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(2017/C 283/01)

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 28 June 2017 — European Commission v Federal Republic of Germany

(Case C-482/14) ([1])

(Failure of a Member State to fulfil obligations — Development of the Community's railways — Directive 91/440/EEC — Article 6(1) — Deutsche Bahn group — Profit transfer agreement — Prohibition of the transfer of public aid earmarked for the management of railway infrastructure to rail transport services — Accounting obligations — Directive 91/440/EEC — Article 9(4) — Regulation (EC) No 1370/2007 — Article 6(1) — Point 5 of the annex — Accounting obligations — Presentation contract by contract of public aid paid for activities relating to the provision of passenger transport services in respect of public service remits)

(2017/C 283/02)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls and T. Maxian Rusche and by J. Hottiaux, Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, Agents, and by R. Van der Hout, advocaat)

Interveners in support of the defendant: Italian Republic (represented by: G. Palmieri, Agent, and by S. Fiorentino, avvocato dello Stato), Republic of Latvia (represented by: I. Kucina and by J. Treijs-Gigulis and I. Kalniņš, Agents)

Operative part of the judgment

The Court:

1. *Holds that, by failing to take all measures necessary to ensure that the detailed rules on account-keeping make it possible to monitor the prohibition of transferring public funds earmarked for the management of railway infrastructure to transport services, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(1) of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission, the Federal Republic of Germany, the Italian Republic and the Republic of Latvia to bear their own costs.*

([1]) OJ C 16, 19.6.2015.

Judgment of the Court (Fifth Chamber) of 29 June 2017 — European Commission v Portuguese Republic

(Case C-126/15) ([1])

(Failure of a Member State to fulfil obligations — Excise duty on cigarettes — Directive 2008/118/EC — Chargeability — Place and time duty falls due — Tax markings — Free movement of goods subject to excise duty — Temporal limit on the marketing and sale of packets of cigarettes — Principle of proportionality)

(2017/C 283/03)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: F. Tomat and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, N. Silva Vitorino and A. Cunha, acting as Agents)

Interveners in support of the defendant: Kingdom of Belgium (represented by: M. Jacobs and J.-C. Halleux, acting as Agents), Republic of Estonia (represented by: K. Kraavi-Käerdi, acting as Agent), Republic of Poland (represented by: B. Majczyna, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by providing that cigarettes released for consumption in a given year may no longer be marketed or sold to the public after the expiry of the time limit laid down in Article 27(a) of the Portaria No 1295/2007 do Ministério das Finanças e da Administração Pública (Decree No 1295/2007 of the Ministry for Finance and Public Administration) of 1 October 2007, in the version applicable to the present action, where there is no increase in the excise duty on those products taking effect the following year, the Portuguese Republic has failed to fulfil its obligations under Article 9, first paragraph of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC and the principle of proportionality.*

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

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

4. *Orders the European Commission to bear its own costs and to pay half of the costs incurred by the Portuguese Republic.*

5. *Orders the Kingdom of Belgium, the Republic of Estonia and the Republic of Poland to bear their own costs.*

([1]) OJ C 155, 11.5.2015.

Judgment of the Court (Fifth Chamber) of 29 June 2017 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Execution of the European arrest warrant issued against Daniel Adam Popławski

(Case C-579/15) ([1])

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Grounds for optional non-execution — Article 4(6) — Member State's undertaking to enforce the sentence in accordance with its domestic law — Implementation — Obligation of conforming interpretation)

(2017/C 283/04)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Daniel Adam Popławski

intervener: Openbaar Ministerie

Operative part of the judgment

1. *Article 4(6) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.*

2. *The provisions of Framework Decision 2002/584 do not have direct effect. However, the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed.*

3. *Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it does not authorise a Member State to refuse to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged and given a custodial sentence, on the sole ground that that Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced.*

([1]) OJ C 27, 25.1.2016.

Judgment of the Court (Eighth Chamber) of 28 June 2017 — Novartis Europharm Ltd v European Commission, Teva Pharma BV (C-629/15 P), Hospira UK Ltd (C-630/15 P)

(Joined Cases C-629/15 P and C-630/15 P) ([1])

(Appeal — Medicinal products for human use — Marketing authorisation — Regulation (EEC) No 2309/93 — Centralised procedure at European Union level — Development of a medicinal product that was the subject of a marketing authorisation for other therapeutic indications — Separate marketing authorisation and new trade name — Directive 2001/83/EC — Second subparagraph of Article 6(1) and Article 10(1) — Concept of a 'global marketing authorisation' — Regulatory data protection period)

(2017/C 283/05)

Language of the case: English

Parties

Appellant: Novartis Europharm Ltd (represented by: C. Schoonderbeek, advocaat)

Other parties to the proceedings: European Commission (represented by: K. Mifsud-Bonnici, A. Sipos and M. Šimerdová, acting as Agents), Teva Pharma BV (represented by: K. Bacon QC, instructed by C. Firth, Solicitor) (C-629/15 P), Hospira UK Ltd (represented by: J. Stratford QC, instructed by E. Vickers and N. Stoate, Solicitors) (C-630/15 P)

Operative part of the judgment

The Court:

1. *Dismisses the appeals in Cases C-629/15 P and C-630/15 P;*

2. *Orders Novartis Europharm Ltd to bear its own costs and to pay those incurred by the European Commission, by Teva Pharma BV and by Hospira UK Ltd in Cases C-629/15 P and C-630/15 P.*

(1) OJ C 38, 1.2.2016.

Judgment of the Court (Grand Chamber) of 27 June 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 4 de Madrid — Spain) — Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe

(Case C-74/16) (1)

(Reference for a preliminary ruling — State aid — Article 107(1) TFEU — Meaning of 'State aid' — Meaning of 'undertaking' and 'economic activity' — Other conditions for the application of Article 107 (1) TFEU — Article 108(1) and (3) TFEU — Meaning of 'new aid' and 'existing aid' — Agreement of 3 January 1979 between the Kingdom of Spain and the Holy See — Tax on construction, installations and works — Exemption for buildings belonging to the Catholic Church)

(2017/C 283/06)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 4 de Madrid

Parties to the main proceedings

Applicant: Congregación de Escuelas Pías Provincia Betania

Defendant: Ayuntamiento de Getafe

Operative part of the judgment

A tax exemption such as that at issue in the main proceedings, to which a congregation belonging to the Catholic Church is entitled in respect of works on a building intended to be used for activities that do not have a strictly religious purpose, may fall under the prohibition in Article 107(1) TFEU if, and to the extent to which, those activities are economic, a matter which it is for the referring court to determine.

(1) OJ C 145, 25.4.2016.

Judgment of the Court (Tenth Chamber) of 6 July 2017 (request for a preliminary ruling from the Audiencia Provincial de Burgos — Spain) — Juan Moreno Marín, María Almudena Benavente Cárdaba, Rodrigo Moreno Benavente v Abadía Retuerta, SA

(Case C-139/16) (1)

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 3(1)(c) — National word mark La Milla de Oro — Grounds for refusal of registration or invalidity — Signs indicating geographical origin)

(2017/C 283/07)

Language of the case: Spanish

Referring court

Audiencia Provincial de Burgos

Parties to the main proceedings

Applicants: Juan Moreno Marín, María Almudena Benavente Cárdaba, Rodrigo Moreno Benavente

Defendant: Abadía Retuerta SA

Operative part of the judgment

1. *A sign such as 'la Milla de Oro', referring to the characteristic of a product or service which is that it can be found in abundance in a single place with a high degree of value and quality, cannot constitute an indication of geographical origin, since that sign must be accompanied by a name designating a geographical place so that the actual physical space with which a strong concentration of a product or service of a high degree of value or quality is associated may be identified.*

2. *Article 3(1)(c) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a sign such as 'la Milla de Oro', referring to the characteristic of a product or service which is that such a product or service can be found in abundance in a single place with a high degree of value, is unlikely to have characteristics the use of which as a trade mark would constitute a ground for invalidity within the meaning of that provision.*

([1]) OJ C 200, 6.6.2016.

Judgment of the Court (Seventh Chamber) of 6 July 2017 — Toshiba Corporation v European Commission

(Case C-180/16 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Market in gas insulated switchgear projects — Decision taken by the European Commission following annulment in part of the initial decision by the General Court of the European Union — Amendment of fines — Rights of the defence — No adoption of a new statement of objections — Equal treatment — Joint venture — Calculation of the starting amount — Extent of contribution to the infringement — Res judicata)

(2017/C 283/08)

Language of the case: English

Parties

Appellant: Toshiba Corporation (represented by: J. F. MacLennan, Solicitor, S. Sakellariou, dikigoros, A. Schulz, Rechtsanwalt, and J. Jourdan, avocat)

Other party to the proceedings: European Commission (represented by: N. Khan, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Toshiba Corp. to pay the costs.*

([1]) OJ C 175, 17.5.2016.

Judgment of the Court (First Chamber) of 5 July 2017 (request for a preliminary ruling from the Bundesarbeitsgericht — Germany) — Werner Fries v Lufthansa CityLine GmbH

(Case C-190/16) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EU) No 1178/2011 — Annex I, point FCL.065(b) — Holders of a pilot's licence who have attained the age of 65 prohibited from acting as pilots of aircraft engaged in commercial air transport — Validity — Charter of Fundamental Rights of the European Union — Article 15 — Freedom of occupation — Article 21 — Equal treatment — Discrimination on grounds of age — Commercial air transport — Concept)

(2017/C 283/09)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Werner Fries

Defendant: Lufthansa CityLine GmbH

Operative part of the judgment

1. *Consideration of the first and second questions has revealed nothing that might affect the validity of point FCL.065(b) in Annex I to Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, in the light of Article 15(1) or Article 21(1) of the Charter of Fundamental Rights of the European Union;*

2. *Point FCL.065(b) in Annex I to Regulation No 1178/2011 must be interpreted as prohibiting the holder of a pilot's licence who has attained the age of 65 neither from acting as a pilot in ferry flights, operated by an air carrier carrying no passengers, cargo or mail, nor from working as an instructor and/or examiner on board an aircraft, without being part of the flight crew.*

([1]) OJ C 222, 20.6.2016.

Judgment of the Court (Third Chamber) of 6 July 2017 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per le Marche — Italy) — Nerea SpA v Regione Marche

(Case C-245/16) ([1])

(Reference for a preliminary ruling — State aid — Regulation (EC) No 800/2008 — General exemption by category — Scope — Article 1(6)(c) — Article 1(7)(c) — Concept of 'undertaking in difficulty' — Concept of 'collective insolvency proceedings' — Company granted State aid under a regional operational programme of the European Regional Development Fund (ERDF) subsequently admitted to an arrangement with creditors as a going concern — Withdrawal of the aid — Obligation to reimburse the advance paid)

(2017/C 283/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per le Marche

Parties to the main proceedings

Applicant: Nerea SpA

Defendant: Regione Marche

intervening parties: Banca del Mezzogiorno — MedioCredito Centrale SpA

Operative part of the judgment

1. *Article 1(7)(c) of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in accordance with Articles [107 and 108 TFEU] (General block exemption Regulation) must be interpreted as meaning that the concept of 'collective insolvency proceedings' that it refers to covers all collective insolvency proceedings for undertakings provided for by national law, whether they are opened by the national administrative or judicial authorities of their own motion or on the initiative of the undertaking concerned;*

2. *Article 1(7)(c) of Regulation No 800/2008 must be interpreted as meaning that the fact that an undertaking satisfied the conditions for being subject to collective insolvency proceedings according to national law, which is for the referring court to establish, is sufficient to prevent State aid being granted to it under that regulation or, if such aid has already been granted to it, to hold that it could not be granted in accordance with that regulation provided that those conditions were satisfied on the date on which that aid was granted. However, aid granted to an undertaking in compliance with Regulation No 800/2008 and, in particular, Article 1(6) thereof, cannot be withdrawn solely on the ground that that undertaking has been subject to collective insolvency proceedings subsequent to the date on which that aid was granted to it.*

([1]) OJ C 279, 1.8.2016.

Judgment of the Court (Seventh Chamber) of 6 July 2017 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — Glencore Agriculture Hungary Kft., formerly Glencore Grain Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Case C-254/16) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 183 — Principle of fiscal neutrality — Deduction of input tax — Refund of overpaid VAT — Investigation procedure — Fine imposed on the taxable person in the course of such a procedure — Extension of the period within which the refund must be made — Exclusion of payment of default interest)

(2017/C 283/11)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Glencore Agriculture Hungary Kft., formerly Glencore Grain Hungary Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

Operative part of the judgment

EU law must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, where a tax investigation procedure is initiated by a tax authority and where a taxable person is fined for failure to cooperate, the date of the refund of overpaid value added tax may be delayed until the formal report on that investigation is delivered to the taxable person and the payment of default interest may be refused, even where the duration of the tax investigation procedure is excessive and cannot be attributed entirely to the conduct of the taxable person.

([1]) OJ C 296, 16.8.2016.

Judgment of the Court (First Chamber) of 29 June 2017 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — 'L.Č.' IK v Valsts ienemumu dienests

(Case C-288/16) ([1])

(Reference for a preliminary ruling — Directive 2006/112/EC — Value added tax (VAT) — Article 146(1)(e) — Exemptions on exportation — Supply of services directly connected with the exportation or the importation of goods — Meaning)

(2017/C 283/12)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: 'L.Č.' IK

Defendant: Valsts ienemumu dienests

Operative part of the judgment

Article 146(1)(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the exemption laid down in that provision does not apply to a supply of services, such as that at issue in the main proceedings, relating to a transaction consisting in the transport of goods to a third country, where those services are not provided directly to the consignor or the consignee of those goods.

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Fourth Chamber) of 6 July 2017 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

(Case C-290/16) ([1])

(Reference for a preliminary ruling — Transport — Common rules for the operation of air services in the European Union — Regulation (EC) No 1008/2008 — Provisions on pricing — Article 22(1) — Article 23(1) — Information required on presentation of fares and rates available to the general public — Obligation to indicate the actual sum of taxes, charges, surcharges or fees — Pricing freedom — Invoicing of handling fees in the event of cancellation of a flight booking by a passenger or failure to present for boarding — Consumer protection)

(2017/C 283/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Air Berlin plc & Co. Luftverkehrs KG

Respondent: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

Operative part of the judgment

1. *The third sentence of Article 23(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community must be interpreted as meaning that, when publishing their air fares, air carriers must specify separately the amounts payable by customers in respect of taxes, airport charges and other charges, surcharges or fees referred to in subparagraphs (b) to (d) of the third sentence of Article 23(1) of that regulation and may not, as a consequence include those items, even partially, in the air fare referred to in subparagraph (a) of the third sentence of Article 23(1) of that regulation.*

2. *Article 22(1) of Regulation No 1008/2008 must be interpreted as not precluding the application of national legislation transposing Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts from leading to a declaration of invalidity of a term in general terms and conditions which allows separate flat-rate handling fees to be billed to customers who did not take a flight or who cancelled their booking.*

([1]) OJ C 343, 19.9.2016.

Judgment of the Court (Ninth Chamber) of 6 July 2017 (request for a preliminary ruling from the Curtea de Apel Bucureşti — Romania) — Dumitru Marcu v Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală Regională a Finanțelor Publice București

(Case C-392/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 199(1)(c) — No VAT registration — Reverse charge — Hypothetical nature of the question referred — Inadmissibility of the question referred)

(2017/C 283/14)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Dumitru Marcu

Defendants: Agenția Națională de Administrare Fiscală (ANAF), Direcția Generală Regională a Finanțelor Publice București

Operative part of the judgment

The request for a preliminary ruling made by the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania) is inadmissible.

([1]) OJ C 350, 26.9.2016.

Judgment of the Court (Seventh Chamber) of 28 June 2017 (request for a preliminary ruling from the Areios Pagos — Greece) — Georgios Leventis, Nikolaos Vafeias v Malcon Navigation Co. ltd., Brave Bulk Transport ltd

(Case C-436/16) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 23 — Jurisdiction clause — Jurisdiction clause in a contract between two companies — Action for damages — Joint and several liability of representatives of one of those companies for tortious acts — Ability of the representatives to rely upon that clause)

(2017/C 283/15)

Language of the case: Greek

Referring court

Areios Pagos

Parties to the main proceedings

Applicants: Georgios Leventis, Nikolaos Vafeias

Defendants: Malcon Navigation Co. ltd., Brave Bulk Transport ltd

Operative part of the judgment

Article 23(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a jurisdiction clause in a contract between two companies cannot be relied upon by the representatives of one of them to dispute the jurisdiction of a court over an action for damages which aims to render them jointly and severally liable for supposedly tortious acts carried out in the performance of their duties.

([1]) OJ C 392, 24.10.2016.

Order of the Court (Fifth Chamber) of 22 June 2017 (requests for a preliminary ruling from the Curtea de Apel Craiova and Tribunalul Bucureşti — Romania) — Fondul Proprietatea SA v Complexul Energetic Oltenia SA (C-556/15), SC Hidroelectrica SA (C-22/16)

(Joined Cases C-556/15 and C-22/16) ([1])

(Reference for a preliminary ruling — Articles 53(2) and 94 of the Rules of Procedure of the Court of Justice — State aid — Participation of a company with a majority public shareholding in an increase in the share capital of a company in which the State is the sole shareholder or in the capital formation for a State-owned commercial company — Questions of a hypothetical nature — Insufficient information regarding the factual context — Manifest inadmissibility)

(2017/C 283/16)

Language of the cases: Romanian

Referring courts

Curtea de Apel Craiova, Tribunalul Bucureşti

Parties to the main proceedings

Applicant: Fondul Proprietatea SA

Defendants: Complexul Energetic Oltenia SA (C-556/15), SC Hidroelectrica SA (C-22/16)

Operative part of the order

The requests for a preliminary ruling submitted by the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania), by decision of 13 October 2015, and by the Tribunalul Bucureşti (District Court, Bucharest, Romania), by decision of 3 July 2015, are manifestly inadmissible.

([1]) OJ C 38, 1.2.2016
OJ C 118, 4.4.2016

Order of the Court (Eighth Chamber) of 7 June 2017 — Redpur GmbH v European Union Intellectual Property Office (EUIPO), Redwell Manufaktur GmbH

(Case C-86/17 P) ([1])

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — EU trade mark — Opposition proceedings — Application for registration of the word mark Redpur — Rejection of the application for registration)

(2017/C 283/17)

Language of the case: German

Parties

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

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

Operative part of the order

1. *The appeal is dismissed.*

2. *Redpur GmbH is to bear its own costs.*

([1]) OJ C 213, 3.7.2017.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 13 April 2017 — Cresco Investigation GmbH v Markus Achatzi

(Case C-193/17)

(2017/C 283/18)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Cresco Investigation GmbH

Respondent in the appeal on a point of law: Markus Achatzi

Questions referred

1. Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Articles 1 and 2(2)(a) of Directive 2000/78/EC, ([1]) to be interpreted as precluding, in a dispute between an employee and an employer in the context of a private employment relationship, a national rule under which Good Friday is also a holiday, with an uninterrupted rest period of at least 24 hours, only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church, and if an employee [belonging to one of those churches] works, despite that day being a holiday, he has, in addition to the entitlement to payment for the work not requiring to be performed as a result of the day being a holiday, also an entitlement to payment for the work actually performed, whereas other employees, who are not members of those churches, do not have any such entitlement?

2. Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Article 2(5) of Directive 2000/78/EC, to be interpreted as meaning that the national legislation referred to in the first question, which — as measured against the total population and the membership, on the part of the majority of the population, of the Roman Catholic Church — grants rights and entitlements to only a relatively small group of members of certain (other) churches, is not affected by that directive because it concerns a measure that in a democratic society is necessary to ensure the protection of the rights and freedoms of others, particularly the right freely to practise a religion?

3. Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Article 7(1) of Directive 2000/78/EC, to be interpreted as meaning that the national legislation referred to in the first question is a positive and specific measure in favour of the members of the churches mentioned in the first question which is designed to guarantee their full equality in working life, to prevent or offset disadvantages to those members due to religion, if they are thereby granted the same right to practise a religion during working hours on what is an important holiday for that religion, such as otherwise exists for the majority of employees in accordance with a separate provision of national law, because generally no work is performed on the holidays for the religion that is observed by the majority of employees?

   If it is found that there is discrimination within the meaning of Article 2(2)(a) of Directive 2000/78/EC:

4. Is EU law, in particular Article 21 of the Charter of Fundamental Rights, in conjunction with Articles 1, 2(2)(a) and 7(1) of Directive 2000/78/EC, to be interpreted as meaning that, so long as the legislature has not created a non-discriminatory legal situation, a private employer is required to grant the rights and entitlements set out in the first question in respect of Good Friday to all employees, irrespective of their religious affiliation, or must the national provision referred to in the first question be disapplied in its entirety, with the result that the rights and entitlements in respect of Good Friday set out in the first question are not to be granted to any employees?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 25 April 2017 — Alexander Mölk v Valentina Mölk

(Case C-214/17)

(2017/C 283/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Alexander Mölk

Defendant: Valentina Mölk

Questions referred

1. Is Article 4(3) read in conjunction with Article 3 of the 2007 Hague Protocol on the law applicable to maintenance obligations to be interpreted as meaning that a maintenance debtor's application, on the basis of a change in his income, for a reduction in the amount of maintenance awarded by a decision that has become final is governed by the law of the State of the creditor's habitual residence even if the amount of maintenance previously payable was determined by the court, on application by the creditor pursuant to Article 4(3) of the 2007 Hague Protocol on the law applicable to maintenance obligations, according to the law of the State where the debtor has his habitual residence, which has not changed?

   If the answer to Question 1 is in the affirmative:

2. Is Article 4(3) of the 2007 Hague Protocol on the law applicable to maintenance obligations to be interpreted as meaning that a creditor also 'seises' the competent authority of the State where the debtor has his habitual residence by entering an appearance, within the meaning of Article 5 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, ([1]) and contesting the substance of the matter in proceedings initiated by the debtor with the competent authority?

([1]) OJ 2009 L 7, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 25 April 2017 — Silvio Berlusconi, Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia, Istituto per la Vigilanza Sulle Assicurazioni (IVASS)

(Case C-219/17)

(2017/C 283/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Silvio Berlusconi, Finanziaria d'investimento Fininvest SpA (Fininvest)

Defendants: Banca d'Italia, Istituto per la Vigilanza Sulle Assicurazioni (IVASS)

Questions referred

1. Is Article 263(1), (2) and (5) of the Treaty on the Functioning of the European Union, read in conjunction with Article 256(1) thereof, to be interpreted as meaning that the Courts of the European Union have jurisdiction, or that the national courts have jurisdiction, in an action challenging decisions to initiate procedures, measures of inquiry and non-binding proposals adopted by the competent national authority (as specified in paragraph 1 of the present order) in proceedings governed by Articles 22 and 23 of Directive 2013/36/EU ([1]) of the European Parliament and of the Council of 26 June 2013, by Articles 1(5), 4(1)(c) and 15 of Council Regulation (EU) No 1024/2013 ([2]) of 15 October 2013, by Articles 85, 86 and 87 of Regulation (EU) No 468/2014 ([3]) of the European Central Bank of 16 April 2014 and by Articles 19, 22 and 25 of the Italian Banking Act?

2. In particular, may the jurisdiction of the Courts of the European Union be asserted when the abovementioned measures are challenged, not in a general action for annulment, but in an action for a declaration of invalidity on the grounds of breach or circumvention of the ruling in Judgment No 882/2016 of 3 March 2016 of the Consiglio di Stato brought in accordance with Article 112 et seq. of the Italian Code of Administrative Procedure relating to compliance with a judgment (that is to say, in proceedings peculiar to Italian administrative procedural law), when the decision of the EU Courts involves the interpretation and identification, in accordance with national law, of the objective limits of the ruling given in the judgment in question?

([1]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (OJ 2013 L 176, p. 338).

([2]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

([3]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ 2014 L 141, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 8 May 2017 — Legatoria Editoriale Giovanni Olivotto (LEGO) SpA v Gestore dei servizi energetici (GSE) SpA and Others

(Case C-242/17)

(2017/C 283/21)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Legatoria Editoriale Giovanni Olivotto (LEGO) SpA

Respondents: Gestore dei servizi energetici (GSE) SpA, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dello Sviluppo Economico, Ministero delle Politiche Agricole e Forestali

Questions referred

1. Does EU law, and more specifically Article 18(7) of Directive 2009/28/EC, ([1]) in conjunction with Commission Decision 2011/438/EU of 19 July 2011, ([2]) preclude national provisions, such as the Ministerial Decree of 23 January 2012, and in particular Articles 8 and 12 thereof, which impose specific requirements that are both different from and more extensive than the requirements which are satisfied by signing up to a voluntary scheme which is the subject of a decision of the European Commission adopted in accordance with Article 18(4) of Directive 2009/28/EC?

2. If the answer to Question (a) is in the negative, must economic operators which are involved in the product supply chain, even though their role is merely that of a trader or intermediary and they do not possess physical availability of the product in question, be held to be subject to the provisions of EU law cited in Question (a)?

(1) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

(2) Commission Implementing Decision of 19 July 2011 on the recognition of the 'International Sustainability and Carbon Certification' scheme for demonstrating compliance with the sustainability criteria under Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council (OJ 2011 L 190, p. 79).

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 15 May 2017 — Bernhard Schloesser, Petra Noll v Société Air France SA

(Case C-255/17)

(2017/C 283/22)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Bernhard Schloesser, Petra Noll

Defendant: Société Air France SA

Question referred

In circumstances where a contract has been entered into with an operating air carrier for a journey comprising two legs, and providing for a change of aircraft by the passenger, and the first leg of the journey is subject to a significant delay, do the courts of the place of final destination have jurisdiction in respect of a claim for compensation brought against that air carrier pursuant to Regulation No 261/2004? (1)

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

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 15 May 2017 — E.B. v Versicherungsanstalt öffentlich Bediensteter BVA

(Case C-258/17)

(2017/C 283/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: E.B.

Respondent body: Versicherungsanstalt öffentlich Bediensteter BVA

Questions referred

1. Does Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1]) ('the Directive') preclude the maintenance in being of the new legal position created by an administrative decision that has become final under national law, in the area of law governing disciplinary action in the civil service (disciplinary decision), compulsorily retiring and reducing the pension benefits of a civil servant, where

   that administrative decision was not yet subject to provisions of EU law, in particular the Directive, at the time when it was adopted, but

   a (notional) decision to the same effect would infringe the Directive if it were adopted within the temporal scope of the Directive?

2. If the first question is answered in the affirmative, is it, for the purposes of creating a non-discriminatory situation,

   (a) necessary under EU law, for the purposes of determining the civil servant's pension, to treat him as if, in the period between the entry into force of the administrative decision and his reaching statutory pensionable age, he had not been retired but working, or is it

   (b) sufficient for these purposes to recognise as due the unreduced pension accruing in consequence of compulsory retirement at the time specified in the administrative decision?

3. Does the answer to Question 2 depend on whether the civil servant did in fact proactively seek active employment in the federal civil service before reaching retirement age?

4. If it is considered sufficient to annul the percentage reduction of pension entitlement (and depending also, if necessary, on the circumstances referred to in Question 3):

   Can the principle of non-discrimination contained in the Directive support a primacy of application over conflicting national law which a national court must observe, when calculating pension entitlement, even in respect of periods before the Directive became directly applicable in national law?

5. If Question 4 is answered in the affirmative, to which point in time does such 'retroactive effect' extend?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Finanzgericht Münster (Germany) lodged on 17 May 2017 — Harry Mensing v Finanzamt Hamm

(Case C-264/17)

(2017/C 283/24)

Language of the case: German

Referring court

Finanzgericht Münster

Parties to the main proceedings

Applicant: Harry Mensing

Defendant: Finanzamt Hamm

Questions referred

1. Is Article 316(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) to be interpreted as meaning that taxable dealers may apply the margin scheme also to the supply of works of art supplied to the taxable dealer within the Community by their creators or their successors in title where such creators or successors in title are not persons referred to in Article 314 of Directive 2006/112?

2. If the answer to Question 1 is in the affirmative: does Article 322(b) of Directive 2006/112 require that the dealer be denied the right to deduct input tax paid on the intra-Community acquisition of works of art, even if there is no equivalent provision under national law?

(1) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 17 May 2017 — Rhein-Sieg-Kreis v Verkehrsbetrieb Hüttebräucker GmbH, BVR Busverkehr Rheinland GmbH

(Case C-266/17)

(2017/C 283/25)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Appellant: Rhein-Sieg-Kreis

Respondents: Verkehrsbetrieb Hüttebräucker GmbH, BVR Busverkehr Rheinland GmbH

Questions referred

1. Does Article 5(2) of Regulation (EC) No 1370/2007 (1) apply to contracts which are not contracts which, within the meaning of the first sentence of Article 5(1) of Regulation (EC) No 1370/2007, take the form of service concession contracts as defined in Directives 2004/17/EC (2) or 2004/18/EC? (3)

If Question 1 is answered in the affirmative:

2. Where an individual competent authority awards a public service contract directly to an internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007, is the joint exercise of control by that authority together with the other shareholders of the internal operator precluded if the power to intervene in public passenger transport in a given geographical area (Article 2(b) and (c) of Regulation (EC) No 1370/2007) is divided between the individual competent authority and a group of authorities which provides integrated public passenger transport services, for example where the power to award public service contracts to an internal operator remains with the individual competent authority but the responsibility for tariffs is transferred to a special purpose transport association to which, in addition to the individual authority, further authorities competent in their geographical areas belong?

3. Where an individual competent authority awards a public service contract directly to an internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007, is the joint exercise of control by that authority together with the other shareholders of the internal operator precluded if, according to that operator's articles of association, in the case of resolutions concerning the conclusion, amendment or termination of a public service contract referred to in Article 5(2) of Regulation (EC) No 1370/2007, the only shareholder entitled to vote is the one which itself or whose indirect or direct owner awards a public service contract to the internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007?

4. Does Article 5(2)(b) of Regulation (EC) No 1370/2007 permit the internal operator also to perform public passenger transport services for other competent local authorities within their territory (including through routes or other part services which enter the territory of neighbouring competent local authorities) if these are not awarded through organised competitive tender procedures?

5. Does Article 5(2)(b) of Regulation (EC) No 1370/2007 permit the internal operator also to perform public passenger transport activity outside the territory of the commissioning authority for other authorities on the basis of public service contracts covered by the transitional provisions of Article 8(3) of Regulation (EC) No 1370/2007?

6. On which date must the requirements of Article 5(2) of Regulation (EC) No 1370/2007 be satisfied?

(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.
(2) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ 2004 L 134, p. 1.
(3) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ 2004 L 134, p. 114.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Herbert Blesgen v TUIfly GmbH

(Case C-283/17)

(2017/C 283/26)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Herbert Blesgen

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? (1) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: Is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Simone Künnecke and Others v TUIfly GmbH

(Case C-284/17)

(2017/C 283/27)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Simone Künnecke, Thomas Küther, Antonia Künnecke, Moritz Künnecke

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: Is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Marta Gentile and Marcel Gentile v TUIfly GmbH

(Case C-285/17)

(2017/C 283/28)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicants: Marta Gentile, Marcel Gentile

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: Is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 18 May 2017 — Gabriele Ossenbeck v TUIfly GmbH

(Case C-286/17)

(2017/C 283/29)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Gabriele Ossenbeck

Defendant: TUIfly GmbH

Questions referred

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? ([1]) In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

2. In the event that the first question is answered in the negative: Is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?

3. In the event that the first or the second question is answered in the affirmative: must the extraordinary circumstance itself have been present at the time the flight was cancelled or is the operating air carrier entitled to devise a new flight plan pursuant to economic considerations?

4. In the event that the first or the second question is answered in the affirmative: does the avoidability criterion relate to the extraordinary circumstance or, rather, to the consequences of the occurrence of the extraordinary circumstance?

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 29 May 2017 — Hellenic Republic v Leo Kuhn

(Case C-308/17)

(2017/C 283/30)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Defendant and appellant on a point of law: Hellenic Republic

Applicant and respondent in the appeal on a point of law: Leo Kuhn

Questions referred

Must Article 7(1)(a) of Regulation (EU) No 1215/2012 (1) be interpreted as meaning that:

1. even in the case — as here — of the repeated contractual transfer of a claim, the place of performance within the meaning of that provision is determined by the first contractual agreement?

2. in the case of the assertion of a claim seeking compliance with the terms of a government bond such as that specifically issued by the Hellenic Republic in the present case, or seeking damages for non-fulfilment of that claim, the actual place of performance is established immediately upon the payment of interest from that government bond into an account of a person holding a domestic securities portfolio?

3. the fact that a legal place of performance within the meaning of Article 7(1)(a) of that regulation was established by the first contractual agreement precludes the assumption that the subsequent actual performance of a contract establishes a — further — place of performance within the meaning of that provision?

(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).

Appeal brought on 6 June 2017 by HB and Others against the judgment of the General Court (First Chamber) delivered on 5 April 2017 in Case T-361/14, HB and Others v European Commission

(Case C-336/17 P)

(2017/C 283/31)

Language of the case: German

Parties

Appellants: HB and Others (represented by: P. Brockmann, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

1. set aside the judgment of the General Court of the European Union of 5 April 2017 in Case T-361/14, *HB and Others* v *Commission*, by which their action was dismissed as unfounded and they were ordered to pay the costs, and refer the case back to the General Court of the European Union so that a new hearing can be held;

   in the alternative,

2. should the Court take the view that it has sufficient information before it for that purpose, itself give a ruling on the merits and confirm that the psychological interaction between humans and animals is a matter that comes within the competence of the European Union;

3. in any event, order the European Commission to pay the costs.

Grounds of appeal and main arguments

First ground of appeal: Procedural defects consisting in an infringement of the right to be heard, in that:

— the acknowledgment by counsel and the judges of the timely appearance of the first appellant at the hearing on 27 September 2016 was prevented because a court official prohibited the admission of the first appellant's young daughter, her child carer having been delayed. The first appellant was consequently refused entry and, contrary to the statement of that official, no information was passed on to the judges or to her counsel with regard to her presence; and

— the information that they must actively signify their presence in the court room in order to be noted as being present was also not passed on to the other appellants, since, although they arrived before the start of the proceedings, they did so after the time indicated on the formal document requesting their appearance in court.

In this respect, the hearing of the parties, which had been applied for in writing, was precluded and this, in the appellants' view, led to an erroneous legal assessment, namely that their action was unfounded.

Second ground of appeal: Procedural defects resulting from an assessment of the probative nature of evidence before its production was ordered, in that:

— all offers to adduce evidence were improperly rejected and without any reason being given;

— in particular, with regard to issues of an interdisciplinary nature, no discussion by experts was permitted; and

— no written or oral questions were submitted to the parties.

This, in the appellants' view, led to an erroneous legal assessment, namely that their action was unfounded.

Third ground of appeal: In the event that the Court of Justice should take the view that ethics are a matter involving human rights and an important requirement for integration, it would be possible for it to give a decision on the merits in the light of the case file.

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 7 June 2017 — Verein für lauteren Wettbewerb e.V. v Princesport GmbH

(Case C-339/17)

(2017/C 283/32)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Verein für lauteren Wettbewerb e.V.

Defendant: Princesport GmbH

Questions referred

1. Is Article 7(1) of Regulation (EU) No 1007/2011 ([1]) to be interpreted as meaning that it is mandatory to clarify that the product is a pure textile product exclusively composed of the same fibre?

2. Is use of one of the three terms mentioned in Article 7 of Regulation (EU) No 1007/2011, namely '100 %', 'pure' or 'all', mandatory or is this merely an option, and not an obligation, for such products?

3. Does the obligation under Article 9(1) of Regulation (EU) No 1007/2011 to label a textile product or to mark it with the name and percentage by weight of all constituent fibres also apply to pure textile products coming under Article 7 of Regulation (EU) No 1007/2011?

([1]) Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (OJ 2011 L 272, p. 1).

Appeal brought on 13 June 2017 by Equipolymers Srl, M&G Polimeri Italia SpA, Novapet SA against the judgment of the General Court (First Chamber) delivered on 5 April 2017 in Case T-422/13: Committee of Polyethylene Terephthalate (PET) Manufacturers in Europe (CPME) and Others v Council of the European Union

(Case C-363/17 P)

(2017/C 283/33)

Language of the case: English

Parties

Appellants: Equipolymers Srl, M&G Polimeri Italia SpA, Novapet SA (represented by: L. Ruessmann, avocat, J. Beck, Solicitor)

Other parties to the proceedings: Committee of Polyethylene Terephthalate (PET) Manufacturers in Europe (CPME), Cepsa Química SA, Indorama Ventures Poland sp. z o.o., Lotte Chemical UK Ltd, Ottana Polimeri Srl, UAB Indorama Polymers Europe, UAB Neo Group, UAB Orion Global pet, Council of the European Union, European Commission

Form of order sought

The appellants claim that the Court should:

— declare the appeal admissible and well-founded;

— set aside the General Court's judgment in so far as it dismisses the claim for compensation of damages;

— rule on the substance of the claim for compensation of damages and award the appellants the damages claimed, or refer the case back to the General Court for a decision on the substance of the Application for Damages; and

— order the Council to pay the appellants' costs.

Pleas in law and main arguments

The General Court distorted and wrongly presented the evidence submitted by the Appellants when finding that there is no causal link between the unlawful adoption of Decision 2013/226 ([1]) and the damages incurred by the Appellants. (Contested Judgment, paragraphs 155 to 197, and in particular paragraphs 187 to 189).

([1]) Council Implementing Decision 2013/226/EU of 21 May 2013 rejecting the proposal for a Council implementing regulation imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia and Malaysia, in so far as the proposal would impose a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand (OJ 2013, L 136, p. 12).

Request for a preliminary ruling from the Tribunal de grande instance de Bobigny (France) lodged on 19 June 2017 — Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) v Vueling Airlines SA

(Case C-370/17)

(2017/C 283/34)

Language of the case: French

Referring court

Tribunal de grande instance de Bobigny

Parties to the main proceedings

Applicant: Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC)

Defendant: Vueling Airlines SA

Question referred

Is the effect of an E 101 certificate issued, in accordance with Article 11(1) and Article 12a(1a) of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, ([1]) by the institution designated by the authority of the Member State whose social security legislation remains applicable to the situation of the employee to be preserved even though the E 101 certificate has been obtained as a result of fraud or an abuse of right, which has been established in a final decision of a court of the Member State in which the employee carries out or should carry out his activity?

If the answer to that question is in the affirmative, does the issuing of E 101 certificates prevent the victims of the damage suffered as a result of the conduct of the employer, who has committed the fraud, from being compensated for that damage, without the affiliation of the employees to the schemes designated by the E 101 certificate being called into question by the action for damages brought against the employer?

([1]) OJ 1972 L 74, p. 1.

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 22 June 2017 — The Minister for Justice and Equality Ireland and the Attorney General v Arkadiusz Piotr Lipinski

(Case C-376/17)

(2017/C 283/35)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: The Minister for Justice and Equality, Ireland and the Attorney General

Defendant: Arkadiusz Piotr Lipinski

Questions referred

1. Where a person is convicted and sentenced by a court of competent jurisdiction in a member state and the original sentence imposed on him is altered on appeal and that sentence (as altered on appeal) is subsequently both suspended and reactivated following the quashing of the suspension in question, should the term 'the trial' as used in Article 4a of the Framework Decision ([1]) be interpreted as:

   a) referring only to the process leading to the finding of guilt and the imposition of the original sentence ('the original sentence'); or

   b) referring to (a) above and/or any or all of the following:

      i) the process of any appeal following (a) and where by the original sentence is altered on appeal ('the altered sentence');

      ii) the process leading to the subsequent suspension of the altered sentence (or part thereof);

      iii) the process leading to the revocation of suspension of the altered sentence (or part thereof).

2. In the event that the term 'the trial' is to be interpreted as referring to or including the process of any appeal leading to the altered sentence, is the absence of a reference to the fact that the person whose surrender is sought was notified of and represented at, the appeal in question fatal to the validity of the European Arrest Warrant notwithstanding the fact that, as a result of additional information supplied in the course of the process in the requested state, it becomes clear as a matter of fact that the person concerned was actually notified of and represented in the appeal process.

([1]) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002, L 190, p. 1).

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 22 June 2017 — Minister for Justice and Equality, The Commissioner of the Garda Síochána v Workplace Relations Commission

(Case C-378/17)

(2017/C 283/36)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: Minister for Justice and Equality, The Commissioner of the Garda Síochána

Defendant: Workplace Relations Commission

Question referred

Where

a) a national body is established by law and has a general jurisdiction conferred on it to inter alia ensure enforcement of Union law in a particular area; and

b) national law would require that such body not have jurisdiction in a limited category of case where an effective remedy would require the disapplication of national legislation on the basis of national or European law; and

c) appropriate national courts would have a jurisdiction to make any appropriate order disapplying national legislation which was required to ensure compliance with the measure of European law in question, would have jurisdiction to entertain cases in which such a remedy was necessary, would have jurisdiction in such cases to provide any remedy mandated by Union law and where the remedy provided in the courts has been assessed, in accordance with the jurisprudence of the Court of Justice, as complying with the principles of equivalence and effectiveness,

Must the statutory body concerned nonetheless be taken to have a jurisdiction to entertain a complaint that national legislation was in breach of relevant Union law and, if upholding that complaint, disapply that legislation notwithstanding that national law would confer the jurisdiction in all cases, involving challenges to the validity of legislation on any ground or requiring the disapplication of legislation, on a court established under the Constitution rather than the body in question?

Action brought on 26 June 2017 — European Commission v Republic of Croatia

(Case C-381/17)

(2017/C 283/37)

Language of the case: Croatian

Parties

Applicant: European Commission (represented by: M. Mataija, T. Scharf, G. von Rintelen, acting as Agents, acting as Agent (s))

Defendant: Republic of Croatia

Form of order sought

The European Commission claims that the Court should:

— declare that the Republic of Croatia has failed to fulfil its obligations under Article 42(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014, L 60, p. 34), by failing to adopt, by 21 March 2016, the laws, regulations and administrative provisions necessary to comply with that Directive or, in any event, by failing to communicate those measures to the Commission;

— order the Republic of Croatia, in accordance with Article 260(3) TFEU, to pay a penalty payment of EUR 9 865,40 per day, as from the date of delivery of the judgment declaring the failure to fulfil the obligation to notify the measures transposing Directive 2014/17/EU;

— order Republic of Croatia to pay the costs.

Pleas in law and main arguments

The Republic of Croatia has failed to fulfil its obligation to notify the measures transposing Directive 2014/17/EU within the period laid down in Article 42(1) of that Directive.

Order of the President of the First Chamber of the Court of 18 May 2017 (request for a preliminary ruling from the Commissione Tributaria Regionale di Milano — Italy) — Agenzia delle Entrate — Direzione Regionale Lombardia Ufficio Contenzioso v H3G SpA

(Case C-202/15) ([1])

(2017/C 283/38)

Language of the case: Italian

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

([1]) OJ C 262, 10.8.2015.

Order of the President of the Court of 2 May 2017 (request for a preliminary ruling from the Letrado de la Administración de Justicia del Juzgado de Violencia sobre la Mujer Único de Terrassa — Spain) — María Assumpció Martínez Roges v José Antonio García Sánchez

(Case C-609/15) ([1])

(2017/C 283/39)

Language of the case: Spanish

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

([1]) OJ C 38, 1.2.2016.

Order of the President of the Fourth Chamber of the Court of 19 May 2017 (request for a preliminary ruling from the Conseil d'État — Belgium) — État belge v Max-Manuel Nianga

(Case C-199/16) ([1])

(2017/C 283/40)

Language of the case: French

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

([1]) OJ C 211, 13.6.2016.

Order of the President of the Court of 26 April 2017 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo nº 1 — Santa Cruz de Tenerife — Spain) — Dragados SA v Cabildo Insular de Tenerife

(Case C-324/16) ([1])

(2017/C 283/41)

Language of the case: Spanish

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

([1]) OJ C 305, 22.8.2016.

Order of the President of the Court of 18 May 2017 (request for a preliminary ruling from the Cour d'appel de Versailles — France) — Green Yellow Canet en Roussillon SNC (C-583/16), Green Yellow Hyères Sup SNC (C-584/16) v Enedis, SA, in the presence of: Axa Corporate Solutions Assurances SA

(Joined Cases C-583/16 and C-584/16) ([1])

(2017/C 283/42)

Language of the case: French

The President of the Court has ordered that the cases be removed from the register.

([1]) OJ C 38, 6.2.2017.

GENERAL COURT

Judgment of the General Court of 13 July 2017 — Rosenich v EUIPO

(Case T-527/14) ([1])

(Internal market — Decision of EUIPO rejecting a request for inclusion on the list of professional representatives — Condition relating to the existence of a place of business within the European Union — Article 93(2)(b) of Regulation (EC) No 207/2009 — Freedom to provide services — Article 36 of the EEA Agreement — Consistent interpretation)

(2017/C 283/43)

Language of the case: German

Parties

Applicant: Paul Rosenich (Triesenberg, Liechtenstein) (represented by: A. von Mühlendahl and C. Eckhartt, lawyers)

Defendant: European Union Intellectual Property Office (represented by: initially, G. Schneider and, subsequently, D. Walicka, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 29 April 2014 (Case R 2063/2012-4), concerning the refusal of EUIPO to enter the applicant on the list of professional representatives provided for in Article 93 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 April 2014 (Case R 2063/2012-4);*

2. *Annuls the decision of the Director of the Operations Support Department of EUIPO of 7 September 2012;*

3. *Orders EUIPO to pay the costs.*

([1]) OJ C 462, 22.12.2014.

Judgment of the General Court of 19 July 2017 — Combaro v Commission

(Case T-752/14) ([1])

(Customs union — Association Agreement between the European Community and the Republic of Latvia — Article 239 of Regulation (EEC) No 2913/92 — Reimbursement and remission of import duties — Import of woven linen fabrics from Latvia — Fairness clause — Special situation — Deception or obvious negligence — Commission decision finding that the remission of import duties was not justified)

(2017/C 283/44)

Language of the case: German

Parties

Applicant: Combaro SA (Lausanne, Switzerland) (represented by: D. Ehle, lawyer)

Defendant: European Commission (represented by: A. Caeiros and B.-R. Killmann, acting as Agents)

Re:

Action based on Article 263 TFEU and seeking annulment of Commission Decision C(2014) 4908 final of 16 July 2014 rejecting the applicant's request for remission of import duties in the amount of EUR 461 415,62.

Operative part of the judgment

The General Court:

1. *Annuls Commission Decision C(2014) 4908 final of 16 July 2014 rejecting Combaro SA's request for remission of import duties in the amount of EUR 461 415,62;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Combaro.*

(1) OJ C 34, 2.2.2015.

Judgment of the General Court of 13 July 2017 — Boomkwekerij van Rijn-de Bruyn v CPVO — Artevos (Oksana)

(Case T-767/14) (1)

(New varieties of plants — Community plant variety rights — Application for a Community plant variety right for the pear variety Oksana — Objections — Rejection of the application by the Board of Appeal of the CPVO — Article 10 of Regulation (EC) No 2100/94 — Novelty of the candidate variety — Lack of evidence)

(2017/C 283/45)

Language of the case: English

Parties

Applicant: Boomkwekerij van Rijn-de Bruyn BV (Uden, Netherlands) (represented by: P. Jonker, lawyer)

Defendant: Community Plant Variety Office (CPVO) (represented by: F. Mattina, acting as Agent)

Other party to the proceedings before the Board of Appeal of CPVO, intervening before the General Court: Artevos GmbH (Karlsruhe, Germany) (represented by: G. Würtenberger, W.R. Kunze, lawyers, and B. Schnell, Solicitor)

Other party to the proceedings before the Board of Appeal of the CPVO: Dachverband Kulturpflanzen- und Nutztiervielfalt eV (Bielefeld, Germany)

Re:

Action against the decision of the Board of Appeal of the CPVO of 2 July 2014 (Case A 007/2013) concerning the grant of a Community plant variety right in respect of pears of the Oksana variety.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Boomkwekerij van Rijn-de Bruyn BV to pay the costs.*

(1) OJ C 46, 9.2.2015.

Judgment of the General Court of 14 July 2017 — Certified Angus Beef v EUIPO — Certified Australian Angus Beef (CERTIFIED AUSTRALIAN ANGUS BEEF)

(Case T-55/15) (1)

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark CERTIFIED AUSTRALIAN ANGUS BEEF — Earlier well-known figurative and word marks SINCE 1978 CERTIFIED ANGUS BEEF BRAND and CERTIFIED ANGUS BEEF BRAND — Relative ground for refusal — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 283/46)

Language of the case: English

Parties

Applicant: Certified Angus Beef LLC (Wooster, Ohio, United States) (represented by: C. Aikens, Barrister)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer and A. Söder, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: Certified Australian Angus Beef Pty Ltd (Surrey Hills, Australia)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 30 October 2014 (Case R 662/2014-4), relating to opposition proceedings between Certified Angus Beef and Certified Australian Angus Beef.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Certified Angus Beef LLC to pay the costs.*

([1]) OJ C 107, 30.3.2015.

Judgment of the General Court of 13 July 2017 — Talanton v Commission

(Case T-65/15) ([1])

(Arbitration clause — Pocemon contract — Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Eligible costs — Recovery of sums paid — Abuse of contractual rights — Principle of good faith — Legitimate expectations — Burden of proof — Counterclaim)

(2017/C 283/47)

Language of the case: Greek

Parties

Applicant: Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon (Palaio Faliro, Greece) (represented by: K. Damis, lawyer)

Defendant: European Commission (represented by: R. Lyal, acting as Agent, and L. Athanassiou and G. Gerapetritis, lawyers)

Re:

First, application based on Article 272 TFEU seeking a declaration that the expenditure that the applicant declared in the context of grant agreement No 216088 relating to the implementation of the 'Point-of-care monitoring and diagnostics for autoimmune diseases' project, concluded in the context of the Seventh Framework Programme for research, technological development and demonstration activities (2007-2013), was eligible and that the request, by the Commission, for recovery of the sum of EUR 273 289,63, pursuant to that grant agreement, amounted to a breach of the Commission's contractual obligations, as well as, second, a counterclaim seeking an order requiring the applicant to pay the sum of EUR 253 289,63, together with interest and reduced by any later payments.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon to reimburse to the European Commission the sum of EUR 253 289,63, paid pursuant to grant agreement No 216088 relating to the implementation of the 'Point-of-care monitoring and diagnostics for autoimmune diseases' project, together with late payment interest at the rate of 3,55 % from 27 January 2015, reduced by the sum of EUR 5 000 paid to the Commission on 4 May 2015, which is first set against late payment interest and then against the principal amount;*

3. *Orders Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon to pay the costs.*

([1]) OJ C 138, 27.4.2015.

Judgment of the General Court of 12 July 2017 — Estonia v Commission

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

(EAGF and EAFRD — Expenditure excluded from financing — Expenditure incurred by Estonia — Cross compliance — Obligation to state reasons — Proportionality — Principle of sound administration — Legal certainty)

(2017/C 283/48)

Language of the case: Estonian

Parties

Applicant: Republic of Estonia (represented initially by K. Kraavi-Käerdi, subsequently by N. Grünberg, acting as Agents)

Defendant: Commission (represented by: A. Sauka and E. Randvere, acting as Agents)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 16, p. 33) to the extent that it concerns the expenditure incurred by the Republic of Estonia amounting to EUR 691 746,53.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Estonia to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 190, 8.6.2015.

Judgment of the General Court of 20 July 2017 — Diesel v EUIPO — Sprinter megacentros del deporte (Representation of a curved and angled line)

(Case T-521/15) ([1])

(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a curved and angled line — Earlier EU figurative mark representing a capital letter 'D' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 283/49)

Language of the case: English

Parties

Applicant: Diesel SpA (Breganze, Italy) (represented by: A. Gaul, M. Frank, A. Parassina and K. Dani, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Sprinter megacentros del deporte, SL (Elche, Spain) (represented by: S. Malynicz QC)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 18 June 2015 (Case R 3291/2014-2), relating to opposition proceedings between Diesel and Sprinter megacentros del deporte.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 18 June 2015 (Case R 3291/2014-2);*

2. *Orders EUIPO to bear its own costs and to pay those incurred by Diesel SpA;*

3. *Orders Sprinter megacentros del deporte, SL to bear its own costs.*

(1) OJ C 381, 16.11.2015.

Judgment of the General Court of 20 July 2017 — Basic Net v EUIPO (Representation of three vertical stripes)

(Case T-612/15) (1)

(European Union trade mark — Application for an EU figurative mark representing three vertical stripes — Absolute ground for refusal — Not distinctive — Article 7(1)(b) of Regulation (EC) No 207/2009 — No distinctive character acquired through use — Article 7(3) of Regulation No 207/2009)

(2017/C 283/50)

Language of the case: Italian

Parties

Applicant: Basic Net SpA (Turin, Italy) (represented by: D. Sindico, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 14 August 2015 (Case R 2845/2014-1) concerning an application for registration of a figurative sign representing three vertical stripes as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Basic Net SpA to pay the costs.*

(1) OJ C 7, 11.1.2016.

Judgment of the General Court of 20 July 2017 — Badica and Kardiam v Council

(Case T-619/15) (1)

(Common foreign and security policy — Restrictive measures adopted against certain persons and entities in view of the situation in the Central African Republic — Freezing of funds — Initial decision to list — List of persons and entities covered by the freezing of funds and economic resources — Inclusion of the applicants' names — Implementation of a UN resolution — Obligation to state reasons — Rights of defence — Presumption of innocence — Manifest error of assessment)

(2017/C 283/51)

Language of the case: French

Parties

Applicants: Bureau d'achat de diamant Centrafrique (Badica) (Bangui, Central African Republic) and Kardiam (Antwerp, Belgium) (represented by: D. Luff and L. Defalque, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen and P. Mahnič Bruni, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking the annulment of Council Implementing Regulation (EU) 2015/1485 of 2 September 2015 implementing Article 17(1) of Council Regulation (EU) No 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (OJ 2015 L 229, p. 1).

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Bureau d'achat de diamant Centrafrique (Badica) and Kardiam to pay the costs.*

(1) OJ C 27, 25.1.2016.

Judgment of the General Court of 12 July 2017 — Frinsa del Noroeste v EUIPO — Frigoríficos Unidos (Frinsa LA CONSERVERA)

(Case T-634/15) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark Frinsa LA CONSERVERA — Earlier EU figurative mark FRIUSA — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 283/52)

Language of the case: Spanish

Parties

Applicant: Frinsa del Noroeste, SA (Santa Eugenia de Ribeira, Spain) (represented by: J. Botella Reyna, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Frigoríficos Unidos, SA (Riudellots de la Selva, Spain)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 July 2015 (Case R 2382/2014-5) relating to opposition proceedings between Frigoríficos Unidos and Frinsa del Noroeste.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Frinsa del Noroeste, SA to pay the costs.*

(1) OJ C 16, 18.1.2016.

Judgment of the General Court of 19 July 2017 — DD v FRA

(Case T-742/15 P) ([1])

(Appeal — Civil service — Members of the temporary staff — Contract of indefinite duration — Disciplinary penalty — Reprimand — Termination of contract — Right to be heard — Non-material harm)

(2017/C 283/53)

Language of the case: English

Parties

Appellant: DD (represented: initially, by L. Levi and M. Vandenbussche and, subsequently, by L. Levi, lawyers)

Other party to the proceedings: European Union Agency for Fundamental Rights (FRA) (represented by: M. O'Flaherty, acting as Agent, assisted by B. Wägenbaur, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 8 October 2015, *DD* v *FRA* (F-106/13 and F-25/14, EU:F:2015:118), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders DD to bear his own costs;*

3. *Orders the European Union Agency for Fundamental Rights (FRA) to bear its own costs.*

([1]) OJ C 111, 29.3.2016.

Judgment of the General Court of 18 July 2017 — EDF Toruń v ECHA

(Case T-758/15) ([1])

(REACH — Fee for registration of a substance — Reduction granted to SMEs — Error in the declaration relating to the size of the enterprise — Decision imposing an administrative charge — Recommendation 2003/361/EC — Legitimate expectations — Proportionality — Calculation criteria of the amount of the administrative charge)

(2017/C 283/54)

Language of the case: Polish

Parties

Applicant: EDF Toruń SA (Toruń, Poland) (represented by: K. Sienkiewicz, lawyer)

Defendant: European Chemicals Agency (represented by: J.-P. Trnka, C. Schultheiss and M. Heikkilä, acting as Agents, and C. Garcia Molyneux, lawyer)

Re:

Application under Article 263 TFEU, seeking first, the annulment of Decision SME(2015) 4950 of the ECHA of 3 November 2015 which states that the applicant does not fulfil the conditions to receive a reduction of the fee for small enterprises and imposing an administrative charge on it and, second, the annulment of invoice No 10054011 issued by the ECHA following the adoption of Decision SME(2015) 4950.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders EDF Toruń S.A. to pay the costs.*

([1]) OJ C 68, 22.2.2016.

Judgment of the General Court of 18 July 2017 — Alfonso Egüed v EUIPO — Jackson Family Farms (BYRON)

(Case T-45/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark BYRON — Earlier non-registered trade mark BYRON — Relative ground for refusal — Article 8(4) of Regulation (EC) No 207/2009 — Rules governing common-law actions for passing-off — Goodwill — Proof of the acquisition and continued existence of the earlier right)

(2017/C 283/55)

Language of the case: English

Parties

Applicant: Nelson Alfonso Egüed (Madrid, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Jackson Family Farms LLC (Santa Rosa, California, United States)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 16 November 2015 (Case R 822/2015-2), relating to opposition proceedings between Jackson Family Farms and Mr Alfonso Egüed.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Nelson Alfonso Egüed to pay the costs.*

([1]) OJ C 111, 29.3.2016.

Judgment of the General Court of 18 July 2017 — Chanel v EUIPO — Jing Zhou and Golden Rose 999 (Ornamentation)

(Case T-57/16) ([1])

(Community design — Invalidity proceedings — Registered Community design representing ornamentation — Earlier design — Ground for invalidity — No individual character — Product at issue — Degree of freedom of the designer — No different overall impression — Article 6 and Article 25 (1)(b) of Regulation (EC) No 6/2002)

(2017/C 283/56)

Language of the case: Spanish

Parties

Applicant: Chanel SAS (Neuilly-sur-Seine, France) (represented by: C. Sueiras Villalobos, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO: Li Jing Zhou (Fuenlabrada, Spain) and Golden Rose 999 Srl (Rome, Italy)

Re:

Action brought against the decision of the Third Board of Appeal of EUIPO of 18 November 2015 (Case R 2346/2014-3), relating to invalidity proceedings between, on the one hand, Chanel and, on the other hand, Mr Li Jing Zhou and Golden Rose 999.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 18 November 2015 (Case R 2346/2014-3);*

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

3. *Orders EUIPO to pay the costs.*

([1]) OJ C 118, 4.4.2016.

Judgment of the General Court of 18 July 2017 — Savant Systems v EUIPO — Savant Group (SAVANT)

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

(EU trade mark — Revocation proceedings — EU word mark SAVANT — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 — Duty to state reasons — Article 75 of Regulation No 207/2009)

(2017/C 283/57)

Language of the case: English

Parties

Applicant: Savant Systems LLC (Osterville, Massachusetts, United States) (represented by: O. Nilgen and A. Kockläuner, 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: Savant Group Ltd (Burton in Kendal, United Kingdom) (represented by: G. Hollingworth, Barrister, K. Gilbert and G. Lodge, Solicitors)

Re:

Action against the decision of the Fourth Board of Appeal of EUIPO of 18 January 2016 (Case R 33/2015-4), relating to revocation proceedings between Savant Systems and Savant Group.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Savant Systems LLC to pay the costs.*

([1]) OJ C 175, 17.5.2016.

Judgment of the General Court of 20 July 2017 — Barnett and Mogensen v Commission

(Case T-148/16) ([1])

(Appeal — Cross-appeal — Civil Service — Officials — Pensions — Adaptation of the weightings — Interim update — Adversely affecting act — Admissibility of the cross-appeal — Article 65(4) of the Staff Regulations — Update for 2014 — Sensitivity threshold concerning the progression of the cost of living)

(2017/C 283/58)

Language of the case: French

Parties

Appellants: Adrian Barnett (Roskilde, Denmark) and Sven-Ole Mogensen (Hellerup, Denmark) (represented by: S. Orlandi and T. Martin, lawyers)

Other party to the proceedings: European Commission (represented by: G. Gattinara and F. Simonetti, acting as Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 5 February 2016, *Barnett and Mogensen* v *Commission* (F-56/15, EU:F:2016:11) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal and the cross-appeal;*

2. *Orders Messrs Adrian Barnett and Sven-Ole Mogensen to bear their own costs and pay the costs incurred by the European Commission in the appeal;*

3. *Orders the Commission to bear its own costs and pay the costs incurred by Messrs Barnett and Mogensen in the cross-appeal.*

([1]) OJ C 191, 30.5.2016.

Judgment of the General Court of 13 July 2017 — Ecolab USA v EUIPO (ECOLAB)

(Case T-150/16) ([1])

(EU trade mark — International registration designating the European Union — Word mark ECOLAB — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 — Equal treatment — Obligation to state reasons — Article 75 of Regulation No 207/2009)

(2017/C 283/59)

Language of the case: English

Parties

Applicant: Ecolab USA, Inc. (Wilmington, Delaware, United States) (represented by: V. Töbelmann and C. Menebröcker, lawyers)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and K. Doherty, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 26 January 2016 (Case R 644/2015-4) relating to the international registration designating the European Union in respect of the word mark ECOLAB.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ecolab USA, Inc. to pay the costs.*

(1) OJ C 211, 13.6.2016.

Judgment of the General Court of 13 July 2017 — Migros-Genossenschafts-Bund v EUIPO — Luigi Lavazza (CReMESPRESSO)

(Case T-189/16) (1)

(EU trade mark — Invalidity proceedings — EU figurative mark CReMESPRESSO — Earlier international word mark CREMESSO — Allusive element — Interdependence of criteria — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009)

(2017/C 283/60)

Language of the case: English

Parties

Applicant: Migros-Genossenschafts-Bund (Zürich, Switzerland) (represented by: M. Treis, lawyer)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill and I. Moisescu, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Luigi Lavazza SpA (Turin, Italy) (represented by: M. Ricolfi and F. Tarocco, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 23 February 2016 (Case R 2823/2014-4) relating to invalidity proceedings between Migros-Genossenschafts-Bund and Luigi Lavazza.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 23 February 2016 (Case R 2823/2014-4), in so far as the Board of Appeal upheld the action brought by Luigi Lavazza SpA and partially annulled the decision of the Cancellation Division with respect to the following goods: 'Electric ice crushers' and 'Ice cream makers, ice cream machines, but also coffee machines' in Classes 7 and 11, covered by the mark at issue;*

2. *Orders EUIPO and Luigi Lavazza to bear, in addition to their own costs, those incurred by Migros-Genossenschafts-Bund.*

(1) OJ C 232, 27.6.2016.

Judgment of the General Court of 14 July 2017 — Klassisk investment v EUIPO (CLASSIC FINE FOODS)

(Case T-194/16) (1)

(EU trade mark — International registration designating the European Union — Figurative mark CLASSIC FINE FOODS — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Duty to state reasons — Article 75 of Regulation No 207/2009)

(2017/C 283/61)

Language of the case: German

Parties

Applicant: Klassisk investment Ltd (Hong Kong, China) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 29 January 2016 (Case R 1970/2015-1) concerning the international registration, designating the European Union, of the figurative mark CLASSIC FINE FOODS.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Klassisk investment Ltd to pay the costs.*

([1]) OJ C 222, 20.6.2016.

Judgment of the General Court of 14 July 2017 — Sata v EUIPO (4600)

(Case T-214/16) ([1])

(EU trade mark — Sign composed exclusively of numerals — Application for an EU word mark 4600 — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2017/C 283/62)

Language of the case: German

Parties

Applicant: Sata GmbH & Co. KG (Kornwestheim, Germany) (represented by: M.-C. Simon, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 24 February 2016 (Case R 1942/2015-4) concerning an application for registration of the word sign 4600 as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 232, 27.6.2016.

Judgment of the General Court of 14 July 2017 — Massive Bionics v EUIPO — Apple (DriCloud)

(Case T-223/16) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark DriCloud — Earlier international word marks ICLOUD — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Submission of evidence out of time — Article 76(2) of Regulation No 207/2009)

(2017/C 283/63)

Language of the case: English

Parties

Applicant: Massive Bionics, SL (Madrid, Spain) (represented by: M. Galindo Martens, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Apple Inc. (Cupertino, California, United States) (represented by: J. Olsen and P. Andreottola, Solicitors, and G. Tritton, Barrister)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 3 March 2016 (Case R 339/2015-5), relating to opposition proceedings between Apple and Massive Bionics.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Massive Bionics, SL to pay the costs.*

([1]) OJ C 251, 11.7.2016.

Judgment of the General Court of 18 July 2017 — Freddo v EUIPO — Freddo Freddo (Freggo)

(Case T-243/16) ([1])

(EU trade mark — Opposition proceedings — Application for registration of the figurative EU trade mark 'freggo' — Earlier EU figurative trade mark 'TENTAZIONE FREDDO FREDDO' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2017/C 283/64)

Language of the case: English

Parties

Applicant: Freddo SA (Buenos Aires, Argentina) (represented by: S. Malynicz QC, K. Gilbert and G. Lodge, Solicitors)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Freddo Freddo, SL (Madrid, Spain) (represented by: J.F. Gallego Jiménez and C. Marí Aguilar, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 17 February 2016 (Case R 919/2015-2), relating to opposition proceedings between Freddo Freddo SL and Freddo SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Freddo SA to pay the costs.*

([1]) OJ C 243, 4.7.2016.

Judgment of the General Court of 13 July 2017 — AIA v EUIPO — Casa Montorsi (MONTORSI F. & F.)

(Case T-389/16) ([1])

(EU trade mark — Invalidity proceedings — EU word mark MONTORSI F. & F. — Earlier national word mark Casa Montorsi — Relative ground for invalidity — Likelihood of confusion — Article 53(1)(a) and Article 8(1)(b) of Regulation (EC) No 207/2009 — Agreement for coexistence of the marks — Scope — Article 53(3) of Regulation No 207/2009)

(2017/C 283/65)

Language of the case: Italian

Parties

Applicant: Agricola italiana alimentare SpA (AIA) (San Martino Buon Albergo, Italy) (represented by: S. Rizzo, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Casa Montorsi Srl (Vignola, Italy) (represented by: S. Verea, K. Muraro and M. Balestriero, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 April 2016 (Case R 1239/2014-1) concerning invalidity proceedings between Casa Montorsi and AIA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Agricola italiana alimentare (AIA) to pay the costs.*

([1]) OJ C 335, 12.9.2016.

Judgment of the General Court of 20 July 2017 — Windfinder R&L v EUIPO (Windfinder)

(Case T-395/16) ([1])

(European Union trade mark — Application for the EU word mark Windfinder — Absolute grounds for refusal — No distinctive character — Descriptiveness — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Neologism — Insufficiently direct and specific connection with certain goods and services covered by the mark applied for — Power to alter decisions)

(2017/C 283/66)

Language of the case: German

Parties

Applicant: Windfinder R&L GmbH & Co. KG (Kiel, Germany) (represented by: B. Schneider, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 12 May 2016 (Case R 1206/2015-5), relating to the application for registration of the word sign Windfinder as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 May 2016 (Case R 1206/2015-5) in so far as it refused registration of the word sign Windfinder for the goods and services at issue, with the exception of anemometers in Class 9 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, and of meteorological information, meteorological forecast, meteorological information services and the supply of meteorological information in Class 42 of the Nice Agreement;*

2. *Upholds the action brought by Windfinder R&L GmbH & Co. KG before that Board of Appeal in accordance with the conditions set out at paragraph 1 of the operative part;*

3. *Dismisses the remainder of Windfinder R&L's action;*

4. *Orders Windfinder R&L and EUIPO to bear their own costs.*

([1]) OJ C 343, 19.6.2016.

Judgment of the General Court of 19 July 2017 — Lackmann Fleisch- und Feinkostfabrik v EUIPO (медведь)

(Case T-432/16) ([1])

(EU trade mark — Application for EU figurative mark медведь — Absolute ground for refusal — No distinctive character — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2017/C 283/67)

Language of the case: German

Parties

Applicant: Lackmann Fleisch- und Feinkostfabrik GmbH (Bühl, Germany) (represented by: A. Lingenfelser, lawyer)

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

Re:

Action brought against the decision of the first Board of Appeal of EUIPO of 17 May 2016 (Case R 240/2016-1), relating to an application for registration of the figurative sign медведь as an EU trade mark.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Lackmann Fleisch- und Feinkostfabrik GmbH to pay the costs.*

([1]) OJ C 364, 3.10.2016.

Judgment of the General Court of 19 July 2017 — Dessi v EIB

(Case T-510/16) ([1])

(Civil Service — EIB staff — Appraisal — Promotion — Appraisal and promotion year 2012 — Decision of the Appeal Committee — Scope of review — Staff representatives — Discrimination)

(2017/C 283/68)

Language of the case: French

Parties

Applicant: Nathalie Dessi (Luxembourg, Luxembourg) (represented initially by: A. Senes and L. Payot, and subsequently by: L. Levi, lawyers)

Defendant: European Investment Bank (EIB) (represented initially by: C. Gómez de la Cruz and E. Raimond, subsequently by: E. Raimond and G. Faedo, and finally by: G. Faedo and K. Carr, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Application on the basis of Article 270 TFEU seeking the annulment of the decision of the EIB Appeal Committee of 23 October 2013, by which it rejected the applicant's request for a review of her staff report for 2012 in that that report did not recommend to the President of the EIB that she be promoted from function group F to function group E.

Operative part of the judgment

The Court:

1. *Annuls the decision of the EIB Appeal Committee of 23 October 2013, by which it rejected Ms Nathalie Dessi's request for a review of her staff report for 2012 in that that report did not recommend to the President of the EIB that she be promoted from function group F to function group E;*

2. *Orders the EIB to pay the costs.*

([1]) OJ C 85, 22.3.2014 (case initially registered at the European Union Civil Service Tribunal as Case F-8/14 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 13 July 2017 — OZ v EIB

(Case T-607/16) ([1])

(Civil service — EIB staff — Sexual harassment — Investigation procedure — Investigation Panel's report — Decision of the President of the EIB not to act on the complaint — No unlawful conduct by the EIB — Liability)

(2017/C 283/69)

Language of the case: English

Parties

Applicant: OZ (represented by: B. Maréchal, lawyer)

Defendant: European Investment Bank (EIB) (represented by: T. Gilliams, E. Raimond and G. Faedo, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

Application under Article 270 TFEU seeking, first, annulment of the report of the Investigation Panel of the EIB of 14 September 2015 and the decision of the President of the EIB of 16 October 2015 not to act on the complaint of sexual harassment filed by the applicant and, second, compensation for the damage which the applicant claims to have suffered following that report and that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders OZ to pay the costs.*

(1) OJ C 335, 12.9.2016 (case initially registered before the European Union Civil Service Tribunal as Case F-37/16 and transferred to the General Court of the European Union on 1 September 2016).

Judgment of the General Court of 13 July 2017 — LG Electronics v EUIPO (QD)

(Case T-650/16) (1)

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

(2017/C 283/70)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: R. Schiffer, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 24 May 2016 (Case R 2046/2015-1), relating to an application for registration of the word sign QD as an EU trade mark.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

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

(1) OJ C 402, 31.10.2016.

Judgment of the General Court of 18 July 2017 — Commission v RN

(Case T-695/16) (1)

(Appeal — Civil Service — Officials — Surviving spouse — Pensions — Survivor's pension — Article 20 of Annex VIII to the Staff Regulations — Conditions for eligibility — Error of law)

(2017/C 283/71)

Language of the case: French

Parties

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

Other parties to the proceedings: RN (represented by: F. Moyse, lawyer) and European Parliament (represented by: M. Ecker and E. Taneva, acting as Agents)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 20 July 2016, RN v Commission (F-104/15, EU:F:2016:163) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 20 July 2016, RN v Commission (F-104/15;*

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

3. *Reserves the costs.*

([1]) OJ C 441, 28.11.2016.

Judgment of the General Court of 19 July 2017 — Parliament v Meyrl

(Case T-699/16) ([1])

(Appeal — Civil Service — Members of the temporary staff — Contested decision annulled at first instance — Dismissal — Right to be heard — Principle of sound administration — Duty of care — Manifest error of assessment — Abuse of power)

(2017/C 283/72)

Language of the case: French

Parties

Appellant: European Parliament (represented by: V. Montebello-Demogeot and M. Dean, acting as Agents)

Other party to the proceedings: Sonja Meyrl (Brussels, Belgium) (represented by: M. Casado García-Hirschfeld, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 19 July 2016, *Meyrl* v *Parliament* (F-147/15, EU:F:2016:157), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 19 July 2016, Meyrl v Parliament (F-147/15);*

2. *Dismisses the action brought by Ms Sonja Meyrl before the Civil Service Tribunal in Case F-147/15;*

3. *Orders each party to bear its own costs relating to the appeal proceedings;*

4. *Orders Ms Meyrl to pay the costs of the proceedings at first instance, including those of the European Parliament.*

([1]) OJ C 454, 5.12.2016.

Order of the General Court of 10 July 2017 — NTS Energie- und Transportsysteme v EUIPO — Schütz (X-Windwerk)

(Case T-649/14) ([1])

(EU trade mark — Appointment of a new representative — Failure to act on the part of the applicant — No need to adjudicate)

(2017/C 283/73)

Language of the case: German

Parties

Applicant: NTS Energie- und Transportsysteme GmbH (Berlin, Germany) (represented by: S. Mach and W. Plewinski, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Schütz GmbH & Co. KGaA (Selters, Germany) (represented by: D. Oerter and E. Tuchscherer, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 23 May 2014 (Case R 978/2013-1) relating to opposition proceedings between Schütz and NTS Energie- und Transportsysteme.

Operative part of the order

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

2. *NTS Energie- und Transportsysteme GmbH shall bear its own costs and shall pay those incurred by the European Union Intellectual Property Office (EUIPO) and by Schütz GmbH & Co. KGaA.*

(1) OJ C 395, 10.11.2014.

Order of the General Court of 30 March 2017 — Herm. Sprenger v EUIPO — web2get (Shape of an articulated stirrup)

(Case T-396/15) (1)

(EU trade mark — Application for a declaration of invalidity — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2017/C 283/74)

Language of the case: German

Parties

Applicant: Herm. Sprenger GmbH & Co. KG (Iserlohn, Germany) (represented by: V. Schiller, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Söder and A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: web2get GmbH & Co. KG (Dülmen, Germany)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 April 2015 (Case R 520/2014-1), relating to opposition proceedings between web2get GmbH. & Co. and Herm. Sprenger GmbH & Co. KG.

Operative part of the order

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

2. *Herm. Sprenger GmbH & Co. KG. shall pay the costs.*

(1) OJ C 302, 14.9.2015.

Order of the General Court of 5 July 2017 — EEB v Commission

(Case T-448/15) ([1])

(Action for annulment and compensation — Access to documents — Regulation (EC) No 1049/2001 — Documents concerning the withdrawal of Proposal COM(2014) 397 final for a Directive of the European Parliament and of the Council — Partial refusal of access — No need to adjudicate in part — Partial manifest inadmissibility)

(2017/C 283/75)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

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

Interveners in support of the defendant: European Parliament (represented by A. Tamás and I. McDowell, acting as Agents) and Council of the European Union (represented by B. Driessen, E. Rebasti and M. Moore, acting as Agents)

Re:

Application, first, under Article 263 TFEU, for, primarily, the annulment of the Commission's decision of 1 June 2015 and, in the alternative, the annulment of an implied refusal and, secondly, under Article 268 TFEU, for repair of the damage allegedly suffered by the applicant as a result of that measure.

Operative part of the order

1. *There is no need to adjudicate on the application for annulment.*

2. *The action is dismissed as to the remainder as manifestly inadmissible.*

3. *The European Commission is ordered to bear its own costs and to pay those incurred by the European Environmental Bureau (EEB).*

4. *The European Parliament and the Council of the European Union are ordered to bear their own costs.*

([1]) OJ C 328, 5.10.2015.

Order of the General Court of 5 July 2017 — EEB v Commission

(Case T-38/16) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents concerning the withdrawal of Proposal COM(2014) 397 final for a Directive of the European Parliament and of the Council — Partial refusal of access — No need to adjudicate)

(2017/C 283/76)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Commission (represented by: A. Buchet, F. Clotuche-Duvieusart and E. Sanfrutos Cano, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking the annulment of Commission Decision Ares(2015) 5212500 of 19 November 2015.

Operative part of the order

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

2. *The European Commission is to bear its own costs and to pay those incurred by the European Environmental Bureau (EEB).*

(1) OJ C 118, 4.4.2016.

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

(Case T-666/16 P) (1)

(Appeal — EIB staff — Appraisal — Career development report — 2013 staff report — Application for annulment of the decision of the Appeals Committee and of the decision not to promote the applicant — Psychological harassment — Claim for damages)

(2017/C 283/77)

Language of the case: Italian

Parties

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

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

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 21 July 2016, *De Nicola* v *EIB* (F-100/15, EU:F:2016:167), seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

(1) OJ C 410, 7.11.2016.

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

(Case T-669/16 P) (1)

(Appeal — EIB staff — Sickness insurance — Refusal to reimburse medical expenses — Laser therapy — Action for annulment and damages)

(2017/C 283/78)

Language of the case: Italian

Parties

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

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

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 21 July 2016, *De Nicola* v *EIB* (F-82/15, EU:F:2016:166), seeking to have that judgment set aside in part.

Operative part of the order

1. *The appeal is dismissed.*

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

([1]) OJ C 410, 7.11.2016.

Order of the General Court of 10 July 2017 — No Limits v EUIPO — Morellato (NO LIMITS)

(Case T-43/17) ([1])

(EU trade mark — Invalidity proceedings — EU word mark NO LIMITS — Revocation of the contested decision — Action which has become devoid of purpose — No need to adjudicate)

(2017/C 283/79)

Language of the case: Italian

Parties

Applicant: No Limits International Investments SA (Bissone, Switzerland) (represented by: F. Canu, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Morellato SpA (Fratte di Santa Giustina in Colle, Italy)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 21 November 2016 (Case R 2007/2015-5) relating to invalidity proceedings between Morellato and No Limits Investments.

Operative part of the order

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

2. *The European Union Intellectual Property Office (EUIPO) shall bear its own costs and shall pay those incurred by No Limits International Investments SA.*

([1]) OJ C 95, 27.3.2017.

Order of the President of the General Court of 4 July 2017 — Institute for Direct Democracy in Europe v Parliament

(Case T-118/17 R)

(Interim proceedings — Institutional law — European Parliament — Decision awarding a grant to a political foundation — Suspension of prefinancing — Obligation to provide a bank guarantee — Application for interim measures — No urgency)

(2017/C 283/80)

Language of the case: English

Parties

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

Defendant: European Parliament (represented by: C. Burgos and S. Alves, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU for the grant of interim measures, seeking, first, the suspension of operation of Parliament Decision FINS-2017-28 of 15 December 2016 concerning the funding allocated to the applicant in so far as it suspends payment of prefinancing, second, exemption from the requirement to provide a bank guarantee as a condition for prefinancing and, third, an order that the Parliament pay to the applicant the prefinancing amount.

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 13 July 2017 — BASF Grenzach ECHA

(Case T-125/17 R)

(Interim measures — REACH — Substance triclosan — Evaluation procedure — Decision of the Board of Appeal of the ECHA — Obligation to provide certain information requiring animal testing — Application for interim measures — No urgency)

(2017/C 283/81)

Language of the case: English

Parties

Applicant: BASF Grenzach GmbH (Grenzach-Wyhlen, Germany) (represented by: K. Nordlander and M. Abenhaïm, lawyers)

Defendant: European Chemicals Agency (ECHA) (represented by: W. Broere, T. Röcke and M. Heikkilä, acting as Agents)

Re:

Application pursuant to Articles 278 TFEU and 279 TFEU for the grant of interim measures to (i) suspend implementation of Decision A-018-2014 of the Board of Appeal of ECHA of 19 December 2016, relating to the substance evaluation of triclosan, and (ii) order the extension of the prescribed period to communicate the results of the tests for the duration of the suspension.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 22 May 2017 — Niemelä and Others v ECB

(Case T-321/17)

(2017/C 283/82)

Language of the case: English

Parties

Applicants: Heikki Niemelä (Ohain, Belgium), Mika Lehto (Espoo, Finland), Nemea plc (St. Julians, Malta), Nevestor SA (Ohain) and Nemea Bank plc (St. Julians) (represented by: A. Meriläinen, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the European Central Bank's decision of 23 March 2017 ECB/SSM/2017– 213800JENPXTUY75VS0/1 WHD-2017-0003, withdrawing the authorisation of Nemea Bank plc ('the supervised entity') as a credit institution;

— secondarily, amend the ECB's decision so as to suspend its application in view the irreparable damage that the immediate and continued application of the decision is likely to have on the supervised entity's stakeholders, principally the Bank's depositors, employees and the shareholders, allowing or otherwise requiring the direct/indirect shareholders of the supervised entity to divest themselves of their holding in the Bank within such reasonable period as may be prescribed;

— order the defendant to compensate the applicants in the sum of EUR 10 million with legal interest from 23 March 2017 for damage suffered as a result of the decision;

— order the defendant to bear all costs and expenses incurred in the present case.

Pleas in law and main arguments

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

1. First plea in law, alleging that the facts of the case are not correctly reproduced in the statement of reasons and/or that the statement of reasons is insufficient.

   — It is argued that the ECB was not in a position to adopt a fully reasoned decision owing to ongoing appeal procedures under national law.

2. Second plea in law, alleging a manifest error of assessment by the ECB.

   — It is argued that the ECB erred in so far as it relied on the directives of the Malta Financial Services Authority as being final and conclusive notwithstanding that the latter remain subject to confirmation, reversal or variation by the Financial Services Tribunal. In any case the ECB was manifestly wrong to hold that the withdrawal of the supervised entity's licence was preferable to the forced sale of the Bank and that there was low probability that the sale option would materialise.

3. Third plea in law, alleging that the contested decision errs in law.

   — It is argued that the ECB lacked jurisdiction to adopt the contested decision as the competence to withdraw the licence issued to the supervised entity as a credit institution lies with the Malta Financial Services Authority and not the ECB. The ECB's decision was ultra vires and in violation of the applicants' rights of appeal under national law as well as of their right to an effective remedy and a fair trial under EU law.

4. Fourth plea in law, alleging that the ECB misused its powers.

   — It is argued that the ECB, even if it did enjoy the disputed competence, misused its powers in such a way as to deprive the supervised entity and the other applicants of their rights of appeal under national law.

5. Fifth plea in law, alleging that the ECB's decision is not in conformity with EU law in that it fails to respect the proportionality principle.

   — It is argued that the proportionality principle should have operated in the present case so as to preclude withdrawal of the supervised entity's licence. In the circumstances, the sale of the Bank would have been less damaging to the supervised entity and would not have been prejudicial to the supervised entity's depositors, employees and shareholders.

Action brought on 30 March 2017 — Grendene v EUIPO — Hipanema (HIPANEMA)

(Case T-435/17)

(2017/C 283/83)

Language in which the application was lodged: Spanish

Parties

Applicant: Grendene (Sobral, Brazil) (represented by: J. L. de Castro Hermida, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word element 'HIPANEMA' — International registration designating the European Union No 1 154 586

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 20/01/2017 in Case R 629/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and replace it with a decision recognising the affinity between the goods covered by the mark applied for and those protected by the opponent's earlier marks, to the extent necessary in order to acknowledge a similarity between those goods within the meaning of Article 8(1)(b) of Regulation (EU) No 207/2009 on the European Union trade mark;

— once that similarity between the goods is acknowledged, compare the signs at issue from a verbal perspective, which was not done either during the opposition proceedings or during the administrative action, conclude that the signs at issue are identical phonetically and aurally and similar graphically, hold that peaceful coexistence between the marks at issue is impossible and, lastly, reject the application for protection in the European Union of international trademark No 1 154 586 'HIPANEMA', Class 14. Or, if the General Court does not have jurisdiction to do so, remit the question to the Board of Appeal of the European Union Intellectual Property Office, subject to the requirement that it acknowledge the similarity between the marks at issue.

Plea in law

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

Action brought on 12 July 2017 — CompuGroup Medical v EUIPO — Medion (life coins)

(Case T-444/17)

(2017/C 283/84)

Language in which the application was lodged: German

Parties

Applicant: CompuGroup Medical AG (Koblenz, Germany) (represented by: B. Dix, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Medion AG (Essen, Germany)

Details of the proceedings before EUIPO

Applicant: Applicant

Mark at issue: EU word mark 'life coins' — Application for registration No 12 541 538

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 25 April 2017 in Case R 1569/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

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

Order of the General Court of 10 July 2017 — Meta Group v Commission

(Case T-471/12) ([1])

(2017/C 283/85)

Language of the case: Italian

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

([1]) OJ C 9, 12.1.2013.

Order of the General Court of 10 July 2017 — Meta Group v Commission

(Joined Cases T-34/13 and T-35/13) ([1])

(2017/C 283/86)

Language of the case: Italian

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

([1]) OJ C 79, 16.3.2013.

Order of the General Court of 10 July 2017 — Meta Group v Commission

(Case T-696/13) ([1])

(2017/C 283/87)

Language of the case: Italian

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

([1]) OJ C 52, 22.2.2014.

Order of the General Court of 12 July 2017 — The Regents of the University of California v CPVO — Nador Cott Protection and CVVP (Tang Gold)

(Case T-405/16) ([1])

(2017/C 283/88)

Language of the case: Spanish

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

([1]) OJ C 14, 16.1.2017.

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