. z o.o. to pay the costs.*

(1) OJ C 328, 5.10.2015.

Judgment of the General Court of 14 June 2017 — Aydin v EUIPO — Kaporal Groupe (ROYAL & CAPORAL)

(Case T-95/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark ROYAL & CAPORAL — Earlier EU word mark KAPORAL — Relative ground for refusal — Likelihood of confusion — Article 8 (1)(b) of Regulation (EC) No 207/2009)

(2017/C 249/37)

Language of the case: French

Parties

Applicant: Savas Aydin (Pantin, France) (represented by: F. Watrin, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf and S. Pétrequin, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Kaporal Groupe (Marseilles, France) (represented by: J. André, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 December 2015 (Case R 867/2015-2) concerning opposition proceedings between Kaporal Groupe and Mr Aydin.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Mr Savas Aydin to pay the costs.*

(1) OJ C 156, 2.5.2016.

Judgment of the General Court of 8 June 2017 — Commission v IEM

(Case T-141/16) (1)

(Arbitration clause — Contract FAIR-CT98-9544 concluded under the Fourth Framework programme for research, technological development and demonstration activities (1994-1998) — Termination of the contract — Reimbursement of sums advanced — Default interest — Default procedure)

(2017/C 249/38)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Katsimerou and S. Lejeune, acting as Agents, and O. Lytra, lawyer)

Defendant: IEM — Erga — Erevnes — Meletes perivallontos kai chorotaxias AE (Athens, Greece)

Re:

Action on the basis of Article 272 TFEU seeking an order that IEM — Erga — Erevnes — Meletes perivallontos kai chorotaxias AE reimburse the advances paid by the European Commission in relation to contract FAIR-CT98-9544, together with default interest.

Operative part of the judgment

The Court:

1. *Orders IEM — Erga — Erevnes — Meletes perivallontos kai chorotaxias AE to pay the sum of EUR 75 728,33 to the European Commission, together with default interest at the rate of 3 % to run from 4 September 2010 until payment in full;*

2. *Orders IEM to pay the costs.*

(1) OJ C 191, 30.5.2016.

Judgment of the General Court of 7 June 2017 — Mediterranean Premium Spirits v EUIPO — G-Star Raw (GINRAW)

(Case T-258/16) (1)

(EU trade mark — Opposition proceedings — Application for the EU word mark GINRAW — Earlier EU word marks RAW — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Evidence submitted for the first time before the General Court — Obligation to state reasons)

(2017/C 249/39)

Language of the case: English

Parties

Applicant: Mediterranean Premium Spirits, SL (Barcelona, Spain) (represented by: J.A. Mora Granell and J. Romaní Lluch, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: G-Star Raw CV (Amsterdam, Netherlands) (represented by: L. Dijkman and J. van Manen, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 14 March 2016 (Case R 1583/2015-4), relating to opposition proceedings between G-Star Raw and Mediterranean Premium Spirits.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mediterranean Premium Spirits, SL to bear its own costs and to pay those incurred by EUIPO and G-Star Raw CV.*

(1) OJ C 251, 11.7.2016.

Judgment of the General Court of 15 June 2017 — Bay v Parliament

(Case T-302/16) ([1])

(Law governing the Institutions — Decision of the President of the Parliament imposing on a Member of the European Parliament the penalty of forfeiture of entitlement to the subsistence allowance — Article 166 of the Rules of Procedure of the Parliament — Right of access to the file — Error of fact)

(2017/C 249/40)

Language of the case: French

Parties

Applicant: Nicolas Bay (La Celle-Saint-Cloud, France) (represented by: A. Cuignache, lawyer)

Defendant: European Parliament (represented by: N. Görlitz, S. Alonso de León and S. Seyr, acting as Agents)

Re:

Action based on Article 263 TFEU and seeking annulment of the decision of the President of the Parliament of 9 March 2016 and of the decision of the Bureau of the Parliament of 11 April 2016 imposing on the applicant the penalty of forfeiture of entitlement to the subsistence allowance for a period of five days.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Nicolas Bay to pay the costs.*

([1]) OJ C 279, 1.8.2016.

Judgment of the General Court of 8 June 2017 — Bundesverband Deutsche Tafel v EUIPO — Tiertafel Deutschland (Tafel)

(Case T-326/16) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Tafel — Enforcement by EUIPO of a judgment setting aside a decision of one of its Boards of Appeal — Absolute ground for refusal — Article 52(1)(a) and Article 7(1)(c) of Regulation (EC) No 207/2009 — Descriptive character — Article 65(6) of Regulation No 207/2009 — Decision taken following the annulment by the General Court of an earlier decision)

(2017/C 249/41)

Language of the case: German

Parties

Applicant: Bundesverband Deutsche Tafel eV (Berlin, Germany) (represented by: T. Koerl, E. Celenk and S. Vollmer, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Tiertafel Deutschland eV (Rathenow, Germany) (represented by: M. Nitschke, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 4 April 2016 (Case R 248/2016-4), relating to invalidity proceedings between Tiertafel Deutschland and Bundesverband Deutsche Tafel.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bundesverband Deutsche Tafel eV to pay the costs.*

(1) OJ C 287, 8.8.2016.

Judgment of the General Court of 14 June 2017 — LG Electronics v EUIPO (Second Display)

(Case T-659/16) (1)

(EU trade mark — Application for the EU word mark Second Display — Absolute grounds for refusal — Descriptiveness — No distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 249/42)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: T. de Haan and P. Péters, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO dated 10 June 2016 (Case R 106/2016-1) concerning an application for registration of the word sign Second Display as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LG Electronics, Inc. to pay the costs.*

(1) OJ C 402, 31.10.2016.

Order of the President of the General Court of 30 May 2017 — Enrico Colombo and Corinti Giacomo v Commission

(Case T-690/16 R)

(Interim measures — Public procurement — Application for interim measures — No urgency)

(2017/C 249/43)

Language of the case: Italian

Parties

Applicants: Enrico Colombo SpA (Sesto Calende, Italy) and Corinti Giacomo (Ispra, Italy) (represented by: R. Colombo and G. Turri, lawyers)

Defendants: European Commission (represented by: P. Rosa Plaza, S. Delaude and L. Di Paolo, acting as Agents) and Carmet Sas di Fietta Graziella & C.

Re:

Application based on Articles 278 TFEU and 279 TFEU seeking the grant of interim measures ordering, first, suspension of implementation of the Commission measures leading to the rejection of the applicants' tender in the context of the call for tenders JRC/IPR/2016/C.4/0002/OC and, secondly, in essence, suspension of the contract concluded between the Commission and the successful tenderer in respect of that call for tenders.

Operative part of the order

1. *There is no longer any need to adjudicate on the application for interim measures insofar as it is directed against Carmet Sas di Fietta Graziella & C.*

2. *The application for interim measures is dismissed as to the remainder.*

3. *The costs are reserved.*

Order of the General Court of 18 May 2017 — Verschuur v Commission

(Case T-877/16) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Document concerning the administrative procedure relating to State aid SA.38374 (2014/C ex 2014/NN) granted by the Netherlands to Starbucks — Refusal to grant access — Action manifestly lacking any foundation in law)

(2017/C 249/44)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: J. Baquero Cruz, A. Buchet and F. Clotuche-Duvieusart, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2016) 6455 final of 3 October 2016, rejecting the applicant's confirmatory application for access to documents under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Operative part of the order

1. *The action is dismissed.*

2. *Mr Steven Verschuur shall bear his own costs.*

([1]) OJ C 53, 20.2.2017

Action brought on 16 May 2017 — Fakro v Commission

(Case T-293/17)

(2017/C 249/45)

Language of the case: Polish

Parties

Applicant: Fakro sp z o.o. (Nowy Sącz, Poland) (represented by: A. Radkowiak-Macuda, legal adviser)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— find that the Commission has failed to fulfil its obligations under the TFEU and the Charter of Fundamental Rights by failing to take a position on the complaint brought before it by the applicant on 12 July 2012 concerning abuse of a dominant position by the VELUX group, notwithstanding the fact that it was formally called on to do so;

— order the Commission to pay the costs, even in the event that the case does not proceed to judgment in view of the adoption by the Commission of a decision during the judicial proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of Article 288 TFEU, read in conjunction with Articles 102 TFEU and 105 TFEU and with Article 41 of the Charter of Fundamental Rights.

The adoption, after three and a half years, of an initial, allegedly factual position in the procedure regarding the complaint lodged by the applicant does not constitute dealing with the case within a reasonable time. The Commission has not produced any evidence making it possible to determine that any action whatsoever was undertaken during the investigation procedure. Before adopting a decision, the Commission is required to carry out a thorough analysis of the matters of fact and of law put forward by the complainant. The proceedings initiated by the applicant constitute the only way in which it can safeguard its rights.

Action brought on 15 May 2017 — Optile v Commission

(Case T-309/17)

(2017/C 249/46)

Language of the case: French

Parties

Applicant: Organisation professionnelle des transports de l'Île de France (Optile) (Paris, France) (represented by: F. Thiriez and M. Dangibeaud, lawyers)

Defendant: European Commission

Form of order sought

— Principally, annul in part Article 1 of European Commission Decision SA.26763 of 2 February 2017 concerning presumed aid granted to public transport undertakings by the Île-de-France region, but only insofar as it deems the aid scheme implemented by the Île-de-France region from 1979 until 2008 constituted a new aid scheme 'unlawfully implemented';

— In the alternative, annul in part Article 1 of European Commission Decision SA.26763 of 2 February 2017 concerning presumed aid granted to public transport undertakings by the Île-de-France region in that it holds that the aid scheme was 'unlawfully implemented' between May 1994 and 25 December 2008.

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 that Commission Decision SA.26763 (ex 2012/NN) of 2 February 2017 concerning presumed aid granted to public transport undertakings by the Île-de-France region (C(2017) 439 final; 'the contested decision') held that the scheme examined constituted a new aid scheme. In that regard, the applicant puts forward the following complaints:

   — disregard of Article 1(b)(i) of Council Regulation (EU) No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9; 'Regulation No 2015/1589'), insofar as the legal basis of the scheme examined predates the Treaty of Rome;

   — insufficient reasoning in the light of Article 1(b)(v) of Regulation No 2015/1589;

— error in fact and in law as regards the date of liberalisation of the market.

2. Second plea in law, alleging that the contested decision classifies the scheme as a new aid scheme for the period of 1994 to 1998. In that context, the applicant alleges:

— infringement of the procedural rights of the parties and of the principles of legal certainty and legitimate expectations in that the Commission extended the scope of its investigation beyond the framework laid down by the opening decision;

— infringement of Article 17 of Regulation No 2015/1589, in that the Commission took the view that an application for repeal made by a private individual interrupted the limitation period.

Action brought on 1 June 2017 — Campbell v Commission

(Case T-312/17)

(2017/C 249/47)

Language of the case: English

Parties

Applicant: Liam Campbell (Dundalk, Ireland) (represented by: J. MacGuill, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 7 April 2017 refusing the applicant access to documents concerning infringement proceedings initiated against Lithuania for alleged non-implementation of Directive 2010/64/EU. ([1])

Pleas in law and main arguments

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

1. First plea in law, alleging the failure by the defendant to conduct a concrete assessment of the request for access to documents under Regulation 1049/2001, in breach of relevant case-law.

2. Second plea in law, alleging the defendant's unlawful reliance on certain general presumptions relating to the disclosure of documents, in breach of the principles identified in the relevant case-law.

3. Third plea in law, alleging the defendant's failure to process a specific and effective examination of the risk for each document, likewise in breach of relevant case-law.

4. Fourth plea in law, alleging the defendant's failure to carry out a specific and effective examination of potential partial access in breach of the case-law.

5. Fifth plea in law alleging a manifest error of assessment by the defendant regarding the existence of an overriding public interest, in breach of the principles in the case-law.

([1]) Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010, L 280, p. 1).

Action brought on 15 May 2017 — Hebberecht v EEAS

(Case T-315/17)

(2017/C 249/48)

Language of the case: French

Parties

Applicant: Chantal Hebberecht (Addis Ababa, Ethiopia) (represented by: B. Maréchal, lawyer)

Defendant: European External Action Service (EEAS)

Form of order sought

The applicant claims that the Court should:

— primarily:

— declare the action admissible and well founded;

— annul the decision of the Appointing Authority of the European External Action Service (EEAS) (Ares (2017) 615970 — 03/02/2017) concerning the refusal of the one-year extension of Ms Hebberecht's mission as Head of the EU delegation to the Federal Democratic Republic of Ethiopia;

— order the EEAS to pay to the applicant a lump sum of EUR 250 000 as compensation for the non-material harm suffered;

— in the alternative:

— order the EEAS to pay to the applicant a lump sum of EUR 200 000 as compensation for the non-material harm suffered;

— in the further alternative:

— order the EEAS to pay to the applicant a lump sum of EUR 150 000 as compensation for the non-material harm suffered;

— in the further alternative:

— order the EEAS to pay to the applicant a lump sum of EUR 100 000 as compensation for the non-material harm suffered;

— in the further alternative:

— order the EEAS to pay to the applicant a lump sum of EUR 50 000 as compensation for the non-material harm suffered;

— Order the EEAS to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of non-discrimination, inasmuch as the applicant considers that the decision not to extend her mission as Head of Delegation of the European Union ('EU') to the Federal Democratic Republic of Ethiopia ('Ethiopia') appears to be directly related to a wave of anti-Semitic attacks and discrimination.

2. Second plea in law, alleging infringement of the principle of the interests of the service, as the applicant's extension would have been justified on the basis of several factors taking account of the interests of the service, such as:

— retaining an efficiently managed and organised delegation, with qualified, motivated staff performing their tasks under the leadership of an experienced head of delegation;

— retaining a head of delegation with 28 years of experience in diplomatic, political and economic relations and cooperation in a country which has the status of extraordinary partner of the EU, namely Ethiopia;

— contributing to safeguarding the stability of the country and preventing its fragmentation through the outbreak of a civil war;

— contributing to halting the current flow of migration and preventing its increase.

3. Third plea in law, alleging infringement of the principle of equal treatment, since other officials in a position identical to that of the applicant were extended on the basis of grounds which are themselves identical to those put forward by the applicant in her application for a one-year extension. In that context, the applicant also raises non-compliance with positive discrimination measures laid down in the Staff Regulations designed to achieve gender balance, this argument being supported by the fact that the new head of delegation appointed to replace her is a man.

4. Fourth plea in law, alleging infringement of the principle of continuity of service, which is an essential criterion for the extension decision, in that five other individuals are also leaving, including the head of cooperation and the head of the rural development and food safety division, these being two key posts for cooperation and development. The applicant therefore maintains that, in those circumstances, her one-year extension as head of delegation would ensure continuity of service and the training of incoming colleagues.

Action brought on 22 May 2017 –Aldridge and Others v Commission

(Case T-319/17)

(2017/C 249/49)

Language of the case: French

Parties

Applicants: Adam Aldridge (Schaerbeek, Belgium) and 32 other applicants (represented by: S. Rodrigues and A. Tymen, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded;

and consequently:

— annul the decision of 15 July 2016 rejecting the request for reclassification of 16 March 2016;

— annul the decision of 13 February 2017 rejecting the complaint of 14 October 2016;

— order payment of compensation in respect of the material and non-material harm incurred by the applicants;

— order the defendant to pay all costs and expenses.

Pleas in law and main arguments

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

1. First plea in law, based on a plea of illegality directed against the decision of the Director of the European Anti-Fraud Office (OLAF) of 16 October 2012 to implement only a one-off reclassification for temporary agents with contracts of indeterminate duration.

   The applicants consider that that decision is unlawful in that its adoption infringed Articles 10(3) and 15 of the Conditions of Employment of Other Servants of the European Union ('CEOS'), contrary to the hierarchy of norms and the principle of the protection of legitimate expectations. Thus, the decision of the Director of OLAF of 15 July 2016 rejecting the request for reclassification of 16 March 2016 and that of 13 February 2017 rejecting the complaint of 14 October 2016 ('the contested decisions') were, they submit, adopted on the basis of an unlawful decision and should therefore be annulled.

2. Second plea in law, alleging infringement of the principle of sound administration, principally in that the entry into force of the new Staff Regulations of Officials of the European Union of 2014 and the provisions restricting career development prospects beyond grades AD 12 and AST 9 are not a valid reason to exclude those temporary agents from the organisation of reclassification procedures.

3. Third plea in law, alleging infringement of the principle of equal treatment, inasmuch as the contested decisions are contrary to a Commission decision, addressed to the European Union agencies, providing for the participation of temporary agents in reclassification procedures. Thus, temporary agents of the Commission's Joint Research Centre ('JRC') having contracts of indeterminate duration benefit from a system of annual reclassification, which the applicants claim constitutes an unjustified difference in treatment.

4. Fourth plea in law, alleging infringement of the principle of proportionality, in particular in that the restriction to a single reclassification during a career does not amount to a measure addressing the objective described in the decision of 16 October 2016 to meet the specific expertise needs of OLAF, but is, on the contrary, rather such as to prevent OLAF from keeping temporary agents in its employment over long periods.

Action brought on 24 May 2017 — Hautala and Others v EFSA

(Case T-329/17)

(2017/C 249/50)

Language of the case: English

Parties

Applicants: Heidi Hautala (Helsinki, Finland), Benedek Jávor (Budapest, Hungary), Michèle Rivasi (Valence, France) and Bart Staes (Antwerp, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

The applicants claim that the Court should:

— annul EFSA's confirmatory decision of 14 March 2017 with reference PAD 2017/005 CA, confirming its decision of 9 December 2016 and 7 October 2016 with reference PAD 2016/034 to refuse most of the documents requested by the applicants; and

— order EFSA to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that EFSA violated Article 6(1) of Regulation 1367/2006 ([1]) by not applying it to the requested information. The exception to disclosure for the protection of 'commercial interests of a natural or legal person, including intellectual property', laid down in Article 4(2), first indent, of Regulation 1049/2001 should have been waived by EFSA and not been applied to the requested information, based on Article 6(1) of Regulation 1367/2006.

2. Second plea in law, alleging that EFSA violated Articles 2(4) and 4(2), first indent, of Regulation 1049/2001 ([2]) and Article 41 of Regulation 178/2002 ([3]) by refusing to disclose the requested information for the protection of commercial interests of the study-owners, meanwhile not substantiating concrete harm and/or an actual risk to concrete harm, also violating Article 4(4) under d, of the Aarhus Convention, where it is provided that an exception to disclosure may only be granted for protecting the interest of 'confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest' as no concrete legitimate economic interest has been identified and/or substantiated in the contested measure.

3. Third plea in law, alleging that EFSA incorrectly applied Article 63(2) of Regulation 1107/2009 ([4]), as this provision does not apply to the requested information and/or the disclosure of the information is of overriding public interest in the sense of Article 63(2) and/or Article 16 of Regulation 1107/2009.

4. Fourth plea in law, alleging that EFSA violated Article 4(2) of Regulation 1049/2001 by not recognising that there is an overriding public interest in the disclosure of the studies and by denying the applicants substantiation of an overriding public interest in the disclosure of the studies.

5. Fifth plea in law, alleging that by omitting to weight the interest of public access to environmental information in the studies against the private interest of companies to protect their commercial interests and/or letting prevail the economic interests of the companies EFSA violated Article 4(2), first indent, of Regulation 1049/2001.

6. Sixth plea in law, alleging that as the available data do not permit an independent and complete review of EFSA's peer review on Glyphosate the applicants have an interest in the disclosure of the studies. By denying the general interest and the applicants' interest in disclosure of the requested information EFSA has violated its obligations under the Articles 2 and 4 of Regulation 1049/2001 and Article 41 of Regulation 178/2002.

([1]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 2006, p. 13)

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

([3]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 2002, p. 1)

([4]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 2009, p. 1)

Action brought on 29 May 2017 — E-Control v ACER

(Case T-332/17)

(2017/C 249/51)

Language of the case: English

Parties

Applicant: Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) (Vienna, Austria) (represented by: F. Schuhmacher, lawyer)

Defendant: Agency for the Cooperation of Energy Regulators

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Board of Appeal of the Agency for the Cooperation of Energy Regulators of 17 March 2017, Case A-001-2017 (consolidated);

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

Pleas in law and main arguments

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

1. First plea in law, alleging an error in law that the Board of Appeal found that ACER was competent to change the proposal of the transmission system.

   — The applicant puts forward that the Board of Appeal erred in law when it assumed a competence of ACER to change the proposal of the transmission system operators because Commission Regulation (EU) 2015/1222 ([1]) does not provide for such competence.

2. Second plea in law, alleging an error in law that the Board of Appeal found that ACER was competent even though it disregarded the applicant's amendment request.

   — The applicant puts forward that ACER disregarded its amendment request pursuant to Article 9(12) of Commission Regulation (EU) 2015/1222. According to the applicant, the Board of Appeal erred in law when it concluded that ACER was competent despite the fact that it disregarded its amendment request.

3. Third plea in law, alleging an error in law that the Board of Appeal found ACER was competent to introduce a bidding zone border pursuant to Article 15 of Commission Regulation (EU) 2015/1222.

   — The applicant puts forward that the Board of Appeal made a manifest error in law when it reached the conclusion that ACER was competent to change the bidding zone configuration and introduce new bidding zones pursuant to Article 15 of Commission Regulation (EU) 2015/1222. According to the applicant, ACER acted ultra vires and disregarded the legal framework and the competence of the Member States.

4. Fourth plea in law, alleging the absence of a proper justification and alleging an error in law that the Board of Appeal found that ACER has shown that structural congestion exists on the German-Austrian border.

   — The applicant puts forward that its procedural rights have not been observed, because the Board of Appeal has not addressed the arguments brought forward in the appeal but instead relied on a general statement devoid of any specific relation to the case at hand. If the Court should reach the conclusion that the Board of Appeal provided a sufficient justification, so the applicant claims, the Board of Appeal also erred in law when it –without any reference to the legal standard- accepted the conclusion of ACER based on a flawed definition of congestion.

5. Fifth plea in law, alleging the absence of a proper justification and alleging an error in law to not consider the request for evidence by the applicant.

   — The applicant puts forward that the Board of Appeal does not provide any meaningful assessment of the request and thereby violates the obligation to provide a proper justification. According to the applicant, because the Board of Appeal has to reach a reasoned conclusion whether the appeal was well-founded, it had an obligation to request information when necessary to decide the case at hand. It is the applicant's opinion that the Board of Appeal therefore erred in law when it denied its request for information.

6. Sixth plea in law, alleging the absence of a proper justification and alleging an error in law that the Board of Appeal found that the introduction of a bidding zone border was proportionate.

   — The applicant raises two distinct pleas, the absence of a proper justification as a violation of procedural rights, and an error in law in respect of the legal standard required. According to the applicant, the contested decision disregarded the fundamental principle of proportionality contained in Article 16 of Regulation (EC) No 714/2009 ([2]) which is also a fundamental principle of the TFEU.

([1]) Commission regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015, L 197, p. 24).

([2]) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 15).

Action brought on 29 May 2017 — Austrian Power Grid and Voralberger Übertragungsnetz v ACER

(Case T-333/17)

(2017/C 249/52)

Language of the case: English

Parties

Applicants: Austrian Power Grid AG (Vienna, Austria) and Voralberger Übertragungsnetz GmbH (Bregenz, Austria) (represented by: H. Kristoferitsch and S. Huber, lawyers)

Defendant: Agency for the Cooperation of Energy Regulators (ACER)

Form of order sought

The applicants claim that the Court should:

— set aside the decision of the Board of Appeal of the Agency for the Cooperation of Energy Regulators of 17 March 2017, Case A-001-2017 (consolidated) in its entirety and annul the following parts and provision of the Decision of ACER No 06/2016 of 17 November 2016 on the Electricity Transmission System Operators' proposal for the determination of the Capacity Calculation Regions:

i. Article 1 of the contested decision in conjunction with

— Annex I, Article 1, para. 1, letter c;

— the word 'also' and the text block 'for the purposes of capacity allocation on the affected bidding zone borders until the requirements described in Article 5(3) of this document are fulfilled' in Annex I, Article 2, para. 2, letter e;

ii. Article 2 of the contested decision;

iii. Annex IV;

iv. Annex V;

in eventu

requesting that the contested decision shall be annulled in its entirety and to refer the case back to the Board of Appeal;

— condemn the defendant to the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Board of Appeal erred in considering ACER competent to change the Transmission System Operators' ('TSOs') proposal.

   The applicants claim the contested decision unlawful since the Board of Appeal omitted to address that ACER was not competent to materially change the All TSOs' Proposal for Capacity Calculation Regions ('CCR').

2. Second plea in law, alleging that the Board of Appeal erred by assuming that ACER was competent to disregard E-Control's request for amendment.

   According to the applicants, the application submitted by the Austrian national regulatory authority ('NRA'), E-Control, requesting that the All TSOs CCR Draft be amended, was not dealt with in conformity with the procedure provided under Article 9(12) of the CACM Regulation ([1]). By approving this unlawful application of Article 9 CACM Regulation, so the applicants claim, the Board of Appeal committed an error in law.

3. Third plea in law, alleging that the Board of Appeal erred by assuming that ACER is competent to determine bidding zones in the course of a procedure according to Article 15 of the CACM Regulation.

   According to the applicants, all available methods of interpretation as well as the case-law and the authentic interpretation of the Commission clearly support the conclusion that the splitting of an existing bidding zone and an obligation to introduce a capacity allocation mechanism may not be based on Article 15 of the CACM Regulation. By contrast, so the applicants claim, the interpretation advocated by ACER and supported by the Board of Appeal is based on an incorrect and incomplete interpretation of the law and the facts of the case.

4. Fourth plea in law, alleging that the Board of Appeal erred in its interpretation of 'structural congestion' and in its scope of review.

According to the applicants, in the CCR decision, ACER provided an interpretation of structural congestion that is neither grounded in the CACM Regulation, nor in Regulation (EC) No. 714/2009 ([2]) in order to legitimize its assumption that the German-Austrian border is structurally congested. The applicants put forward that by de facto accepting this wrong interpretation of the applicable law, the Board of Appeal enacted a substantively unlawful decision. Moreover, so the applicants claim, by accepting ACER's assumption regarding the presence of a structural congestion at the German-Austrian interconnection, the Board of Appeal erroneously shifted the burden of proof to the applicants and infringed its duty to fully assess the facts of the matter and to state reason.

5. Fifth plea in law, alleging that the Board of Appeal erred in considering the splitting of the German-Austrian bidding zone proportional.

The applicants claim that they have clearly demonstrated that the splitting of the German-Austrian bidding zone ordered by ACER constitutes disproportionate interference with their rights. However, so the applicants claim, the Board of Appeal has entirely failed to address the arguments put forward by them in their appeals. Moreover, so the applicants claim, the Board of Appeal erred in considering the bidding zone splitting and the introduction of a capacity allocation mechanism as appropriate.

6. Sixth plea in law, alleging that the Board of Appeal erred in finding that the introduction of a German-Austrian bidding zone does not restrict the fundamental freedoms.

According to the applicants, they demonstrated that, contrary to the conclusion drawn by ACER and the Board of Appeal, the introduction of a CAM at the German-Austrian border restricts the free movement of goods enshrined in Articles 34 and 35 TFEU and the freedom to provide services (Article 56 TFEU). The applicants put forward that the Board of Appeal, in a very short and unfounded manner, rejected their arguments and stated that quantitative restrictions on bilateral energy trade does not face any reservations in the light of the fundamental freedoms. According to the applicants, the Board of Appeal insofar infringed EU primary law and its duty to state adequate reasons.

7. Seventh plea in law, alleging that the Board of Appeal erred when considering the Agency's CCR decision in compliance with the procedural rules.

The applicants put forward that they established in their appeals that the Agency's CCR decision is partially flawed for the following reasons: (i) the Agency exceeded its competence by declaring that the non-binding ACER Opinion 09/2015, issued in September 2015, has binding effect, and, as this Opinion did not form part of the consultation procedure, the applicants' procedural rights were fundamentally violated by ACER; (ii) the Agency's file for the preparation of the CCR decision lacked technical studies, analysis and in-depth assessments: either the Agency provided the applicants with significantly incomplete information and, by doing so, violated the applicants' right to full access to the case file according to Article 41 of the EU Charter of Fundamental Rights, or the Agency did not at all prepare and/or consult technical expertise and analyses in order to put its CCR-decision on a factually sound basis; (iii) the Agency did not take into account the mandatory requirements for a bidding zone modification as set out in Article 33 of the CACM Regulation; (iv) the CCR decision is based on facts that have not been sufficiently clarified and the Agency failed to make observations.

According to the applicants, despite these significant violations of statutory procedural rules by ACER, the Board of Appeal, again in a very general way, confirmed the legitimacy of the CCR decision and therefore acted unlawfully.

([1]) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015, L 197, p. 24).

([2]) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 8).

Action brought on 2 June 2017 — FLA Europe v Commission

(Case T-347/17)

(2017/C 249/53)

Language of the case: Dutch

Parties

Applicant: FLA Europe NV (Oudenaarde, Belgium) (represented by: A. Willems, S. De Knop and B. Natens, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare its application initiating proceedings admissible;

— annul Commission Implementing Regulation (EU) 2017/423 of 9 March 2017 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co., implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Article 5(1) and (2) TEU and, in the alternative, infringement of the principle of institutional balance laid down in Article 13(2) TEU.

   — The contested regulation lacks any legal basis.

   — The Commission did not have the power to adopt the contested regulation.

2. Second plea in law, alleging breach of Article 266 TFEU by reason of a failure to take the measures necessary to comply with the judgment of the Court of Justice of 4 February 2016, *C&J Clark International* (C-659/13 and C-34/14, EU:C:2016:74).

3. Third plea in law, alleging breach of Articles 1(1) and 10(1) of Regulation (EU) 2016/1036 ([1]) and infringement of the principle of legal certainty (prohibition of retroactivity) in so far as anti-dumping duties were imposed on goods that are in free circulation.

4. Fourth plea in law, alleging breach of Article 21 of Regulation (EU) 2016/1036 in so far as anti-dumping duties were imposed without a fresh assessment of the EU interest.

5. Fifth plea in law, alleging breach of Article 5(1) and (4) TEU in so far as an act was adopted which goes further than is necessary to attain the objective being pursued.

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

Action brought on 2 June 2017 — Nike European Operations Netherlands and Others v Commission

(Case T-351/17)

(2017/C 249/54)

Language of the case: English

Parties

Applicants: Nike European Operations Netherlands BV (Hilversum, Netherlands), Hugo Boss AG (Metzingen, Germany), Timberland Europe BV (Almelo, Netherlands), New Balance Athletic Shoes (UK) Ltd (Warrington, United Kingdom), Wolverine Europe BV (Amsterdam, Netherlands) and Wolverine Europe Ltd (London, United Kingdom) (represented by: E. Vermulst and J. Cornelis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Implementing Regulation (EU) 2017/423 of 9 March 2017 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017, L 64, p. 72);

— order the European Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission did not have the legal competence to adopt the contested regulation.

2. Second plea in law, alleging that the reopening of the concluded footwear proceeding and the retroactive imposition of the expired anti-dumping duty by the contested regulation: (i) lacks legal basis, is based on a manifest error in the application of Article 266 TFEU and the Basic Regulation ([1]) and infringes Article 9(4) of the Basic Regulation; (ii) is inconsistent with the principles of protection of legitimate expectations, legal certainty and non-retroactivity as far as the applicants are concerned; (iii) is based on a misapplication of Article 266 TFEU and a misuse of powers by the European Commission and infringes Article 5(4) TEU.

3. Third plea in law, alleging that the retroactive imposition of the anti-dumping duty on the applicants' suppliers preventing repayment of the applicants violates the principle of non-discrimination.

4. Fourth plea in law, alleging that the European Commission has misused its power in the assessment of the market economy and individual treatment claims and violated the principle of non-discrimination.

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

Action brought on 6 June 2017 — Genomic Health v EUIPO (ONCOTYPE DX GENOMIC PROSTATE SCORE)

(Case T-354/17)

(2017/C 249/55)

Language of the case: English

Parties

Applicant: Genomic Health, Inc. (Redwood City, California, United States) (represented by: A. Reid, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'ONCOTYPE DX GENOMIC PROSTATE SCORE' — Application for registration No 15 214 257

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 February 2017 in Case R 1682/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the Applicant's costs of and occasioned by this appeal.

Pleas in law

The Applicant submits that the Contested Decision is incorrect and constitutes an:

— Infringement of the general principles of equal treatment, good administration and legal certainty;

— Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation No 207/2009;

— Infringement of Article 7(1)(c) in conjunction with Article 7(2) of Regulation No. 207/2009.

Action brought on 7 June 2017 — Aldo Supermarkets v EUIPO — Aldi Einkauf (ALDI)

(Case T-359/17)

(2017/C 249/56)

Language in which the application was lodged: French

Parties

Applicant: Aldo Supermarkets (Varna, Bulgaria) (represented by: C. Saettel, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Aldi Einkauf GmbH & Co. OHG (Essen, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'ALDI' – Application for registration No 12 749 586

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 March 2017 in Case R 976/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Rule 19 of Regulation No 2868/95;

— Existence of contradictory grounds in that the Board of Appeal accepted, in paragraph 18 of the contested decision, that the opposition form contained a colour representation of the earlier mark, and, in paragraph 24 of the contested decision, that the applicant had produced a PDF file showing the colour representation of the mark, although those comments are incompatible with the finding in paragraphs 22 to 25 of the contested decision that, essentially, the applicant had failed to demonstrate the existence of its earlier mark by not providing a colour representation thereof;

— Infringement of the rights of the defence and of the principle of *audi alteram partem*, in that the Board of Appeal noted of its own motion the infringement of Rule 19 of the Implementing Regulation, without hearing the parties on that plea, although the principle of *audi alteram partem* requires the Boards of Appeal to hear the parties on any plea which they intend to raise of their own motion;

— Infringement of Article 42(2) of Regulation No 207/2009 and of Rule 22(3) and (4) of the Implementing Regulation.

Action brought on 2 June 2017 — Jana shoes and Others v Commission

(Case T-360/17)

(2017/C 249/57)

Language of the case: English

Parties

Applicants: Jana shoes GmbH & Co. KG (Detmold, Germany), Novi International GmbH & Co. KG (Detmold), shoe.com GmbH & Co. KG (Detmold), Wendel GmbH & Co. KG Schuhproduktionen International (Detmold) and Wortmann KG Internationale Schuhproduktionen (Detmold) (represented by: A. Willems and S. De Knop, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the application admissible;

— annul Commission Implementing Regulation (EU) 2017/423 of 9 March 2017 re-imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam and produced by Fujian Viscap Shoes Co. Ltd, Vietnam Ching Luh Shoes Co. Ltd, Vinh Thong Producing-Trading-Service Co. Ltd, Qingdao Tae Kwang Shoes Co. Ltd, Maystar Footwear Co. Ltd, Lien Phat Company Ltd, Qingdao Sewon Shoes Co. Ltd, Panyu Pegasus Footwear Co. Ltd, PanYu Leader Footwear Corporation, Panyu Hsieh Da Rubber Co. Ltd, An Loc Joint Stock Company, Qingdao Changshin Shoes Company Limited, Chang Shin Vietnam Co. Ltd, Samyang Vietnam Co. Ltd, Qingdao Samho Shoes Co. Ltd, Min Yuan, Chau Giang Company Limited, Foshan Shunde Fong Ben Footwear Industrial Co. Ltd and Dongguan Texas Shoes Limited Co. implementing the judgment of the Court of Justice in Joined Cases C-659/13 and C-34/14 (OJ 2017, L 64, p. 72);

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that without a valid legal basis, Regulation 2017/423 violates the principle of conferral under Articles (5)(1) and 5(2) TUE and, in any event, the principle of institutional balance under Article 13(2)TEU.

2. Second plea in law, alleging that by failing to take the necessary measures to comply with judgment in joined Cases C-659/13 and C-34/14, *C&J Clark International*, Regulation 2017/423 violates Article 266 TFEU.

3. Third plea in law, alleging that by imposing an anti-dumping duty on imports of Footwear 'which took place during the period of application of Council Regulation (EC) No 1472/2006 and Council Regulation (EU) 1294/2009', Regulation 2017/423 violates Article 1(1) and 10(1) of Regulation (EU) 2016/1036 ([1]), and the principle of legal certainty (non-retroactivity).

4. Fourth plea in law, alleging that by imposing an anti-dumping duty without conducting a fresh Union interest assessment, Regulation 2017/423 violates Article 21 of Regulation 2016/1036 and that in any event, it is manifestly erroneous to conclude that the imposition of the anti-dumping duty was in the Union interest.

5. Fifth plea in law, alleging that by adopting an act that exceeds what is necessary to achieve its objective; Regulation 2017/423 violates Article 5(1) and 5(4) TEU.

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

Action brought on 6 June 2017 — NCL v EUIPO (FEEL FREE)

(Case T-362/17)

(2017/C 249/58)

Language of the case: German

Parties

Applicant: NCL Corporation Ltd (Miami, Florida, United States) (represented by: J. Bühling and D. Graetsch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'FEEL FREE' — Application for registration No 15 090 533

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 March 2017 in Case R 2094/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law relied on

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

Action brought on 5 June 2017 — Bielawski v EUIPO (HOUSE OF CARS)

(Case T-364/17)

(2017/C 249/59)

Language of the case: Polish

Parties

Applicant: Marcin Bielawski (Warsaw, Poland) (represented by: M. Kondrat, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'HOUSE OF CARS' — Application for registration No 15 172 638

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 27 March 2017 in Case R 2047/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; or

— amend the contested decision by finding that there is no absolute ground for refusal in regard to the mark applied for;

— order EUIPO to pay the costs of the proceedings.

Plea in law

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

Action brought on 5 June 2017 — Poland v Commission

(Case T-366/17)

(2017/C 249/60)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 23 March 2017 (notified under document C(2017) 1904 on 24 March 2017) refusing to make a financial contribution from the European Regional Development Fund to the major project 'Starting production of a next-generation diesel engine by Volkswagen Motor Polska', forming part of the Operational Programme 'Innovative Economy' and provided with structural aid within the framework of the 'Convergence in Poland' objective;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its assessment of the project 'Starting production of a next-generation diesel engine by Volkswagen Motor Polska' by deciding that, on account of its lack of innovation, that project is not guaranteed to be consistent with the priorities of the Operational Programme 'Innovative Economy' (Priority Axis IV of that programme), and that, consequently, it does not meet the requirements of Article 41(1) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

2. Second plea in law, alleging that the Commission infringed Article 41(2) of Regulation No 1083/2006 through flagrant contravention of the project assessment deadline.

Action brought on 09 June 2017 — Linak v EUIPO — ChangZhou Kaidi Electrical (Shape of electrically operated lifting column)

(Case T-367/17)

(2017/C 249/61)

Language in which the application was lodged: English

Parties

Applicant: Linak A/S (Nordborg, Denmark) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ChangZhou Kaidi Electrical Co. Ltd (Changzhou, China)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design 'Electrically operated lifting column' — Community design No 101 159-0001

Contested decision: Decision of the Third Board of Appeal of EUIPO of 21 March 2017 in Case R 1411/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 6 of Regulation No 6/2002.

Action brought on 9 June 2017 — Linak v EUIPO — ChangZhou Kaidi Electrical (Shape of electrically operated lifting column)

(Case T-368/17)

(2017/C 249/62)

Language in which the application was lodged: English

Parties

Applicant: Linak A/S (Nordborg, Denmark) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ChangZhou Kaidi Electrical Co. Ltd (Changzhou, China)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant

Design at issue: Community design 'Electrically operated lifting column' — Community design No 101 159-0002

Contested decision: Decision of the third Board of Appeal of EUIPO of 21 March 2017 in Case R 1412/2015-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

— Infringement of Article 6 of Regulation No 6/2002.

Action brought on 13 June 2017 — Winkler v Commission

(Case T-369/17)

(2017/C 249/63)

Language of the case: German

Parties

Applicant: Bernd Winkler (Grange, Ireland) (represented by: A. Kässens, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 13 March 2017 on the applicant's complaint and order the defendant to adopt a decision on the calculation of the capital value at the time of the registration of the applicant's claim on 14 September 2011;

— in the alternative, order the defendant to pay compensation amounting to EUR 19 920,39, payable to the applicant's pension account.

Pleas in law and main arguments

In support of the action, the applicant puts forward three pleas in law:

1. First plea in law: infringement of the principle that action must be taken within a reasonable period, infringement of the principles of legal certainty and of fair procedure, and infringement of the obligations relating to information and consultation.

2. Second plea in law: infringement of the principles of equal treatment, non-discrimination and proportionality.

3. Third plea in law: failure to respect legitimate expectations.

Action brought on 12 June 2017 — KPN v Commission

(Case T-370/17)

(2017/C 249/64)

Language of the case: English

Parties

Applicant: KPN BV (Den Haag, Netherlands) (represented by: P. van Ginneken and G. Béquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision C(2016) 5165 final of the European Commission of 3 August 2016 declaring a concentration to be compatible with the internal market and the EEA agreement pursuant to Article 6(2) of Council Regulation No 139/2004 in Case M. 7978 — Vodafone/Liberty Global/Dutch JV;

— revert the case to the Commission for further examination pursuant to Article 10(5) of Council Regulation No 139/2004;

— 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 that the Commission committed a manifest error in its assessment of the market for sports content and that, as a consequence of this, the competition analysis of the Commission is unfunded.

   — The applicant puts forward that sports content is not substitutable and is essential for subscribers. According to the applicant, this makes sports content (and especially must have sports content) essential for TV providers who want to compete on (among others) the markets relating to TV services.

   — The applicant further puts forward that the Commission, by considering otherwise, made a manifest error in its assessment of the market(s) for sports contents. According to the applicant, these errors in the market definition have consequences for the further assessment of the Commission in this decision and ultimately for the conclusions of the Commission to allow the merger.

2. Second plea in law, alleging that the Commission committed a manifest error in its assessment regarding the incentive to engage in input foreclosure on the market of wholesale supply of Premium Pay TV Sports channels.

   — The applicant puts forward that before the merger, Ziggo already had the ability and incentive to foreclose must have content from competitors. According to the applicant, the Commission knew this and the merger thus permits to extend the foreclosure to new markets, such as the markets for fixed-mobile multiplay bundles.

   — The applicant equally puts forward that the Commission erroneously assessed that the consumption of content on mobile devices is minor and that therefore these markets would not be affected by the merger. Furthermore, so the applicant claims, the Commission erroneously assessed that the markets for fixed-mobile multiplay bundles are only at their early stages in the Netherlands.

   — According to the applicant, the Commission therefore erroneously came to the conclusion that the merger would have no negative effects regarding foreclosure of sports content on the markets for fixed-mobile multiplay bundles.

3. Third plea in law, alleging that the Commission did not motivate why the joint venture would not have the incentive to foreclose downstream competitors from access to must have content.

   — The applicant puts forward that the conclusions of the Commission discussed in the previous pleas were insufficiently motivated.

Action brought on 16 June 2017 — HeidelbergCement and Schwenk Zement v Commission

(Case T-380/17)

(2017/C 249/65)

Language of the case: English

Parties

Applicants: HeidelbergCement AG (Heidelberg, Germany) and Schwenk Zement KG (Ulm, Germany) (represented by: U. Denzel, C. von Köckritz, P. Pichler, M. Raible, U. Soltész, G. Wecker and H. Weiß, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul decision of the European Commission C(2017) 1650 final of 5 April 2017 declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement in Case M. 7878 — HeidelbergCement/Schwenk/Cemex Hungary/Cemex Croatia;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission was not competent to decide on the Transaction since the transaction did not have a Union dimension. The Commission erred in law and infringed Art. 1 of Council Regulation No 139/2004 ([1]) ('EUMR') by considering HeidelbergCement and Schwenk — rather than the direct acquirer Duna-Dráva Cement — as 'undertakings concerned'.

2. Second plea in law, alleging that the Commission violated Articles 2 and 8 EUMR and committed manifest errors of assessment and violated its duty to state reasons in defining the relevant geographic market.

3. Third plea in law, alleging that the Commission infringed Articles 2 (2) and (3) EUMR by prohibiting a transaction without establishing a significant impediment to effective competition in a substantial part of the internal market.

4. Fourth plea in law, alleging that the Commission committed manifest errors of assessment in the competitive assessment of the effects of the transaction.

5. Fifth plea in law, alleging that the Commission erred in law and committed manifest errors of assessment in the assessment and rejection of the proposed remedy.

6. Sixth plea in law, alleging that the Commission committed several procedural errors and thus violated essential procedural requirements, the Applicants' rights of defence and their fundamental rights, as well as the principle of good administration and its duty of care.

7. Seventh plea in law, alleging that the Commission lacked competence to prohibit the acquisition of Cemex Hungary after it had referred the Hungarian part of the transaction for review by the Hungarian competition authority pursuant to Art. 4 (4) EUMR.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004, L 24, p. 1).

Order of the General Court of 18 May 2017 — Cavankee Fishing and Others v Commission

(Case T-138/08) ([1])

(2017/C 249/66)

Language of the case: English

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

([1]) OJ C 142, 7.6.2008.

Order of the General Court of 18 May 2017 — FK (*) v Commission

(Case T-816/16 RENV) ([1])

(2017/C 249/67)

Language of the case: French

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

([1]) OJ C 319, 20.10.2012 (case initially registered before the European Union Civil Service Tribunal under Case No F-87/12).

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN