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Contents

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Court of Justice of the European Union

2017/C 269/01 Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union* 1

V *Announcements*

COURT PROCEEDINGS

Court of Justice

2017/C 269/02 Case C-22/17 P: Appeal brought on 16 January 2017 by Neonart svetlobni in reklamni napisi Krevh d.o.o. against the order of the General Court (Second Chamber) delivered on 14 November 2016 in Case T-221/16: Neonart svetlobni in reklamni napisi Krevh v EUIPO (NEONART) 2

2017/C 269/03 Case C-257/17: Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 15 May 2017 — C, A v Staatssecretaris van Veiligheid en Justitie 2

2017/C 269/04 Case C-267/17: Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 17 May 2017 — Rhenus Veniro GmbH & Co. KG v Kreis Heinsberg 3

EN

2017/C 269/05 Case C-287/17: Request for a preliminary ruling from the Okresní soud v Českých Budějovicích (Czech Republic) lodged on 19 May 2017 — Česká pojišťovna a.s. v WCZ, spol. s r.o. 3

2017/C 269/06 Case C-300/17: Request for a preliminary ruling from the Kúria (Hungary) lodged on 24 May 2017 — Hochtief AG v Budapest Főváros Önkormányzata 4

2017/C 269/07 Case C-302/17: Request for a preliminary ruling from the Krajský súd v Bratislave (Slovak Republic) lodged on 24 May 2017 — PPC Power a.s. v Finančné riaditeľstvo Slovenskej republiky, Daňový úrad pre vybrané daňové subjekty 5

2017/C 269/08 Case C-303/17: Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 24 May 2017 — Headlong Limited v Nemzeti Adó- és Vámhivatal Központi Irányítása 6

2017/C 269/09 Case C-304/17: Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 24 May 2017 — Helga Löber v Barclays Bank PLC 6

2017/C 269/10 Case C-305/17: Request for a preliminary ruling from the Okresný súd Bratislava (Slovakia) lodged on 26 May 2017 — FENS spol. s r.o. v Slovak Republic — Úrad pre reguláciu sieťových odvetví 7

2017/C 269/11 Case C-306/17: Request for a preliminary ruling from the Tatabányai Törvényszék (Hungary) lodged on 26 May 2017 — Éva Nothartová v József Boldizsár Sámson 8

2017/C 269/12 Case C-310/17: Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 29 May 2017 — Levola Hengelo BV v Smilde Foods BV 8

2017/C 269/13 Case C-315/17: Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo de Zaragoza (Spain) lodged on 29 May 2017 — Pilar Centeno Meléndez v Universidad de Zaragoza . . . 9

2017/C 269/14 Case C-320/17: Request for a preliminary ruling from the Conseil d'État (France) lodged on 29 May 2017 — Marle Participations SARL v Ministère de l'Économie et des Finances 10

2017/C 269/15 Case C-335/17: Request for a preliminary ruling from the Varhoven kasatsionen sad (Bulgaria) lodged on 6 June 2017 — Neli Valcheva v Georgios Babanarakis 10

2017/C 269/16 Case C-338/17: Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 7 June 2017 — Virginie Marie Gabriel Guigo v 'Garantirani vzemania na rabotnitsite i sluzhitelite' Fund 11

2017/C 269/17 Case C-349/17: Request for a preliminary ruling from the Tallinna Ringkonnakohus (Estonia) lodged on 13 June 2017 — Eesti Pagar AS v Ettevõtluse Arendamise Sihtasutus, Majandus- ja Kommunikatsiooniministeerium 12

2017/C 269/18 Case C-364/17: Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 13 June 2017 — 'Varna Holideis' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite 13

2017/C 269/19 Case C-377/17: Action brought on 23 June 2017 — European Commission v Federal Republic of Germany 13

General Court

2017/C 269/20 Case T-233/16: Judgment of the General Court of 27 June 2017 — Ruiz Molina v EUIPO (Appeal — Civil Service — Members of the temporary staff — Fixed-term contract with a termination clause ending the contract if the staff member's name is not included on the reserve list of the next open competition — Termination of the contract by application of the termination clause — Reclassification of a fixed-term contract as a contract of unlimited duration — Res judicata — Clause 5(1) of the Framework Agreement on fixed- term work concluded by ETUC, UNICE and CEEP — Obligation to state reasons) 15

2017/C 269/21 Case T-11/16: Order of the General Court of 7 June 2017 — De Masi v Commission (Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — No confirmatory decision — Request for access on the basis of interinstitutional cooperation under Article 230 TFEU — Documents relating to the work of the 'Code of Conduct Group (Business Taxation)' set up by the Council — Act not amenable to review — Manifest inadmissibility) 15

2017/C 269/22 Case T-137/16: Order of the General Court of 13 June 2017 — Uniwersytet Wrocławski v REA (Action for annulment — Application initiating proceedings — Formal requirements — Party not represented by a lawyer — Manifest inadmissibility) 16

2017/C 269/23 Case T-152/16: Order of the General Court of 26 June 2017 — Megasol Energie v Commission (Action for annulment — Dumping — Subsidies — Imports of crystalline silicon photovoltaic modules and key components (cells) consigned from Malaysia and Taiwan — Extension to those imports of the definitive anti-dumping duty and definitive countervailing duty imposed on imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — No interest in bringing proceedings — Inadmissibility) 17

2017/C 269/24 Case T-179/16: Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER SMOKY) (EU trade mark — Opposition proceedings — Application for EU word mark MASTER SMOKY — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure) 17

2017/C 269/25 Case T-180/16: Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER SHAPE) (EU trade mark — Opposition proceedings — Application for EU word mark MASTER SHAPE — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure) 18

2017/C 269/26 Case T-181/16: Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER PRECISE) (EU trade mark — Opposition proceedings — Application for EU word mark MASTER PRECISE — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure) 19

2017/C 269/27 Case T-182/16: Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER DUO) (EU trade mark — Opposition proceedings — Application for EU word mark MASTER DUO — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure) 19

2017/C 269/28 Case T-183/16: Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER DRAMA) (EU trade mark — Opposition proceedings — Application for EU word mark MASTER DRAMA — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure) 20

2017/C 269/29 Case T-289/16: Order of the General Court of 21 June 2017 — Inox Mare v Commission (Action for annulment — Regulation (EU, Euratom) No 883/2013 — External investigation conducted by OLAF — Report and recommendations — Measures not amenable to challenge — Inadmissible) 20

2017/C 269/30 Case T-346/16: Order of the General Court of 20 June 2017 — CSL Behring v EUIPO — Vivatrex (Vivatrex) (EU trade mark — Opposition proceedings — Application for the EU figurative mark Vivatrex — Revocation of the earlier EU trade mark — No need to adjudicate) 21

2017/C 269/31 Case T-347/16: Order of the General Court of 21 June 2017 — Inox Mare v Commission (Action for annulment — Customs Union — Commission decision finding that the repayment of import duties is not justified in a particular case — Action brought by a separate operator — No direct concern — Inadmissibility) 22

2017/C 269/32 Case T-582/16: Order of the General Court of 22 June 2017 — Vankerckhoven-Kahmann v Commission (Civil service — Officials — Career reconstruction — Refusal to promote — Inter-institutional transfer — Classification in grade — Request within the meaning of Article 90(1) of the Staff Regulations — Reasonable period — Inadmissible) 22

2017/C 269/33 Case T-657/16: Order of the General Court of 14 June 2017 — Márquez Alentà v EUIPO — Fiesta Hotels & Resorts (Representation of an ant) (EU trade mark — Application for an EU figurative mark representing an ant — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate) 23

2017/C 269/34 Case T-863/16: Order of the General Court of 29 May 2017 — Le Pen v Parliament (Action for annulment — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid — Manifest inadmissibility in part — No need to adjudicate in part) 23

2017/C 269/35 Case T-26/17 R: Order of the President of the General Court of 26 June 2017 — Jalkh v Parliament (Interim measures — Law governing the institutions — Member of the European Parliament — Privileges and immunities — Waiver of the parliamentary immunity of a Member of the European Parliament — Application for suspension of operation of a measure — No urgency) 24

2017/C 269/36 Case T-27/17 R: Order of the President of the General Court of 26 June 2017 — Jalkh v Parliament (Interim measures — Institutional law — Member of the European Parliament — Privileges and immunities — Waiver of the parliamentary immunity of a Member of the European Parliament — Application for suspension of operation — No urgency) 24

2017/C 269/37 Case T-610/16: Action brought on 16 May 2017 — PC v EASO 25

2017/C 269/38 Case T-157/17: Action brought on 15 March 2017 — Ostvesta v Commission 26

2017/C 269/39 Case T-281/17: Action brought on 10 May 2017 — European Dynamics Luxembourg and Evropaïki Dynamiki v Commission 27

2017/C 269/40 Case T-357/17: Action brought on 6 June 2017 — Aide et Action France v Commission 28

2017/C 269/41 Case T-376/17: Action brought on 14 June 2017 — Poland v Commission 30

2017/C 269/42 Case T-381/17: Action brought on 16 June 2017 — Acsen v Parliament 31

2017/C 269/43 Case T-383/17: Action brought on 20 June 2017 — Hansol Paper v Commission 31

2017/C 269/44 Case T-384/17: Action brought on 21 June 2017 — Chypre v EUIPO — M. J. Dairies (BBQLOUMI) . 33

2017/C 269/45 Case T-391/17: Action brought on 28 June 2017 — Romania v Commission 33

2017/C 269/46 Case T-401/17: Action brought on 27 June 2017 — Tengelmann Warenhandelsgesellschaft v EUIPO — C & C IP (T) 34

2017/C 269/47 Case T-713/16: Order of the General Court of 26 June 2017 — Fair deal for expats and Others v Commission 35

2017/C 269/48 Case T-826/16: Order of the General Court of 9 June 2017 — Casasnovas Bernad v Commission . . 35

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 269/01)

Last publication

OJ C 256, 7.8.2017.

Past publications

OJ C 249, 31.7.2017.

OJ C 239, 24.7.2017.

OJ C 231, 17.7.2017.

OJ C 221, 10.7.2017.

OJ C 213, 3.7.2017.

OJ C 202, 26.6.2017.

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 16 January 2017 by Neonart svetlobni in reklamni napisi Krevh d.o.o. against the order of the General Court (Second Chamber) delivered on 14 November 2016 in Case T-221/16: Neonart svetlobni in reklamni napisi Krevh v EUIPO (NEONART)

(Case C-22/17 P)

(2017/C 269/02)

Language of the case: English

Parties

Appellant: Neonart svetlobni in reklamni napisi Krevh d.o.o. (represented by: J. Marn, Non avocat)

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

By order of 11 May 2017 the Court of Justice (Seventh Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 15 May 2017 — C, A v Staatssecretaris van Veiligheid en Justitie

(Case C-257/17)

(2017/C 269/03)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: C, A

Respondent: Staatssecretaris van Veiligheid en Justitie

Questions referred

1. Having regard to Article 3(3) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, [p. 12]) and to the *Nolan* judgment (C-583/10, EU:C:2012:638), does the Court of Justice have jurisdiction to answer questions referred for a preliminary ruling by the courts of the Netherlands concerning the interpretation of certain provisions of that directive in proceedings relating to the right of residence of members of the family of sponsors who have Netherlands nationality, if that directive has been declared to be directly and unconditionally applicable under Netherlands law to those family members?

2. Should Article 15(1) and (4) of Council Directive 2003/86/EC … be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which an application for an autonomous residence permit on the part of a foreign national who has resided lawfully for more than five years on the territory of a Member State for family-reunification purposes may be rejected because of non-compliance with conditions relating to integration laid down in national law?

3. Should Article 15(1) and (4) of Council Directive 2003/86/EC … be interpreted as precluding national legislation, such as that at issue in the main proceedings, on the basis of which an autonomous residence permit cannot be granted earlier than the date on which it is applied for?

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 17 May 2017 — Rhenus Veniro GmbH & Co. KG v Kreis Heinsberg

(Case C-267/17)

(2017/C 269/04)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Appellant: Rhenus Veniro GmbH & Co. KG

Respondent: Kreis Heinsberg

Questions referred

1. Is Article 5(2) of Regulation (EC) No 1370/2007 ([1]) applicable to directly awarded public service contracts within the meaning of Article 2(i) of the regulation which do not, for the purposes of the second sentence of Article 5(1) of the regulation, take the form of service concessions contracts under Directives 2004/17/EC or 2004/18/EC?

   If Question 1 is answered in the affirmative:

2. Do Article 2(b) and Article 5(2) of Regulation (EC) No 1370/2007 presume, as is conveyed by the word 'or', an exclusive competence either of an individual authority or of a group of authorities, or do those provisions also permit an individual authority to be a member of a group of authorities and to assign specific tasks to the group but at the same time to retain the power to intervene under Article 2(b) and to be the competent local authority within the meaning of Article 5(2) of the regulation?

3. Does point (e) of the second sentence of Article 5(2) of Regulation (EC) No 1370/2007, which lays down the requirement to perform the major part of the public passenger transport service itself, prevent the internal operator from having that major part of the services performed by a wholly-owned subsidiary?

4. At what point in time must the conditions governing direct awards laid down in Article 5(2) of Regulation (EC) No 1370/2007 be met: at the time of publication of an intended direct award pursuant to Article 7 of Regulation (EC) No 1370/2007 or not until the time of the direct award itself?

([1]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1).

Request for a preliminary ruling from the Okresní soud v Českých Budějovicích (Czech Republic) lodged on 19 May 2017 — Česká pojišťovna a.s. v WCZ, spol. s r.o.

(Case C-287/17)

(2017/C 269/05)

Language of the case: Czech

Referring court

Okresní soud v Českých Budějovicích

Parties to the main proceedings

Applicant: Česká pojišťovna a.s.

Defendant: WCZ, spol. s r.o.

Question referred

Must Article 6(1) and (3) of Directive 2011/7/EU ([1]) of the European Parliament and of the Council on combating late payment in commercial transactions be interpreted as requiring the court to award a successful applicant in a dispute concerning the recovery of a debt under a commercial transaction defined in Article 3 or 4 of that directive the sum of EUR 40 (or the equivalent in national currency) as well as compensation for costs of the court proceedings, including compensation for costs of a reminder to the defendant before the bringing of the action, in the amount laid down by the procedural provisions of the Member State?

([1]) OJ 2011 L 48, p. 1.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 24 May 2017 — Hochtief AG v Budapest Főváros Önkormányzata

(Case C-300/17)

(2017/C 269/06)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Hochtief AG

Defendant: Budapest Főváros Önkormányzata

Questions referred

1. Does EU law preclude a procedural provision of a Member State which makes the possibility of asserting any civil right of action resulting from an infringement of a public procurement provision conditional on a final declaration by a public procurement arbitration committee or a court (hearing an appeal against an award of the public procurement arbitration committee) that the provision has been infringed?

2. Can a provision of a Member State providing, as a condition for being able to assert a claim for compensation, that a public procurement arbitration committee or a court (hearing an appeal against an award of the public procurement arbitration committee) must have made a final declaration that a provision has been infringed be replaced by another provision in accordance with EU law? In other words, can the injured party prove the infringement of the provision by other means?

3. In an action seeking compensation for damage, is a procedural provision of a Member State which allows judicial proceedings to be brought against an administrative decision only on the basis of the legal arguments submitted in proceedings before the public procurement arbitration committee — and the injured party can rely, as a ground for the alleged infringement, on the unlawfulness, according to the case-law of the Court of Justice, of his exclusion on the basis of a conflict of interest only in a manner which, in accordance with the actual rules of the negotiated procedure, result in his exclusion from the contract award procedure for another reason, as there has been a change in his application — contrary to EU law and, in particular, to the principles of effectiveness and equivalence, or capable of having an effect which runs counter to that law or those principles?

Request for a preliminary ruling from the Krajský súd v Bratislave (Slovak Republic) lodged on 24 May 2017 — PPC Power a.s. v Finančné riaditeľstvo Slovenskej republiky, Daňový úrad pre vybrané daňové subjekty

(Case C-302/17)

(2017/C 269/07)

Language of the case: Slovak

Referring court

Krajský súd v Bratislave

Parties to the main proceedings

Applicant: PPC Power a.s.

Defendants: Finančné riaditeľstvo Slovenskej republiky, Daňový úrad pre vybrané daňové subjekty

Question referred

Are the aims of, and the principles underlying Directive 2003/87/EC ([1]) establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61/EC ([2]) ('the Directive') — and more specifically (i) the objective of reducing emissions by means of technological developments (Article 1 and recitals 2 and 20 of the Directive), (ii) the objectives of maintaining economic development, preserving the integrity of the internal market and maintaining competition (recitals 5 and 7), (iii) the objective of ensuring financially and economically advantageous conditions for reducing emissions (Article 1), the principle of legal certainty for operators within the meaning of Article 3 (f), inasmuch as operators are entitled, in accordance with Article 9, to rely on the fact that national allocation plans are to remain unchanged during the 18 months before the beginning of the relevant period (that is to say, for the period 2008 to 2012, from 30 June 2006 at the latest), (iv) the requirement that emission allowances must be allocated free of charge (Article 10), (v) the right of the persons referred to in the second subparagraph of Article 13(3) to be issued with replacement allowances for those with which they have been issued and which the Member States have … cancelled in accordance with the first subparagraph of Article 13(3) — to be interpreted as precluding the national legislation of a Member State which imposes on operators, within the meaning of Article 3(f) of the Directive, that are subject to tax in the territory of the Member State concerned, an obligation to pay a special tax (i) the legal basis of which is that the issue of emission allowances (in the case of non-use or sale) is taxed regardless of whether or not the operator derives a profit, (ii) where the emission allowances were allocated to the operator on the basis of the national allocation plan submitted by the Member State to the European Commission for the period 2008 to 2012 in accordance with Article 9 of the Directive (that is to say, notified to the Commission and the Member States under Article 9(1) of the Directive and not rejected by the Commission in accordance with Article 9(3) of the Directive) and which, in accordance with Article 10 of the Directive, provides that, for the five-year period beginning on 1 January 2008, 100 % of the emission allowances are to be allocated free of charge, (iii) where the rate of this tax is 80 % of the emission allowance tax base, which is determined as being the sum of the multiplication of the emission allowances transferred (sold) in each calendar month and the average market price of allowances in the calendar month preceding the month in which the transfer takes place and of the multiplication of unused allowances and the average market price of allowances for the calendar year concerned and (v) where the average market prices are calculated as the simple arithmetic mean of the prices of the last trade on a stock exchange (that is to say, where the tax is not based on the price at which the emission allowances were actually sold)?

([1]) OJ 2003 L 275, p. 32.
([2]) OJ 1996 L 257, p. 26.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 24 May 2017 — Headlong Limited v Nemzeti Adó- és Vámhivatal Központi Irányítása

(Case C-303/17)

(2017/C 269/08)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Headlong Limited

Defendant: Nemzeti Adó- és Vámhivatal Központi Irányítása

Questions referred

1. Is it relevant, for the purposes of the reply to be given to the questions referred for a preliminary ruling in Case [C-3/17] by the Fővárosi Közigazgatási és Munkaügyi Bíróság, that the administrative penalty does not consist of a fine but of temporary inaccessibility of electronic data for a period of 90 days, a penalty which is fundamentally different (for example the provision of the service is temporarily suspended, the penalty decision is not notified and it is not subject to appeal) and which the national authority may also impose cumulatively, in the same act, as well as a fine?

2. In view of the nature, seriousness and method of imposing the administrative penalty of temporary inaccessibility of electronic data for a period of 90 days, and, above all, of the impossibility of appealing against it, can it be considered, in accordance with Article 56 of the Treaty on the Functioning of the European Union (TFEU), that that penalty is in itself a disproportionately serious restriction of Article 56 TFEU and of Article 17(1) and Article 47 of the Charter of Fundamental Rights of the European Union, a restriction which, in its current form, cannot be justified by the objectives of consumer protection established by the Member State in the field of games of chance?

3. Is it relevant, for the purposes of the reply to be given to the sixth question referred for a preliminary ruling in Case [C-3/17] by the Fővárosi Közigazgatási és Munkaügyi Bíróság that the Member State does not ensure the adoption of the rules necessary for obtaining — either by call for tenders for the award of licences, or submitting a tender [to contract] — a licence to organise online casino games, and for this reason service providers cannot obtain the necessary administrative licences for offering the service?

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 24 May 2017 — Helga Löber v Barclays Bank PLC

(Case C-304/17)

(2017/C 269/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Helga Löber

Defendant: Barclays Bank PLC

Question referred

Under Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, ([1]) in non-contractual claims based on prospectus liability where

— the investor took his investment decision caused by the defective prospectus at the place where he is domiciled

— and, on the basis of that decision, he transferred the purchase price for the security acquired on the secondary market from his account held with an Austrian bank to a clearing account held with another Austrian bank, from where the purchase price was subsequently transferred to the seller by order of the applicant,

(a) does jurisdiction lie with the court within whose area of jurisdiction the investor is domiciled,

(b) does jurisdiction lie with the court within whose area of jurisdiction the seat/the account-keeping branch of the bank with which the applicant has his bank account from which he transferred the amount invested to the clearing account is located,

(c) does jurisdiction lie with the court within whose area of jurisdiction the seat/the account-keeping branch of the bank which keeps the clearing account is located,

(d) does jurisdiction lie with one of those courts at the choice of the applicant,

(e) does jurisdiction lie with none of those courts?

([1]) OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Okresný súd Bratislava (Slovakia) lodged on 26 May 2017 — FENS spol. s r.o. v Slovak Republic — Úrad pre reguláciu sieťových odvetví

(Case C-305/17)

(2017/C 269/10)

Language of the case: Slovak

Referring court

Okresný súd Bratislava

Parties to the main proceedings

Applicant: FENS spol. s r.o.

Defendant: Slovak Republic — Úrad pre reguláciu sieťových odvetví

Questions referred

1. Must Article 30 TFEU be interpreted as precluding a national rule such as Article 12(9) of the Nariadenie vlády Slovenskej republiky č. 317/2007 Z. z., ktorým sa ustanovujú pravidlá pre fungovanie trhu s elektrinou (Regulation No 317/2007 of the Government of the Slovak Republic laying down rules for the functioning of the market in electricity — 'the regulation') which introduces a specific pecuniary charge for the export of electricity from the territory of the Slovak Republic, regardless of whether that electricity is exported from Slovak territory to the Member States of the European Union or to third countries, in circumstances in which the electricity exporter fails to demonstrate that the electricity exported has been imported into the Slovak Republic, that is to say, a pecuniary charge levied solely on electricity generated in the Republic of Slovakia and exported from it?

2. Does a pecuniary charge, such as the charge introduced by Article 12(9) of the [regulation], namely: a charge applied solely to electricity generated in the Slovak Republic and at the same time exported from the territory of the Slovak Republic, regardless of whether it is exported to third countries or to the Member States of the European Union, also constitute a charge having equivalent effect to a customs duty within the meaning of Article 28(1) TFEU?

3. Is a national rule such Article 12(9) of the [regulation] compatible with the principle of free movement of goods laid down by Article 28 TFEU?

Request for a preliminary ruling from the Tatabányai Törvényszék (Hungary) lodged on 26 May 2017 — Éva Nothartová v József Boldizsár Sámson

(Case C-306/17)

(2017/C 269/11)

Language of the case: Hungarian

Referring court

Tatabányai Törvényszék

Parties to the main proceedings

Applicant: Éva Nothartová

Defendant: József Boldizsár Sámson

Question referred

Where there is a counterclaim arising from a contract or facts different from those on which the claim is based, for the purposes of determining jurisdiction to hear and determine the counterclaim:

(a) Does only Article 8(3) of Regulation (EU) No 1215/2012 ('the Brussels Ia Regulation') ([1]) apply because only that provision concerns the counterclaim, or

(b) Does Article 8(3) of the Brussels Ia Regulation refer solely to a counterclaim arising from the same contract or facts on which the claim is based, so that that regulation does not apply to a counterclaim which does not arise from the same contract or facts on which the claim is based, and for this reason must it be determined, in accordance with the other rules of jurisdiction under the Brussels Ia Regulation, that the court with jurisdiction to hear and determine the claim also has jurisdiction to hear and determine the counterclaim?

([1]) 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 (OJ 2012 L 351, p. 1).

Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 29 May 2017 — Levola Hengelo BV v Smilde Foods BV

(Case C-310/17)

(2017/C 269/12)

Language of the case: Dutch

Referring court

Gerechtshof Arnhem-Leeuwarden

Parties to the main proceedings

Applicant: Levola Hengelo BV

Defendant: Smilde Foods BV

Questions referred

1. (a) Does Union law preclude the taste of a food product — as the own intellectual creation of the author — being granted copyright protection? In particular:

(b) Is copyright protection precluded by the fact that the expression 'literary and artistic works' in Article 2(1) of the Berne Convention, which is binding on all the Member States of the European Union, includes 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression', but that the examples cited in that provision only relate to creations which can be perceived by sight and/or by hearing?

(c) Does the (possible) instability of a food product and/or the subjective nature of the taste experience preclude the taste of a food product being eligible for copyright protection?

(d) Does the system of exclusive rights and restrictions, as governed by Articles 2 to 5 of Directive 2001/29/EC, ([1]) preclude the copyright protection of the taste of a food product?

2. If the answer to question 1(a) is in the negative:

(a) What are the requirements for the copyright protection of the taste of a food product?

(b) Is the copyright protection of a taste based solely on the taste as such or (also) on the recipe of the food product?

(c) What evidence should a party who, in infringement proceedings, claims to have created a copyright-protected taste of a food product, put forward? Is it sufficient for that party to present the food product involved in the proceedings to the court so that the court, by tasting and smelling, can form its own opinion as to whether the taste of the food product meets the requirements for copyright protection? Or should the applicant (also) provide a description of the creative choices involved in the taste composition and/or the recipe on the basis of which the taste can be considered to be the author's own intellectual creation?

(d) How should the court in infringement proceedings determine whether the taste of the defendant's food product corresponds to such an extent with the taste of the applicant's food product that it constitutes an infringement of copyright? Is the decisive factor here that the overall impressions of the two tastes are the same?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo de Zaragoza (Spain) lodged on 29 May 2017 — Pilar Centeno Meléndez v Universidad de Zaragoza

(Case C-315/17)

(2017/C 269/13)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo de Zaragoza

Parties to the main proceedings

Applicant: Pilar Centeno Meléndez

Defendant: Universidad de Zaragoza

Questions referred

1. Is Clause 4(1) of the Framework Agreement annexed to Council Directive 1999/70/EC of 28 June ([1]) applicable to the horizontal career increment claimed by the applicant, on the basis that it is an employment condition, or, rather, does the increment constitute an element of remuneration with the characteristics described in the present order that depends on the subjective qualities of the recipient which have been gained by working for a number of years under a system based on increasing levels of difficulty and responsibility and on continuity, specialisation and professionalism?

2. If the previous question is answered in the affirmative and the Court of Justice considers [the increment] to be an employment condition for the purposes of Clause 4(1) of the Framework Agreement, is the difference in remuneration justified on objective grounds?

(1) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.
OJ 1999 L 175, p. 43.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 29 May 2017 — Marle Participations SARL v Ministère de l'Économie et des Finances

(Case C-320/17)

(2017/C 269/14)

Language of the case: French

Referring court

Conseil d'État (Council of State, France)

Parties to the main proceedings

Applicant: Marle Participations SARL

Defendant: Ministère de l'Économie et des Finances

Question referred

The Court of Justice is asked to rule on the question as to whether — and, if so, under what conditions — the letting of buildings by a holding company to a subsidiary constitutes a direct or indirect involvement in the management of that subsidiary the effect of which being that the acquisition and holding of shares in that subsidiary are considered economic activities within the meaning of the Directive of 28 November 2006 (1) on the common system of value added tax.

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

Request for a preliminary ruling from the Varhoven kasatsionen sad (Bulgaria) lodged on 6 June 2017 — Neli Valcheva v Georgios Babanarakis

(Case C-335/17)

(2017/C 269/15)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Parties to the main proceedings

Applicant: Neli Valcheva

Defendant: Georgios Babanarakis

Question referred

Is the concept of 'rights of access' used in Article 1(2)(a) and Article 2(10) of Council Regulation (EC) No 2201/2003 (1) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility to be interpreted as encompassing not only access between the parents and the child but also the child's access to relatives other than the parents, that is to say the grandparents?

(1) OJ 2003 L 338, p. 1.

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 7 June 2017 — Virginie Marie Gabriel Guigo v 'Garantirani vzemania na rabotnitsite i sluzhitelite' Fund

(Case C-338/17)

(2017/C 269/16)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Virginie Marie Gabriel Guigo

Defendant: 'Garantirani vzemania na rabotnitsite i sluzhitelite' Fund

Questions referred

1. Are Articles 151 and 153 TFEU and Articles 3, 4, 11 and 12 of Directive 2008/94 ([1]) to be interpreted as permitting a national provision such as Article 4(1) of the Zakon za Garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia (Law on the guaranteed claims of employees in the event of the employer's insolvency), under which persons whose employment was terminated prior to the three-month period provided for before registration of the decision initiating insolvency proceedings over the employer's assets are excluded from the protection of unmet employment-related claims?

2. If the first question is answered affirmatively, is the procedural autonomy of the Member States, in light of the principles of equivalence, effectiveness and proportionality in the context of the social objective underpinning Articles 151 und 153 TFEU and Directive 2008/94, to be construed as permitting a national measure, such as Article 25 of the Zakon za Garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia, which provides that, on expiry of a period of two months from the date of registration of the decision initiating insolvency proceedings, the rights to assert and obtain satisfaction of guaranteed claims are extinguished if the domestic law of the Member State contains a provision, such as Article 358 (1)(3) of the Kodeks na truda (Employment Code), under which the period for asserting unmet employment-related claims is three years from the date on which the claim ought to have been met and payments made after expiry of this period are not deemed to have been made without a legal basis?

3. Is Article 20 of the Charter of Fundamental Rights of the European Union to be interpreted as permitting such a distinction to be made, on the one hand, between employees with unmet claims whose employment was terminated before the three-month period before registration of the decision initiating insolvency proceedings over the employer's assets and employees whose employment was terminated during the three-month period laid down and, on the other hand, between those employees and employees who, under Article 358 (1)(3) of the Kodeks na truda, are entitled on the termination of their employment to protection of their unmet claims during a period of three years commencing at the time when the claim ought to have been met?

4. Is Article 4, read with Article 3, of Directive 2008/84 and with the principle of proportionality, to be interpreted as permitting a provision, such as Article 25 of the Zakon za Garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia, under which the rights to assert and to obtain satisfaction of guaranteed claims are automatically extinguished, without any possibility of an individual assessment of the relevant factors, on expiry of a two-month period from the date of registration of the decision initiating insolvency proceedings?

([1]) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) OJ 2008 L 283, p. 36.

Request for a preliminary ruling from the Tallinna Ringkonnakohus (Estonia) lodged on 13 June 2017 — Eesti Pagar AS v Ettevõtluse Arendamise Sihtasutus, Majandus- ja Kommunikatsiooniministeerium

(Case C-349/17)

(2017/C 269/17)

Language of the case: Estonian

Referring court

Tallinna Ringkonnakohus

Parties to the main proceedings

Appellant: Eesti Pagar AS

Respondents: Ettevõtluse Arendamise Sihtasutus, Majandus- ja Kommunikatsiooniministeerium

Questions referred

(a) Is Article 8(2) of Commission Regulation (EC) No 800/2008 ([1]) declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) to be interpreted as meaning that, in the context of that provision, where the activity to be supported is, for example, the acquisition of an industrial plant, 'work on the project or activity' has started when the agreement for the purchase of the relevant plant has been entered into? Are the Member State authorities authorised to assess an infringement of the criterion mentioned in that provision in light of the costs of withdrawal from an agreement which contravenes the requirement of an incentive effect? If the Member State authorities have such authority, what level of costs (in percentage terms) incurred by withdrawal from the agreement may be deemed to be sufficiently marginal from the aspect of meeting the requirement of the incentive effect?

(b) Is a Member State authority obliged to recover an unlawful aid granted by it even if the European Commission has not adopted a corresponding decision?

(c) Can a Member State authority which decides to grant an aid — on the erroneous assumption that it is an aid that accords with the block exemption requirements, but which is in fact an unlawful aid — engender a legitimate expectation on the part of the aid recipients? Is, in particular, the fact that the Member State authority is aware, on granting the unlawful aid, of the circumstances causing the aid not to be covered by the block exemption sufficient to give rise to a legitimate expectation on the part of the recipients?

If the preceding question is answered affirmatively, must the public interest and the interest of the individual be weighed against one another? In the context of that weighing-up of interests, is it significant whether, in relation to the aid at issue, the European Commission has adopted a decision declaring it incompatible with the common market?

(d) Which limitation period applies to the recovery of an unlawful aid by a Member State authority? Is that period ten years, corresponding to the period after which, under Articles 1 and 15 of Council Regulation (EC) No 659/1999 ([2]) laying down detailed rules for the application of Article 93 of the EC Treaty, the aid becomes existing aid and can no longer be recovered, or four years in accordance with Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 ([3]) on the protection of the European Communities' financial interests?

What is the legal basis for such recovery where the aid was granted from a structural fund: Article 108(3) TFEU or Council Regulation (EC, Euratom) No 2988/95 on the protection of the European Communities' financial interests?

(e) If a Member State authority recovers an unlawful aid, is it then obliged to demand from the recipient the payment of interest on the unlawful aid? If so, which rules will then apply to the calculation of the interest, inter alia, as regards the rate of interest and the calculation period?

([1]) OJ 2008 L 214, p. 3.
([2]) OJ 1999 L 83, p. 1.
([3]) OJ 1995 L 312, p. 1, corrigendum OJ 1998 L 36, p. 16.

Request for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 13 June 2017 — 'Varna Holideis' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-364/17)

(2017/C 269/18)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: 'Varna Holideis' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. Are Articles 90(1) and 185(1) of Directive 2006/112 ([1]) to be interpreted as requiring the deduction claimed for input tax on a supply also to be adjusted in a case, such as that in the dispute in the main proceedings, where the legal transaction in respect of which the right to deduct input tax was exercised has been declared null and void by a judgment having legal force or should one, in light of the definition in Article 14(1) of Directive 2006/112, proceed on the basis that there is no supply and the tax claim did not arise in the first place?

2. Is Article 185(1) and (2) of Directive 2006/112 to be interpreted as meaning that, in the absence of a national provision for the adjustment of deduction claimed in respect of input tax, and in the event of a court decision declaring a legal transaction null and void, the adjustment may be made by direct application of Article 90(1) of the directive?

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

Action brought on 23 June 2017 — European Commission v Federal Republic of Germany

(Case C-377/17)

(2017/C 269/19)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls, H. Tserepa-Lacombe and L. Malferrari, Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

1. declare that, in so far as it has maintained compulsory fees for architects and engineers under the HOAI (Fee Ordinance for Architects and Engineers), the Federal Republic of Germany has failed to fulfil its obligations under Article 15(1), 15 (2)(g) and 15(3) of Directive 2006/123/EC and under Article 49 TFEU;

2. order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The German Fee Ordinance for Architects and Engineers (Honorarordnung für Architekten und Ingenieure — 'HOAI') contains a system of minimum and maximum prices for the services of that group of professionals. That system makes it more difficult for architects and engineers who wish to compete with established providers by way of offers outside the permitted price range to become established. Those providers, it is submitted, are prevented in that regard from providing services of the same quality at lower prices and from providing services of a higher quality at higher prices.

This constitutes a restriction of the freedom of establishment for the purposes of both Article 15(1), 15(2)(g) and 15(3) of Directive 2006/123/EC and Article 49 TFEU.

That restriction is not justified; in particular it is not justified by the interest of safeguarding the quality of services, which is not directly linked to the price.

GENERAL COURT

Judgment of the General Court of 27 June 2017 — Ruiz Molina v EUIPO

(Case T-233/16) ([1])

(Appeal — Civil Service — Members of the temporary staff — Fixed-term contract with a termination clause ending the contract if the staff member's name is not included on the reserve list of the next open competition — Termination of the contract by application of the termination clause — Reclassification of a fixed-term contract as a contract of unlimited duration — Res judicata — Clause 5(1) of the Framework Agreement on fixed- term work concluded by ETUC, UNICE and CEEP — Obligation to state reasons)

(2017/C 269/20)

Language of the case: French

Parties

Appellant: José Luis Ruiz Molina (San Juan de Alicante, Spain) (represented by: N. Lhoëst and S. Michiels, lawyers)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: A. Lukošiūtė, acting as Agent, and B. Wägenbaur, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 2 March 2016, *Ruiz Molina* v *OHMI* (F 60/15, EU:F:2016:28) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr José Luis Ruiz Molina to bear his own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO) in the appeal.*

([1]) OJ C 243, 4.7.2016.

Order of the General Court of 7 June 2017 — De Masi v Commission

(Case T-11/16) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — No confirmatory decision — Request for access on the basis of interinstitutional cooperation under Article 230 TFEU — Documents relating to the work of the 'Code of Conduct Group (Business Taxation)' set up by the Council — Act not amenable to review — Manifest inadmissibility)

(2017/C 269/21)

Language of the case: German

Parties

Applicant: Fabio De Masi (Brussels, Belgium) (represented by: A. Fischer-Lescano, Professor)

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

Re:

Application based on Article 263 TFEU and seeking the annulment, first, of the decision allegedly contained in the Commission's letter of 9 December 2015 responding to the request for access to the documents of the 'Code of Conduct Group (Business Taxation)', submitted by the applicant on the basis of 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), and, secondly, of the decision allegedly contained in the Commission's letter of 9 November 2015 responding to the request for access to the same documents submitted by the Chairman of the European Parliament's Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect.

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible.*

2. *Mr Fabio De Masi shall bear his own costs.*

([1]) OJ C 78, 29.2.2016.

Order of the General Court of 13 June 2017 — Uniwersytet Wrocławski v REA

(Case T-137/16) ([1])

(Action for annulment — Application initiating proceedings — Formal requirements — Party not represented by a lawyer — Manifest inadmissibility)

(2017/C 269/22)

Language of the case: Polish

Parties

Applicant: Uniwersytet Wrocławski (Wrocław, Poland) (represented by: D. Dubis, lawyer)

Defendant: Research Executive Agency (REA) (represented by: S. Payan-Lagrou and V. Canetti, acting as Agents, assisted by M. Le Berre and G. Materna, lawyers)

Re:

Application, first, seeking the annulment of the decisions of the REA, acting under powers delegated by the European Commission, terminating the Cossar grant agreement (No 252908) and requiring the applicant to repay the sums of EUR 36 508,37, EUR 58 031,38 and EUR 6 286,68 as well as to pay damages in the amount of EUR 5 803,14, and, secondly, seeking reimbursement by the REA of the corresponding sums plus interest calculated from the day of payment until the day of reimbursement.

Operative part of the order

1. *The action in Case T-137/16 is dismissed as being manifestly inadmissible.*

2. *The Uniwersytet Wrocławski shall bear its own costs and shall pay the costs incurred by the Research Executive Agency (REA).*

([1]) OJ C 200, 6.6.2016.

Order of the General Court of 26 June 2017 — Megasol Energie v Commission

(Case T-152/16) ([1])

(Action for annulment — Dumping — Subsidies — Imports of crystalline silicon photovoltaic modules and key components (cells) consigned from Malaysia and Taiwan — Extension to those imports of the definitive anti-dumping duty and definitive countervailing duty imposed on imports of crystalline silicon photovoltaic modules and key components (cells) originating in or consigned from China — No interest in bringing proceedings — Inadmissibility)

(2017/C 269/23)

Language of the case: German

Parties

Applicant: Megasol Energie AG (Wangen an der Aare, Switzerland) (represented by: T. Wegner, lawyer)

Defendant: European Commission (represented by: T. Maxian Rusche, A. Demeneix and K. Blanck-Putz, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of Commission Implementing Regulation (EU) 2016/184 of 11 February 2016 extending the definitive countervailing duty imposed by Council Implementing Regulation (EU) No 1239/2013 on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not (OJ 2016 L 37, p. 56), and of Commission Implementing Regulation (EU) 2016/185 of 11 February 2016 extending the definitive anti-dumping duty imposed by Council Regulation (EU) No 1238/2013 on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China to imports of crystalline silicon photovoltaic modules and key components (i.e. cells) consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not (OJ 2016 L 37, p. 76), in so far as they apply to the applicant.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Megasol Energie AG shall pay the costs.*

([1]) OJ C 211, 13.6.2016.

Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER SMOKY)

(Case T-179/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER SMOKY — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure)

(2017/C 269/24)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Guinot (Paris) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2905/2014-5) concerning opposition proceedings between Guinot and L'Oréal.

Operative part of the order

1. *The action is dismissed.*

2. *L'Oréal shall pay the costs.*

(1) OJ C 222, 20.6.2016.

Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER SHAPE)

(Case T-180/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER SHAPE — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure)

(2017/C 269/25)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Guinot (Paris) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2907/2014-5) concerning opposition proceedings between Guinot and L'Oréal.

Operative part of the order

1. *The action is dismissed.*

2. *L'Oréal shall pay the costs.*

(1) OJ C 222, 20.6.2016.

Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER PRECISE)

(Case T-181/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER PRECISE — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure)

(2017/C 269/26)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Guinot (Paris) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2911/2014-5) concerning opposition proceedings between Guinot and L'Oréal.

Operative part of the order

1. *The action is dismissed.*

2. *L'Oréal shall pay the costs.*

([1]) OJ C 222, 20.6.2016.

Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER DUO)

(Case T-182/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER DUO — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure)

(2017/C 269/27)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Guinot (Paris) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2916/2014-5) concerning opposition proceedings between Guinot and L'Oréal.

Operative part of the order

1. *The action is dismissed.*

2. *L'Oréal shall pay the costs.*

(1) OJ C 222, 20.6.2016.

Order of the General Court of 26 June 2017 — L'Oréal v EUIPO — Guinot (MASTER DRAMA)

(Case T-183/16) (1)

(EU trade mark — Opposition proceedings — Application for EU word mark MASTER DRAMA — Prior national figurative mark MASTERS COLORS PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Action manifestly unfounded in law — Article 126 of the Rules of Procedure)

(2017/C 269/28)

Language of the case: French

Parties

Applicant: L'Oréal (Paris, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Guinot (Paris) (represented by: A. Sion, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2500/2014-5) concerning opposition proceedings between Guinot and L'Oréal.

Operative part of the order

1. *The action is dismissed.*

2. *L'Oréal shall pay the costs.*

(1) OJ C 222, 20.6.2016.

Order of the General Court of 21 June 2017 — Inox Mare v Commission

(Case T-289/16) (1)

(Action for annulment — Regulation (EU, Euratom) No 883/2013 — External investigation conducted by OLAF — Report and recommendations — Measures not amenable to challenge — Inadmissible)

(2017/C 269/29)

Language of the case: Italian

Parties

Applicant: Inox Mare Srl (Rimini, Italy) (represented by: R. Holzeisen, lawyer)

Defendant: European Commission (represented by: initially, J. Baquero Cruz, D. Nardi and L. Grønfeldt, and, subsequently, J. Baquero Cruz and D. Nardi, acting as Agents)

Re:

Application based on Article 263 TFEU, seeking annulment of the Final Report of the European Anti-Fraud Office (OLAF) concerning external investigation OF/2013/0086/B1 (THOR(2015) 40189 of 26 November 2015), of the recommendation of the Director-General of OLAF with respect to that report (THOR(2015) 42057 of 9 December 2015) and of the prior and strictly related measures taken by OLAF

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *Inox Mare Srl shall bear its own costs and pay those incurred by the European Commission.*

(1) OJ C 270, 25.7.2016.

Order of the General Court of 20 June 2017 — CSL Behring v EUIPO — Vivatrex (Vivatrex)

(Case T-346/16) (1)

(EU trade mark — Opposition proceedings — Application for the EU figurative mark Vivatrex — Revocation of the earlier EU trade mark — No need to adjudicate)

(2017/C 269/30)

Language of the case: English

Parties

Applicant: CSL Behring AG (Berne, Switzerland) (represented by: M. Best, U. Pfleghar and S. Schäffner, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Vivatrex GmbH (Aachen, Germany) (represented by: F. Stangl, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 27 April 2016 (Joined Cases R 1263/2015-4 and R 1221/2015-4), relating to opposition proceedings between CSL Behring and Vivatrex.

Operative part of the order

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

2. *Each party is to bear its own costs.*

(1) OJ C 305, 22.8.2016.

Order of the General Court of 21 June 2017 — Inox Mare v Commission

(Case T-347/16) ([1])

(Action for annulment — Customs Union — Commission decision finding that the repayment of import duties is not justified in a particular case — Action brought by a separate operator — No direct concern — Inadmissibility)

(2017/C 269/31)

Language of the case: Italian

Parties

Applicant: Inox Mare Srl (Rimini, Italy) (represented by: R. Holzeisen, lawyer)

Defendant: European Commission (represented by: A. Caeiros, J. Baquero Cruz and D. Nardi, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment of Commission Decision C(2015) 9672 final of 6 January 2016 finding that the repayment of import duties is not justified in a particular case (REM 02/14).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Inox Mare Srl shall bear its own costs and also pay those incurred by the European Commission.*

([1]) OJ C 296, 16.8.2016.

Order of the General Court of 22 June 2017 — Vankerckhoven-Kahmann v Commission

(Case T-582/16) ([1])

(Civil service — Officials — Career reconstruction — Refusal to promote — Inter-institutional transfer — Classification in grade — Request within the meaning of Article 90(1) of the Staff Regulations — Reasonable period — Inadmissible)

(2017/C 269/32)

Language of the case: French

Parties

Applicant: Monique Vankerckhoven-Kahmann (Enghien, Belgium) (represented by: N. Lhoëst, lawyer)

Defendant: European Commission (represented initially by G. Berscheid and C. Berardis-Kayser and subsequently by G. Berscheid and L. Radu Bouyon, acting as Agents)

Re:

Action brought under Article 270 TFEU, seeking annulment, first, of the Commission's decision of 17 April 2015 refusing to re-grade the applicant on her transfer and, secondly, of the Commission's decision of 9 November 2015 rejecting her complaint lodged on 17 July 2015.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Monique Vankerckhoven-Kahmann is ordered to bear her own costs and to pay those incurred by the European Commission.*

([1]) OJ C 145, 25.4.2016 (case initially registered before the European Union Civil Service Tribunal under number F-11/15 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 14 June 2017 — Márquez Alentà v EUIPO — Fiesta Hotels & Resorts (Representation of an ant)

(Case T-657/16) ([1])

(EU trade mark — Application for an EU figurative mark representing an ant — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2017/C 269/33)

Language of the case: Spanish

Parties

Applicant: Marc Márquez Alentà (Cervera, Spain) (represented by: J. Carbonell Callicó, lawyer)

Defendant: European Union Intellectual Property Office (represented by: E. Zaera Cuadrado, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Fiesta Hotels & Resorts, SL (Ibiza, Spain)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 30 June 2016 (Case R 1242/2015-1), relating to opposition proceedings between Fiesta Hotels & Resorts and Mr Márquez Alentà.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) shall bear its own costs and shall pay the costs incurred by Mr Marc Márquez Alentà.*

([1]) OJ C 410, 7.11.2016.

Order of the General Court of 29 May 2017 — Le Pen v Parliament

(Case T-863/16) ([1])

(Action for annulment — Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums unduly paid — Manifest inadmissibility in part — No need to adjudicate in part)

(2017/C 269/34)

Language of the case: French

Parties

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

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

Re:

Application under Article 263 TFEU seeking annulment of the decision of the Secretary-General of the Parliament of 29 January 2016 relating to the recovery from the applicant of a sum of EUR 320 026,23 unduly paid for parliamentary assistance, the debit note of 4 February 2016 relating thereto, and the decision of the Quaestors of 4 October 2016 rejecting the applicant's complaint against the decision of 29 January 2016.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible in so far as it concerns the claim for annulment of the decision of the Secretary-General of the European Parliament of 29 January 2016 relating to the recovery from Mr Jean-Marie Le Pen of a sum of EUR 320 026,23 unduly paid for parliamentary assistance and of the debit note of 4 February 2016 relating thereto, and in so far as it concerns the claim that the Parliament should be ordered to pay the applicant EUR 50 000 by way of compensation for the recoverable costs.*

2. *There is no longer any need to adjudicate on the action in so far as it concerns the claim for annulment of the decision of the Quaestors of 4 October 2016 rejecting the applicant's complaint against the decision of 29 January 2016.*

3. *The parties are ordered to bear their own costs.*

([1]) OJ C 38, 6.2.2017.

Order of the President of the General Court of 26 June 2017 — Jalkh v Parliament

(Case T-26/17 R)

(Interim measures — Law governing the institutions — Member of the European Parliament — Privileges and immunities — Waiver of the parliamentary immunity of a Member of the European Parliament — Application for suspension of operation of a measure — No urgency)

(2017/C 269/35)

Language of the case: French

Parties

Applicant: Jean-François Jalkh (Gretz-Armainvillers, France) (represented initially by J.-P. Le Moigne and subsequently by M. Ceccaldi, lawyers)

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

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation decision of 22 November 2016 taken by the European Parliament to waive Mr Jalkh's parliamentary immunity in view of the judicial investigation (No 1422400530) brought before the Paris Tribunal de Grande Instance (ordinary court of first instance, France).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 26 June 2017 — Jalkh v Parliament

(Case T-27/17 R)

(Interim measures — Institutional law — Member of the European Parliament — Privileges and immunities — Waiver of the parliamentary immunity of a Member of the European Parliament — Application for suspension of operation — No urgency)

(2017/C 269/36)

Language of the case: French

Parties

Applicant: Jean-François Jalkh (Gretz-Armainvillers, France) (represented initially by J.-P. Le Moigne, and subsequently by M. Ceccaldi, lawyers)

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

Re:

Application based on Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the Parliament of 22 November 2016 concerning the waiver of Mr Jalkh's immunity in view of the judicial investigation (No 14142000183) open before the tribunal de grande instance de Nanterre (Court of First Instance, Nanterre, France).

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 16 May 2017 — PC v EASO

(Case T-610/16)

(2017/C 269/37)

Language of the case: Finnish

Parties

Applicant: PC (represented by: L. Railas, lawyer)

Defendant: European Asylum Support Office (EASO)

Form of order sought

— annul the negative probationary period assessment report on the applicant and thereby require EASO to draw up a new assessment report for the applicant with the result that her employment is confirmed;

— annul Decision EASO/ED/2015/358;

— declare that the applicant's dismissal was not by the authority empowered to conclude contracts of employment (AECE);

— annul Decision EASO/HR/2015/607 terminating the applicant's employment at the end of the probationary period, so that her employment continues uninterruptedly from 1 March 2015 to 28 February 2020 (the date of termination of the employment relationship under the contract);

— if EASO cannot restore the applicant's employment relationship, require EASO to compensate the applicant for the damage suffered as a result of EASO's wrongful decision by paying her as damages salary, allowances and employer's pension contributions for the period from 1 December 2015 to 28 February 2020;

— if EASO restores the applicant's employment relationship, require EASO to pay the applicant as damages salary, allowances and employer's pension contributions for the period in which she was without employment, from 1 December 2015 until her return to work;

— order EASO to award the applicant a month's salary and employer's pension contributions in accordance with paragraph 5 of Case F-113/13;

— order EASO to pay the applicant's costs.

Pleas in law and main arguments

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

1. The first plea in law alleges that the assessor of the probationary period misused his discretion by drawing up a negative assessment report for the probationary period and groundlessly making public criticisms against the applicant. The applicant submits that EASO found without any reference to the case-law or other source of law that (each) 'assessor enjoys an especially broad discretion in assessing the work of persons on whom he is to report, since the assessment report conveys the assessor's freely expressed opinion'.

2. The second plea in law alleges that EASO breached the principle of proper assessment when drawing up the probationary period assessment report. The assessment of the probationary period on which the decision to dismiss was based was done without taking account of 'the facts as they were', was contrary to the EU Staff Regulations and the EASO Guide to the Assessment of Probationary Staff, and took no account of the applicant's written comments on the probationary period assessment report.

3. The third plea in law alleges that EASO infringed the principle of equal treatment and that EASO misinterpreted the provisions of the EU Charter of Fundamental Rights by using them against the applicant.

4. The fourth plea in law alleges that EASO misused its discretion when signing official EU document EASO/ED/2015/358 (delegation of powers), which was done unlawfully because of the lack of binding implementation rules of EASO's board of administration, contains a clear conflict of interests, and in the applicant's opinion was incorrectly dated.

5. The fifth plea in law alleges that in the probationary period assessment report and subsequent dealings EASO made use of document EASO/ED/2015/358, which is dated retroactively.

6. The sixth plea in law alleges that throughout the procedure for assessment of the probationary period EASO breached the procedural provisions applicable to the assessment procedure and the provisions concerning administrative inquiries, and infringed the applicant's rights of defence. According to the applicant, the decision on the probationary period assessment report could have been the opposite, that is to say positive, if EASO had not infringed the EU Staff Regulations and the EASO Guide to the Assessment of Probationary Staff.

7. The seventh plea in law alleges that the applicant validly presented arguments with the purpose of calling in question the lawfulness of the decision to dismiss. According to the applicant, EASO's decision to terminate her employment contract is based on incorrect considerations and EASO's deficiencies during the probationary period assessment procedure, including unlawful nomination of the maker of the decision to dismiss, his lack of expertise in staff matters and his lack of acquaintance with the probationary period assessment documents, with the mistakes in the assessment of the probationary period and with the applicant's complaints and comments.

Action brought on 15 March 2017 — Ostvesta v Commission

(Case T-157/17)

(2017/C 269/38)

Language of the case: Latvian

Parties

Applicant: Ostvesta SIA (Riga, Latvia) (represented by: J. Davidovičs, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Mission Report THOR (2013) 11413-07/05/2013 of the European Anti-fraud Office (OLAF), together with its 15 annexes, Final Report OF/2010/0827/B1, Report No OF/2010/0827 and Report THOR (2011) 27463, in view of the serious illegalities vitiating those acts and the recommended measures adopted on the basis of those acts;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested measures are binding on the State tax authorities and courts and have direct legal effects that harm the interests and the personal and actual rights of the applicant, altering its legal position, and are therefore challengeable acts, taking into consideration:

   — the nature of customs duties as 'EU own resources' and the consequential obligations for Member States, which must collect those duties;

   — the nature of OLAF as the administrative investigating body that replaces the Commission in external investigations;

   — the role of the European Commission, as the institution with an enforcement function in relation to the application of the European Union's Customs Code.

2. Second plea in law, alleging that the contested measures are unlawful and are vitiated by irregularities, because:

   — they do not contain any of the essential information envisaged in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013; that is to say, they lack information relating to the procedural guarantees in the investigation, to the persons involved in the investigation, to the hearing of the applicant's legal representatives, or to the preliminary legal qualification;

   — they reject the responsibility of the competent authorities in an unreasoned and contradictory manner;

   — OLAF failed to fulfil its duty to conduct the investigation objectively and impartially and in accordance with the principle of presumption of innocence;

   — incorrect information is included in the Final Report because of the lack of a preliminary investigation or because of omissions in the preliminary investigation;

   — the Community legislation in the field of anti-dumping duties was infringed and misapplied;

   — the Community legislation and the legislation of the Republic of Taiwan concerning the obligation imposed on the Bureau of Foreign Trade of Taiwan to verify the origin of the goods which it certifies were infringed and misapplied;

   — Article 220(2)(b) of Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code was infringed and misapplied;

   — the Treaties and the legal rules relating to their application, as well as the Charter of Fundamental Rights of the European Union, specifically Article 41 thereof, were infringed.

Action brought on 10 May 2017 — European Dynamics Luxembourg and Evropaïki Dynamiki v Commission

(Case T-281/17)

(2017/C 269/39)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Luxembourg, Luxembourg), Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: M. Sfyri and C-N. Dede, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the defendant's award decision regarding Phase 2 of the restricted procurement procedure (reference EuropeAid/138143/DH/SER/AL), communicated to the applicants with its letter of 6 March 2017, by which they were informed that their bid had not been successful and that the contract was awarded to another tenderer;

— order the defendant to provide the applicants with compensation in the form of damages for the loss of opportunity to be awarded a contract, in the amount of EUR 240 000 (two hundred and forty thousand Euros);

— order the defendant to pay the applicants exemplary damages in the amount of EUR 40 000 (forty thousand Euros);

— order the Defendant to pay the applicants' legal fees and other costs and expenses incurred in connection with this application, even if the current application is rejected.

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 defendant infringed the EU law of public procurement, the principles of transparency and equal treatment and the provisions of the Financial Regulation, by not communicating to the applicants the award decision at the same time it communicated it to the other tenderers and by refusing to respect the standstill period. The applicants argue that the defendant acted in breach of the principle of sound administration by adversely affecting the applicants' right to an effective remedy against the contested decision.

2. Second plea in law, alleging that the defendant changed the tender specifications a few days before the deadline for the submission of tenders, introducing new terms. By doing so, the defendant infringed Article 112 of the Financial Regulation, since changes to procurement documents occurred through contacts during the procurement procedure and more specifically through clarifications that were given to the tenderers.

3. By their third plea, the applicants argue that the defendant committed several manifest errors of assessment, which are depicted in the extracts of the Evaluation Report communicated to the applicants and that the defendant introduced new and unknown criteria at the stage of the evaluation of the offers.

Action brought on 6 June 2017 — Aide et Action France v Commission

(Case T-357/17)

(2017/C 269/40)

Language of the case: French

Parties

Applicant: Aide et Action France (Paris, France) (represented by: A. Le Mière, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the European Commission of 6 April 2017, as well as debit note No 3241607987 received on 8 August 2016, with all the legal consequences which that entails;

— order the European Commission to pay Aide et Action France EUR 8 000 on the basis of Article 134 of the Rules of Procedure of the General Court of the European Union.

Pleas in law and main arguments

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

1. First plea in law, alleging that the applicant has an interest in bringing proceedings and standing, since the decision of 6 April 2017 ('the contested decision') has legal effects as regards the applicant.

2. Second plea in law, alleging that the contested decision contains an inadequate statement of reasons, in that:

   — that decision infringes Article 296 of the Treaty on the Functioning of the European Union (TFEU) and Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter');

   — that decision does not contain any clear and unambiguous factual or legal elements;

   — the Commission merely invokes contractual breaches, without referring to any contractual provision on the basis of which such breaches could be established, or on the basis of which the amount of the debt alleged could be determined;

   — that decision is insufficiently reasoned even in the light of its context;

   — the investigations and the summary of the facts of the European Anti-fraud Office (OLAF) did not enable the applicant to understand the scope of the measure taken against it.

3. Third plea in law, concerning the refusal of access to OLAF's final report sent to the European Commission, in that:

   — the contested decision infringes Article 15(3) TFEU, Article 42 of the Charter and 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;

   — once the debit note had been issued and the decision to proceed with recovery by offsetting had been taken, the applicant should have had access to OLAF's final report in order to exercise its rights of defence fully;

   — the Commission should have agreed on the national conditions as regards the right of access to documents on which an unfavourable decision is based;

   — the Grant Contract provided that investigation reports and evaluations of the Commission should be notified;

   — the Commission could in any event have disclosed a document by redacting certain passages.

4. Fourth plea in law, alleging that the contested decision is unfounded and, therefore, infringes the TFEU, in that:

   — the contested decision infringes Article 209 TFEU and its implementing Financial Regulations No 966/2012 of 25 October 2012 and No 1268/2012 of 29 October 2012;

   — the contested decision is not based on any claim which is certain, of a fixed amount and due;

   — all of the funds received by the applicant were entirely used for the implementation of the programme for which the European funds had been granted, in accordance with Article 14 of Annex 2 to the Grant Contract.

Action brought on 14 June 2017 — Poland v Commission

(Case T-376/17)

(2017/C 269/41)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul European Commission Implementing Decision C(2017) 2104 final of 4 April 2017 extending the suspension of monthly payments to Poland concerning preliminary recognition aid for groups of producers in the fruit and vegetable sector within the framework of the European Agriculture Guarantee Fund (EAGF);

— 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 infringed the second sentence of the second subparagraph of Article 41(2) of Regulation No 1306/2013, ([1]) read in conjunction with the introductory wording of the first subparagraph of that provision and Article 41(2)(b) of that regulation, by extending the suspension of monthly payments on the basis of errors of fact and misinterpretation of the law, notwithstanding the fact that the conditions for suspending monthly payments were not met.

2. Second plea in law, alleging that the Commission infringed the principle of proportionality and Article 41(3) of Regulation No 1306/2013 by maintaining the rate of suspension of monthly payments at a level that was flagrantly excessive in relation to the risk of potential loss to the European Union budget.

([1]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (OJ 2013 L 347, p. 549).

Action brought on 16 June 2017 — Acsen v Parliament

(Case T-381/17)

(2017/C 269/42)

Language of the case: Romanian

Parties

Applicant: Ibram Acsen (Bucharest, Romania) (represented by: C. Gagu, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— partially annul Article 22(1)(c) of Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies in so far as that provision applies to the absolute nullity of mergers.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of the principle that no limitation period can apply in the case of absolute nullity.

— Since Article 22(1)(c) of Directive 2011/35/EU does not distinguish between relative nullity and absolute nullity, the period of six months for initiating nullification proceedings also applies in the event of absolute nullity, contrary to the principle that no limitation period can apply in the case of nullity of such a kind.

Action brought on 20 June 2017 — Hansol Paper v Commission

(Case T-383/17)

(2017/C 269/43)

Language of the case: English

Parties

Applicant: Hansol Paper Co. Ltd (Seoul, Republic of Korea) (represented by: J.-F. Bellis, B. Servais and A. Tel, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2017/763 of 2 May 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea;

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission violated Articles 2(11) and 17(2) of the Basic Regulation ([1]) and unlawfully calculated the applicant's dumping margin.

— The applicant puts forward that the Commission resorted to sampling pursuant to Article 17 of the Basic Regulation despite denying having done so, thus violating Article 17(2) of the Basic Regulation as the applicant was not given the opportunity to submit its comments on the proposed sample.

— The applicant further puts forward that the Commission wrongly and unlawfully calculated the applicant's dumping margin thereby violating Article 2(11) of the Basic Regulation.

2. Second plea in law, alleging that the Commission violated Article 9.3 of the WTO Anti-Dumping Agreement and Article 9(4), second paragraph of the Basic Regulation as well as the basic principle of good administration.

— According to the applicant, the Commission violated Article 9.3 of the WTO Anti-Dumping Agreement and Article 9(4), second paragraph of the Basic Regulation as the anti-dumping duty imposed exceeds the amount of dumping found in the investigation.

— The applicant further alleges that the Commission violated the principle of good administration in that it calculated the applicant's ad valorem dumping margin wrongly and unlawfully by using a constructed CIF value rather than the actual CIF value.

3. Third plea in law, alleging that the Commission wrongly applied Articles 2(9) and 2(10) of the Basic Regulation by erroneously deducting undue allowances for sales of small roles made from Jumbo rolls sourced by Schades Ltd. from EU producers.

4. Fourth plea in law, alleging that the Commission violated Article 2(1) of the Basic Regulation by erroneously constructing in two instances the normal value pursuant to Article 2(3) of the Basic Regulation.

5. Fifth plea in law, alleging that the Commission violated Articles 1(1), 3(1), 3(2), 3(3), 3(5), 3(6), 3(7) and 3(8) of the Basic Regulation, the case law of the EU Courts and of the WTO, the Commission's past practice and the principles of fair comparison and of equal treatment in the injury margin calculation.

— The applicant puts forward that the Commission violated Articles 1(1), 3(2), 3(3) and 3(6) of the Basic Regulation as it included resale of small rolls (product not concerned) in the injury margin calculation.

— The applicant further alleges that the Commission violated Articles 3(1), 3(2), 3(3), 3(5), 3(6), 3(7) and 3(8) of the Basic Regulation, the case law of the EU Courts and the WTO, the Commission's past practice and the principles of fair comparison and of equal treatment as it applied by analogy Article 2(9) of the Basic Regulation for the purposes of the injury margin calculation.

— The applicant lastly claims that the Commission violated Articles 3(2), 3(3) and 3(6) of the Basic Regulation as it failed to properly assess the impact of the negative undercutting margin found for the product concerned.

(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 21 June 2017 — Chypre v EUIPO — M. J. Dairies (BBQLOUMI)

(Case T-384/17)

(2017/C 269/44)

Language in which the application was lodged: English

Parties

Applicant: Republic of Cyprus (represented by: S. Malynicz, QC and V. Marsland, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: M. J. Dairies EOOD (Sofia, Bulgaria)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colour containing the word element 'BBQLOUMI' — Application for registration No 13 069 034

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 10 April 2017 in Case R 496/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and other party to bear their own costs and pay those of the applicant.

Plea in law

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

Action brought on 28 June 2017 — Romania v Commission

(Case T-391/17)

(2017/C 269/45)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: R. Radu, C.-M. Florescu, E. Gane and L. Lițu, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's (EU) decision of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe';

— order the 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 infringement of the provisions of the Treaties of the European Union relating to the competence of the Union.

   — The proposed citizens' initiative is exclusively aimed at improving the protection of the rights of persons belonging to national and linguistic minorities, and has no direct link with cultural diversity for the purposes of Article 3 TEU and Article 167 TFEU.

2. Second plea in law, alleging a failure to comply with the obligation to state reasons under the second paragraph of Article 296 TFEU.

   — The Commission confines itself to listing the proposals for measures by means of which statements of support will be collected from citizens and does not put forward any legal argument to support the conclusion that these fall within its sphere of competence.

Action brought on 27 June 2017 — Tengelmann Warenhandelsgesellschaft v EUIPO — C & C IP (T)

(Case T-401/17)

(2017/C 269/46)

Language in which the application was lodged: English

Parties

Applicant: Tengelmann Warenhandelsgesellschaft KG (Mülheim an der Ruhr, Germany) (represented by: H. Prange, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: C & C IP Sàrl (Luxembourg, Luxembourg)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'T' — Application for registration No 11 623 022

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 April 2017 in Case R 502/2015-5

Form of order sought

The applicant claims that the Court should:

— set aside the contested decision and amend it to the effect that the opposition is rejected in its entirety;

— order the defendant and, as the case may be, the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including the costs of the appeal proceedings.

Plea in law

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

Order of the General Court of 26 June 2017 — Fair deal for expats and Others v Commission

(Case T-713/16) ([1])

(2017/C 269/47)

Language of the case: English

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

([1]) OJ C 428, 21.11.2016.

Order of the General Court of 9 June 2017 — Casasnovas Bernad v Commission

(Case T-826/16) ([1])

(2017/C 269/48)

Language of the case: French

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

([1]) OJ C 22, 23.1.2017.

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