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(2017/C 437/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 25 October 2017 — European Commission v Council of the European Union

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

(Action for annulment — Council decision authorising the opening of negotiations on a revised Lisbon Agreement on Appellations of Origin and Geographical Indications — Article 3(1) TFEU — Exclusive competence of the European Union — Common commercial policy — Article 207(1) TFEU — Commercial aspects of intellectual property)

(2017/C 437/02)

Language of the case: English

Parties

Applicant: European Commission (represented by: F. Castillo de la Torre, J. Guillem Carrau, B. Hartmann, A. Lewis and M. Kocjan, Agents)

Intervener in support of the applicant: European Parliament (represented by: J. Etienne, A. Neergaard and R. Passos, Agents)

Defendant: Council of the European Union (represented by: M. Balta and F. Florindo Gijón, Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Hedvábná, K. Najmanová, M. Smolek and J. Vláčil, Agents), Federal Republic of Germany (represented by: T. Henze and J. Techert, Agents), Hellenic Republic (represented by: M. Tassopoulou, Agent), Kingdom of Spain (represented by: M.A. Sampol Pucurull, Agent), French Republic (represented by: G. de Bergues, D. Colas, F. Fize, B. Fodda and D. Segoin, Agents), Italian Republic (represented by: G. Palmieri, Agent, and S. Fiorentino, avvocato dello Stato), Hungary (represented by: M. Bóra, M.Z. Fehér and G. Koós, Agents), Kingdom of the Netherlands (represented by: M. Bulterman, M. Gijzen and B. Koopman, Agents), Republic of Austria (represented by: C. Pesendorfer, Agent), Portuguese Republic (represented by: M. Figueiredo, L. Inez Fernandes and M.L. Duarte, Agents), Slovak Republic (represented by: M. Kianička, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: C. Brodie and D. Robertson, Agents)

Operative part of the judgment

The Court:

1. *Annuls Council Decision 8512/15 of 7 May 2015 authorising the opening of negotiations on a revised Lisbon Agreement on Appellations of Origin and Geographical Indications as regards matters falling within the competence of the European Union;*

2. *Maintains the effects of Decision 8512/15 until the entry into force, within a reasonable period which cannot exceed six months from the date of delivery of the present judgment, of a decision of the Council of the European Union based on Articles 207 and 218 TFEU;*

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

4. *Orders the Czech Republic, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Slovak Republic, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.*

([1]) OJ C 311, 21.9.2015.

Judgment of the Court (Fourth Chamber) of 25 October 2017 — European Commission v Italian Republic

(Case C-467/15 P) ([1])

(Appeal — State aid — Aid granted by the Italian Republic to milk producers — Aid scheme linked to the reimbursement of the milk levy — Conditional decision — Decision adopted by the Council of the European Union pursuant to the third subparagraph of Article 108(2) TFEU — Regulation (EC) No 659/1999 — Article 1(b) and (c) — Existing aid — New aid — Definitions — Alteration to existing aid in breach of a condition ensuring compatibility of the aid with the internal market)

(2017/C 437/03)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and P. Němečková, acting as Agents)

Other party to the proceedings: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by S. Fiorentino and P. Grasso, avvocati dello Stato)

Operative part of the judgment

The Court:

1. *Sets aside paragraphs 1, 2 and 4 of the operative part of the judgment of the General Court of the European Union of 24 June 2015, Italy v Commission (T-527/13, EU:T:2015:429);*

2. *Dismisses the action brought by the Italian Republic before the General Court in Case T-527/13;*

3. *Orders the Italian Republic to bear its own costs and to pay those of the European Commission both at first instance and on appeal.*

([1]) OJ C 406, 7.12.2015.

Judgment of the Court (Fourth Chamber) of 25 October 2017 — Slovak Republic v European Commission

(Joined Cases C-593/15 P and C-594/15 P) ([1])

(Appeal — Own resources of the European Union — Decision 2007/436/EC — Financial liability of the Member States — Loss of certain import duties — Obligation to pay the European Commission the amount corresponding to the loss — Actions for annulment — Admissibility — Letter from the European Commission — Concept of 'actionable measure')

(2017/C 437/04)

Language of the case: Slovak

Parties

Appellant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Other party to the proceedings: European Commission (represented by: A. Caeiros, A. Tokár, G.-D. Balan and Z. Malůšková, acting as Agents)

Interveners in support of the applicant: Czech Republic (represented by: M. Smolek, J. Vláčil and T. Müller, acting as Agents), Federal Republic of Germany (represented by: T. Henze and K. Stranz, acting as Agents), Romania (represented by: R.-H. Radu, M. Chicu and A. Wellman, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

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

3. *Orders the Czech Republic, the Federal Republic of Germany and Romania to bear their own costs.*

(1) OJ C 27, 25.1.2016.

Judgment of the Court (Fourth Chamber) of 25 October 2017 — Romania v European Commission

(Case C-599/15 P) (1)

(Appeal — Own resources of the European Union — Decision 2007/436/EC — Financial liability of the Member States — Loss of certain import duties — Obligation to pay the European Commission the amount corresponding to the loss — Actions for annulment — Admissibility — Letter from the European Commission — Concept of 'actionable measure')

(2017/C 437/05)

Language of the case: Romanian

Parties

Appellant: Romania (represented by: R.-H. Radu, M. Chicu and A. Wellman, acting as Agents)

Other party to the proceedings: European Commission (represented by: G.-D. Balan, A. Caeiros and A. Tokár and by Z. Malůšková, acting as Agents)

Interveners in support of the applicant: Czech Republic (represented by: M. Smolek, J. Vláčil and T. Müller, acting as Agents), Federal Republic of Germany (represented by: T. Henze and K. Stranz, acting as Agents), Slovak Republic (represented by: B. Ricziová, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

3. *Orders the Czech Republic, the Federal Republic of Germany and the Slovak Republic to bear their own costs.*

(1) OJ C 38, 1.2.2016.

Judgment of the Court (First Chamber) of 25 October 2017 — Polyelectrolyte Producers Group GEIE (PPG), SNF SAS v European Chemicals Agency, Kingdom of the Netherlands, European Commission

(Case C-650/15 P) ([1])

(Appeal — Regulation (EC) No 1907/2006 (REACH) — Article 57 — Substances of very high concern — Identification — Article 2(8)(b) — Exemption — Article 3(15) — Definition of 'intermediate' — Acrylamide)

(2017/C 437/06)

Language of the case: French

Parties

Appellants: Polyelectrolyte Producers Group GEIE (PPG), SNF SAS (represented by E. Mullier and R. Cana, avocats, and by D. Abrahams, Barrister)

Other parties to the proceedings: European Chemicals Agency (represented by M. Heikkilä and W. Broere, acting as Agents, and by J. Stuyck and S. Raes, advocaten), Kingdom of the Netherlands (represented by M. Bulterman and B. Koopman, acting as Agents), European Commission (represented by K. Talabér-Ritz, E. Manhaeve, K. Mifsud-Bonnici and D. Kukovec, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Polyelectrolyte Producers Group GEIE (PPG) and SNF SAS to bear their own costs and to pay those incurred by the European Chemicals Agency (ECHA);*

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

([1]) OJ C 48, 8.2.2016.

Judgment of the Court (Grand Chamber) of 25 October 2017 — European Commission v Council of the European Union

(Case C-687/15) ([1])

(Action for annulment — Conclusions of the Council of the European Union concerning the World Radiocommunication Conference 2015 of the International Telecommunication Union — Article 218(9) TFEU — Derogation from the prescribed legal form — No indication of the legal basis)

(2017/C 437/07)

Language of the case: English

Parties

Applicant: European Commission (represented by: L. Nicolae and F. Erlbacher, acting as Agents)

Defendant: Council of the European Union (represented by: I. Šulce, J.-P. Hix and O. Segnana, acting as Agents)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek, J. Vláčil and M. Hedvábná, acting as Agents), Federal Republic of Germany (represented by: T. Henze and K. Stranz, acting as Agents), French Republic (represented by: F. Fize, G. de Bergues, B. Fodda and D. Colas, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: C. Brodie, M. Holt and D. Robertson, acting as Agents, and by J. Holmes, Barrister)

Operative part of the judgment

The Court:

1. *Annuls the conclusions of the Council of the European Union, adopted on 26 October 2015, at its 3419th meeting in Luxembourg, on the World Radiocommunication Conference 2015 (WRC-15) of the International Telecommunication Union (ITU);*

2. *Orders the Council of the European Union to pay the costs;*

3. *Orders the Czech Republic, the Federal Republic of Germany, the French Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 68, 22.2.2016.

Judgment of the Court (Fifth Chamber) of 26 October 2017 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen — Belgium) — Argenta Spaarbank NV v Belgische Staat

(Case C-39/16) ([1])

(Reference for a preliminary ruling — Corporation tax — Directive 90/435/EEC — Articles 1(2) and 4 (2) — Parent companies and subsidiaries of different Member States — Common system of taxation — Deductibility from the taxable profits of the parent company — Domestic provisions seeking to abolish the double taxation of profits distributed by subsidiaries — No account taken of the existence of a link between the interest on loans and the financing of the holding that gave rise to the payment of dividends)

(2017/C 437/08)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Operative part of the judgment

1. *Article 4(2) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States must be interpreted as precluding a provision of domestic law, such as Article 198(10) of the 1992 Income Tax Code, coordinated by the Royal Decree of 10 April 1992 and confirmed by the Law of 12 June 1992, pursuant to which interest paid by a parent company under a loan is not deductible from the taxable profits of that parent company up to an amount equal to that of the dividends, which already benefit from tax deductibility, that are received from the holdings of that parent company in the capital of its subsidiary companies that have been held for a period of less than one year, even if such interest does not relate to the financing of such holdings;*

2. *Article 1(2) of Directive 90/435 must be interpreted as not authorising Member States to apply a domestic provision, such as Article 198(10) of the 1992 Income Tax Code, coordinated by the Royal Decree of 10 April 1992 and confirmed by the Law of 12 June 1992, to the extent that that provision goes beyond what is necessary for the prevention of fraud and abuse.*

([1]) OJ C 136, 18.4.2016.

Judgment of the Court (Fourth Chamber) of 26 October 2017 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — The English Bridge Union Limited v Commissioners for Her Majesty's Revenue & Customs

(Case C-90/16) ([1])

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Exemption for supplies of services closely linked to sport — Concept of 'sport' — Activity characterised by a physical element — Duplicate bridge)

(2017/C 437/09)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: The English Bridge Union Limited

Defendant: Commissioners for Her Majesty's Revenue & Customs

Operative part of the judgment

Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that an activity such as duplicate bridge, which is characterised by a physical element that appears to be negligible, is not covered by the concept of 'sport' within the meaning of that provision.

([1]) OJ C 145, 25.4.2016.

Judgment of the Court (Grand Chamber) of 25 October 2017 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Proceedings brought by POLBUD — WYKONAWSTWO sp. z o.o., in liquidation

(Case C-106/16) ([1])

(Reference for a preliminary ruling — Freedom of establishment — Cross-border conversion of a company — Transfer of its registered office without transfer of its real head office — Refusal to remove it from the commercial register — National legislation whereby removal from commercial register is dependent on the winding up of a company after a liquidation procedure — Scope of freedom of establishment — Restriction on freedom of establishment — Protection of the interests of creditors, minority shareholders and employees — Prevention of abusive practices)

(2017/C 437/10)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

POLBUD — WYKONAWSTWO sp. z o.o., in liquidation

Operative part of the judgment

1. *Articles 49 and 54 TFEU must be interpreted as meaning that freedom of establishment is applicable to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purposes of its conversion, in accordance with the conditions imposed by the legislation of the other Member State, into a company incorporated under the law of the latter Member State, when there is no change in the location of the real head office of that company.*

2. *Articles 49 and 54 TFEU must be interpreted as precluding legislation of a Member State which provides that the transfer of the registered office of a company incorporated under the law of one Member State to the territory of another Member State, for the purposes of its conversion into a company incorporated under the law of the latter Member State, in accordance with the conditions imposed by the legislation of that Member State, is subject to the liquidation of the first company.*

([1]) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 26 October 2017 (reference for a preliminary ruling from the Amtsgericht Kehl) — I v Staatsanwaltschaft Offenburg

(Case C-195/16) ([1])

(Reference for a preliminary ruling — Transport — Driving licences — Directive 2006/126/EC — Article 2(1) — Mutual recognition of driving licences — Definition of 'driving licence' — Driving licence pass certificate authorising its holder to drive in the Member State having awarded it before the issue of the definitive driving licence — Situation in which the holder of a test pass certificate drives a vehicle in another Member State — Obligation to recognise the test pass certificate — Penalties imposed on the holder of the test pass certificate for driving a vehicle outside of the Member State in which it was awarded — Proportionality)

(2017/C 437/11)

Language of the case: German

Referring court

Amtsgericht Kehl

Parties to the main proceedings

Applicant: I

Defendant: Staatsanwaltschaft Offenburg

Operative part of the judgment

1. *Article 2(1) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences and Articles 18, 21, 45, 49 and 56 TFEU must be interpreted as not precluding legislation of a Member State under which that Member State may refuse to recognise a certificate issued in another Member State evidencing its holder's right to drive, where that certificate does not fulfil the requirements of the model driving licence provided for in that directive, even if the conditions set by that directive for issuing a driving licence have been satisfied by the holder of that certificate.*

2. *Article 2(1) of Directive 2006/126 and Articles 21, 45, 49 and 56 TFEU must be interpreted as not precluding a Member State from imposing a penalty on a person who, despite having satisfied the conditions for the issuing of a driving licence as provided for in that directive, drives a motor vehicle in that Member State without a driving licence conforming to the model driving licence provided for in that directive and who, pending the issuing of such a driving licence by another Member State, can prove only that he has been granted the right to drive in another Member State by means of a temporary certificate issued by that Member State, provided that that penalty is not disproportionate to the seriousness of the facts at issue. It is thus for the referring court to take into account, in its assessment of the seriousness of the offence committed by the person in question and of the severity of the penalty to be imposed on him, as a potentially mitigating circumstance, the fact that that person had been granted the right to drive in another Member State, evidenced by a certificate issued by that other Member State which will, in principle, be exchanged before its expiry, at that person's request, for a driving licence conforming to the requirements of the model driving licence provided for in Directive 2006/126. That court must also consider, in the context of its assessment, what actual risk that person posed for road safety in its territory.*

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Grand Chamber) of 25 October 2017 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Majid Shiri, also known as Madzhdi Shiri

(Case C-201/16) ([1])

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Article 27 — Remedy — Scope of the judicial review — Article 29 — Time limit for carrying out the transfer — No transfer within the time limit laid down — Obligations of the Member State responsible — Transfer of responsibility — Requirement for a decision of the Member State responsible)

(2017/C 437/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Majid Shiri, also known as Madzhdi Shiri

Joined party: Bundesamt für Fremdenwesen und Asyl

Operative part of the judgment

1. *Article 29(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.*

2. *Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.*

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Fifth Chamber) of 26 October 2017 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Balgarska energiyna borsa AD (BEB) v Komisia za energiyno i vodno regulirane (KEVR)

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

(Reference for a preliminary ruling — Articles 101 and 102 TFEU — Directive 2009/72/EC — Articles 9, 10, 13 and 14 — Regulation (EC) No 714/2009 — Article 3 — Regulation (EU) No 1227/2011 — Article 2(3) — Regulation (EU) 2015/1222 — Article 1(3) — Certification and designation of an independent transmission system operator — Limitation of the number of holders of electricity transmission licences in national territory)

(2017/C 437/13)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Balgarska energiyna borsa AD (BEB)

Defendant: Komisia za energiyno i vodno regulirane (KEVR)

Operative part of the judgment

Articles 9, 10, 13 and 14 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, Article 2(3) in conjunction with recital 3 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, and Article 1(3) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management do not preclude, in circumstances such as those of the main proceedings, national legislation limiting the number of holders of electricity transmission licences for a particular territory.

([1]) OJ C 326, 5.9.2016.

Judgment of the Court (Sixth Chamber) of 26 October 2017 (request for a preliminary ruling from the Augstākās tiesas Administratīvo lietu departaments) — 'Aqua Pro' SIA v Valsts ieņēmumu dienests

(Case C-407/16) ([1])

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 220(1) and (2)(b) — Post-clearance recovery of import or export duties — Definition of 'entry in the accounts of the import duties' — Decision of the competent customs authority — Time limit for submitting an application for repayment or remission — Obligation to transmit the case to the European Commission — Evidence in the event of an appeal against a decision of the competent authority of the importing Member State)

(2017/C 437/14)

Language of the case: Latvian

Referring court

Augstākās tiesas Administratīvo lietu departaments

Parties to the main proceedings

Applicant: 'Aqua Pro' SIA

Defendant: Valsts ieņēmumu dienests

Operative part of the judgment

1. *Article 217(1) and Article 220(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in the case of post-clearance recovery, the amount of duty found to be owed by the authorities is to be regarded as entered in the accounts when the customs authorities enter that amount in the accounting records or on any other equivalent medium, regardless of the fact that the decision of the authority to enter that amount in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review.*

2. *Article 220(2)(b) and Articles 236, 239 and 243 of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that, in the case of an administrative appeal or judicial review, within the meaning of Article 243 of that regulation, as amended by Regulation No 2700/2000, brought against a decision of the competent tax authority subsequently to enter in the accounts an amount of import duty and to require the importer to pay it, that importer may rely on a legitimate expectation under Article 220(2)(b) of that regulation, as amended by Regulation No 2700/2000, in order to challenge that entry in the accounts, regardless of whether the importer has submitted an application for remission or repayment of such duty in accordance with the procedure laid down in Articles 236 and 239 of the regulation, as amended by Regulation No 2700/2000.*

3. *Article 869(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1335/2003 of 25 July 2003, must be interpreted as meaning that, where there is no Commission decision or procedure within the meaning of Article 871(2) of the regulation, as amended by Regulation No 1335/2003, in a situation such as that at issue in the case in the main proceedings, the customs authorities may not themselves decide not to enter uncollected duties subsequently in the accounts by taking the view that the conditions for pleading a legitimate expectation under Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, are satisfied, and that those authorities are required to transmit the dossier to the European Commission, either where they consider that the Commission has committed an error within the meaning of that provision of Regulation No 2913/92, as amended by Regulation No 2700/2000, or where the circumstances of the case in the main proceedings are related to the findings of an EU investigation within the meaning of the second indent of Article 871(1) of Regulation No 2454/93, as amended by Regulation No 1335/2003, or where the amount of the duties at issue in the main proceedings is EUR 500 000 or more.*

4. *Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that information contained in a European Anti-Fraud Office (OLAF) report relating to the conduct of the customs authorities of the exporting State and that of the exporter may be admitted as evidence in ascertaining whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. To the extent, however, that such a report proves insufficient, in the light of the information that it contains, for the purposes of establishing to the requisite legal standard whether those conditions are actually satisfied in all respects, which is for the referring court to ascertain, the customs authorities may be required to provide further evidence for that purpose, inter alia by carrying out subsequent checks.*

5. *Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that it is for the referring court to ascertain, in the light of all the specific evidence in the case in the main proceedings, and in particular of the evidence adduced by the parties in those proceedings for that purpose, whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. For the purpose of that assessment, priority is not to be given to information obtained in a subsequent check over that contained in a European Anti-Fraud Office (OLAF) report.*

6. *Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, must be interpreted as meaning that a Member State is bound, under the conditions specified by the European Commission pursuant to that article, by the findings of a European Commission decision adopted under Article 873 of that regulation, as amended by Regulation No 1335/2003, in respect of another Member State in cases involving comparable issues of fact and of law, which it is for its authorities and courts to ascertain by taking into account, inter alia, the information on the conduct of the exporter or that of the customs authorities of the exporting State as stated in the European Anti-Fraud Office (OLAF) report on which the decision is based.*

7. *Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, and Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, must be interpreted as meaning that the customs authorities may, in principle, carry out as many post-clearance checks as they deem necessary, and use the information obtained from those checks, both in ascertaining whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, are satisfied and in determining whether a case before those authorities involves issues of fact and of law that are comparable, within the meaning of Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, to a case on the basis of which a decision not to enter a duty in the accounts was adopted by the European Commission in accordance with Article 873 of Regulation No 2454/93, as amended by Regulation No 1335/2003.*

8. *Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that the fact that an importer imported goods under a distribution agreement has no incidence on his ability to plead a legitimate expectation on the same conditions as an importer who has imported goods by buying them directly from the exporter, that is to say, if three cumulative conditions are satisfied. It is necessary, first, that the failure to levy the duties was due to an error on the part of the competent authorities themselves, secondly, that that error was such that it could not reasonably have been detected by a person liable for payment acting in good faith and, finally, that that person complied with all the provisions laid down by the legislation in force as regards his customs declaration. To that end, it is for such an importer to guard against the risks of an action for post-clearance recovery, inter alia by seeking to obtain from the other contracting party to that distribution agreement, at the time when the agreement is concluded or thereafter, all the necessary evidence confirming that the 'Form A' certificate of origin in respect of those goods was correctly issued. There can thus be no legitimate expectation within the meaning of the provision, in particular where, although he has clear reasons for doubting the accuracy of a 'Form A' certificate of origin, that importer failed to obtain from that contracting party information concerning the circumstances of the issue of that certificate in order to verify whether those doubts were well founded.*

([1]) OJ C 343, 19.9.2016.

Judgment of the Court (Sixth Chamber) of 26 October 2017 — Global Steel Wire, SA (C-454/16 P), Moreda-Riviere Trefilerías SA (C-455/16 P), Trefilerías Quijano SA (C-456/16 P), Trenzas y Cables de Acero PSC SL (C-458/16 P) v European Commission

(Joined Cases C-454/16 P to C-456/16 P to C-458/16 P) ([1])

(Appeal — Regulation (EC) No 1/2003 — Competition — Agreements, decisions and concerted practices — European prestressing steel market — Infringement of Article 101 TFEU — Fines — 2006 Guidelines on the method of setting fines — Paragraph 35 — Ability to pay — New request for a reduction in the amount of the fine on the ground of inability to pay — Letter of rejection — Action brought against that letter — Admissibility)

(2017/C 437/15)

Language of the cases: Spanish

Parties

Appellants: Global Steel Wire, SA (C-454/16 P), Moreda-Riviere Trefilerías SA (C-455/16 P), Trefilerías Quijano SA (C-456/16 P), Trenzas y Cables de Acero PSC SL (C-458/16 P) (represented by: F. González Díaz, A. Tresandi Blanco and V. Romero Algarra, abogados)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Global Steel Wire SA, Moreda-Riviere Trefilerías SA, Trefilerías Quijano SA and Trenzas y Cables de Acero PSC SL to pay the costs.*

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Sixth Chamber) of 26 October 2017 — Global Steel Wire, SA (C-457/16 P), Trenzas y Cables de Acero PSC SL (C-459/16 P), Trefilerías Quijano SA (C-460/16 P), Moreda-Riviere Trefilerías SA (C-461/16 P) v European Commission

(Joined Cases C-457/16 P and C-459/16 P to C-461/16 P) ([1])

(Appeal — Regulation (EC) No 1/2003 — Competition — Agreements, decisions and concerted practices — European prestressing steel market — Infringement of Article 101 TFEU — Attributability of unlawful conduct of subsidiaries to their parent company — Definition of 'undertaking' — Evidence for the finding of an economic unit — Presumption of actual exercise of decisive influence — Successive undertakings — Amount of the fine — Ability to pay — Conditions — Observance of the rights of the defence)

(2017/C 437/16)

Language of the cases: Spanish

Parties

Appellants: Global Steel Wire, SA (C-457/16 P), Trenzas y Cables de Acero PSC SL (C-459/16 P), Trefilerías Quijano SA (C-460/16 P), Moreda-Riviere Trefilerías SA (C-461/16 P) (represented by: F. González Díaz, A. Tresandi Blanco and V. Romero Algarra, abogados)

Other party to the proceedings: European Commission (represented by: F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents, assisted by L. Ortiz Blanco and A. Lamadrid de Pablo, abogados)

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Global Steel Wire SA, Trenzas y Cables de Acero PSC SL, Trefilerías Quijano SA and Moreda-Riviere Trefilerías SA to pay the costs.*

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Ninth Chamber) of 26 October 2017 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky, Slovakia) — *Finančné riaditeľstvo Slovenskej republiky* v *BB construct s. r. o.*

(Case C-534/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Inclusion in the register of taxable persons for VAT — National law requiring provision of a guarantee — Combating fraud — Charter of Fundamental Rights of the European Union — Freedom to conduct a business — Principle of non-discrimination — Principle of ne bis in idem — Principle of non-retroactivity)

(2017/C 437/17)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Finančné riaditeľstvo Slovenskej republiky

Defendant: BB construct s. r. o.

Operative part of the judgment

1. *Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 16 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding, at the time of the registration for the purposes of value added tax of a taxable person, of which the director was formerly the director or associate member of another legal person which had not complied with its tax obligations, the tax authority from requiring that taxable person to provide a guarantee, the amount of which could reach EUR 500 000, provided that the guarantee required from that taxable person does not go further than is necessary in order to attain the objectives of Article 273, which it is for the referring court to determine.*

2. *The principle of equal treatment must be interpreted as not precluding a tax authority from requiring a new taxable person, at the time of his registration for the purposes of value added tax, to provide, owing to his links with another legal person that has tax debts, such a guarantee*

([1]) OJ C 22, 23.1.2017.

Appeal brought on 18 August 2017 by Groupe Léa Nature against the judgment of the General Court (Sixth Chamber) delivered on 8 June 2017 in Case T-341/13 RENV: Groupe Léa Nature v European Union Intellectual Property Office

(Case C-505/17 P)

(2017/C 437/18)

Language of the case: English

Parties

Appellant: Groupe Léa Nature (represented by: E. Baud, avocat)

Other parties to the proceedings: European Union Intellectual Property Office, Debonair Trading Internacional Lda

Form of order sought

The appellant claims that the Court should:

— set aside the judgment rendered by the General Court on June 8, 2017;

— refer the case back to the General Court; and

— order Debonair to pay the costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on two pleas in law.

First plea in law, alleging infringement of Article 8(1)(b) EUMTR, based on a violation of the settled case-law pertaining to the assessment of the likelihood of confusion between the marks.

In support of this plea the appellant claims that the General Court did not:

— apply the relevant criteria required to determine the relevant public;

— assess correctly the similarities between the signs;

— properly apply the relevant requirements susceptible to assess the acquisition of a distinctive character through use; and

— validly proceed with an analysis of the global assessment of the likelihood of confusion.

Second plea in law, alleging infringement of Article 8(5) EUMTR, based on a violation of the settled case-law rendered in relation to uses detrimental to the repute of an earlier mark.

In support of this plea, the appellant claims that the General Court did not:

— apply all the criteria required to establish the reputation of an earlier mark;

— assess correctly the similarities between the signs;

— proceed with a valid analysis of the existence of a link that the relevant public may make between the marks; and

— properly assess the detrimental effect that the use of a trademark application is susceptible to have on the repute of an earlier mark.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 September 2017 — Finanzamt Goslar v baumgarten sports & more GmbH

(Case C-548/17)

(2017/C 437/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: Finanzamt Goslar

Respondent in the appeal on a point of law: baumgarten sports & more GmbH

Questions referred

1. Account being taken of the task of tax collector for the tax authority that falls to the taxable person, must Article 63 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) be interpreted restrictively as meaning that the amount receivable in respect of the supply of goods or services

   (a) is due or

   (b) is at least unconditionally owed?

2. If the answer to the first question is in the negative: is the taxable person obliged to pre-finance the VAT owed in respect of the supply of goods or services for a period of two years if he is not able to receive (part of) the remuneration for the goods or services supplied by him until two years after the taxable event has occurred?

3. If the answer to the second question is in the affirmative: account being taken of the powers conferred on them under Article 90(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, are the Member States entitled to assume, for the purposes of the tax period in which VAT first becomes chargeable, that there has been an adjustment as provided for in Article 90(1) of that directive in the case where the taxable person is not able to obtain the amount receivable, because it is not due, until two years after the taxable event has occurred?

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

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 September 2017 — Alpenchalets Resorts GmbH v Finanzamt München Abteilung Körperschaften

(Case C-552/17)

(2017/C 437/20)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Alpenchalets Resorts GmbH

Defendant: Finanzamt München Abteilung Körperschaften

Questions referred

1. Is the supply of a service which consists essentially in the provision of holiday accommodation and in which additional service components are to be regarded merely as ancillary to the principal supply, in accordance with the judgment of the Court of Justice of the European Union of 12 November 1992, *Van Ginkel* (C-163/91, EU:C:1992:435), subject to the special scheme for travel agents under Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? ([1])

2. If the first question is answered in the affirmative, can that supply of service also be subject, in addition to the special scheme for travel agents under Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, to the tax rate reduction for the provision of holiday accommodation, as referred to in Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax in conjunction with Annex III, point (12)?

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

Appeal brought on 22 September 2017 by OZ against the judgment of the General Court (Sixth Chamber) delivered on 13 July 2017 in Case T-607/16: OZ v European Investment Bank

(Case C-558/17 P)

(2017/C 437/21)

Language of the case: English

Parties

Appellant: OZ (represented by: B. Maréchal, avocat)

Other party to the proceedings: European Investment Bank

Form of order sought

The appellant claims that the Court should:

— annul the judgment in Case T-607/16 under appeal in whole;

— annul the decision from Dr. Werner Hoyer, President of the EIB dated 16 October 2015 rendered in the framework of DAW procedure launched by OZ's request dated 20 May 2015 towards the supervisor Mr. F, as investigated by the Investigation Panel and annul the Report dated 14 September 2015 related to the request filed by OZ, in which the complaint of OZ has been rejected and inappropriate recommendations have been included;

— compensation for medical costs as a result of the damage suffered by OZ in an amount of (i) EUR 977 to date (including VAT) and (ii) a provisional amount of EUR 5 850 for future medical costs;

— damages in relation to the moral prejudice suffered amounting to EUR 20 000;

— legal fees for the current proceedings amounting to EUR 35 100 (including VAT);

— order the EIB to pay the costs of this proceeding in appeal and before the General Court;

— order the re-opening of the DAW procedure by EIB and/or a new decision from the President of the EIB.

Pleas in law and main arguments

The appellant claims that the Court should set aside the judgment of the General Court of 13 July 2017, OZ v European Investment Bank (Case T-607/16) by which the General Court dismissed the action for annulment of the decision of the President of the EIB, dated 16 October 2015, given within the framework of the dignity at work investigation procedure launched by OZ's dignity at work request dated 20 May 2015, concerning Mr. F, regarding sexual harassment allegations as investigated by the Investigation Panel and annulment of the report by the investigation panel, dated 14 September 2015, related to the dignity at work request filed by OZ on 20 May 2015 ('the Decision and the Report at issue').

The case is related to sexual harassment allegations raised by OZ regarding the supervisor, Mr. F, which occurred between 2011 and 2014 and led OZ to initiate a formal dignity at work procedure filed on 20 May 2015.

In accordance with the dignity at work procedure, an investigation panel has issued a report, dated 14 September 2014, on the basis of which the President of the European Investment Bank has given a decision dated 16 October 2015.

The appellant claims that: (i) there have been several irregularities during the process of the investigation procedure, in particular with respect to violations related to OZ's right to due process, fair hearing (as set forth in Article 6 of the European convention of human rights ('ECHR') and Article 47 of the charter of fundamental rights of the European Union ('CFR') and (ii) both the report and the Decision contain several elements which are not only irrelevant for the treatment of OZ's complaint about sexual harassment, which pertains to the private life of OZ and should thus be removed, or are irrelevant and exceed the scope of the investigation.

After having unsuccessfully tried to find an amicable settlement of the dispute, notably by the launching of a conciliation procedure based on Article 41 of the European Investment Bank's staff regulations (the failure of which has been established on 22 April 2016), OZ, through the lawyer, Me Benoit Maréchal, lodged an application with the European Union Civil Service Tribunal for annulment of the decision and report.

By judgment of 13 July 2017 the General Court dismissed the action. The General Court considered that the European Investment Bank had not committed unlawful acts towards OZ within the framework of the sexual harassment investigation procedure and dismissed the claim for damages.

OZ is lodging the present appeal relying on the grounds of infringement of European Union law by the General Court and tries to demonstrate EIB's liability.

— First Plea in law: infringement of the dignity at work procedure and of Article 6 of the ECHR and Article 47 of the CFR: the principle of the right of OZ to due process, fair hearing and fair proceedings, in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 47 of the Charter of Fundamental Rights of the European Union, has been infringed during the investigation of the harassment request.

— Second Plea in law: infringement of Article 8 of the ECHR and Article 7 of the CFR: insertion of irrelevant elements and comments integrated in the report and the decision of the EIB's President — violation of the right of OZ to respect for a private life.

— Third Plea in law: infringement on the ground of denial of justice as the General Court did not rule based on the facts and legal basis submitted.

Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 25 September 2017 — Nestrade, S.A. v Agencia Estatal de la Administración Tributaria (AEAT), Tribunal Económico-Administrativo Central (TEAC)

(Case C-562/17)

(2017/C 437/22)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: Nestrade, S.A.

Defendant: Agencia Estatal de la Administración Tributaria (AEAT), Tribunal Económico-Administrativo Central (TEAC)

Questions referred

1. Can the rule in *Petroma* (Case C-271/12) ([1]) be qualified so as to allow a VAT refund sought by an undertaking not established in the EU, even though the national tax authority has already issued a decision refusing the refund on the grounds that the undertaking had failed to respond to a request for information concerning its tax reference number, in view of the fact that the authority was in possession of that information at the relevant time since it had been provided by the undertaking in response to other requests?

2. If that question is answered in the affirmative:

   Does a retroactive application of the rule in *Senatex* (Case C-518/14) ([2]) mean that an administrative act refusing the refund of the VAT in question must be revoked, in view of the fact that the act merely upheld a previous final administrative decision refusing the VAT refund, which was adopted by the AEAT using a procedure which was not the procedure laid down by law for that situation and which, furthermore, curtailed the rights of the applicant, depriving it of a legal remedy?

([1]) Judgment of 8 May 2013, *Petroma Transports and Others* C-271/12, EU:C:2013:297.
([2]) Judgment of 15 September 2016, *Senatex*, C-518/14, EU:C:2016:691.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 28 September 2017 — Sofina SA, Rebelco SA, Sidro SA v Ministre de l'Action et des Comptes Publics

(Case C-575/17)

(2017/C 437/23)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Sofina SA, Rebelco SA, Sidro SA

Defendant: Ministre de l'Action et des Comptes Publics

Questions referred

1. Must Articles 56 and 58 of the Treaty establishing the European Community, now Articles 63 and 65 of the Treaty on the Functioning of the European Union, be interpreted as meaning that the cash-flow disadvantage resulting from the application of withholding tax to dividends paid to loss-making non-resident companies, while loss-making resident companies are not taxed on the amount of the dividends they receive until the year when, if at all, they return to a surplus, constitutes in itself a difference in treatment characterising a restriction on the free movement of capital?

2. Must the potential restriction on the free movement of capital referred to in the preceding question, in view of the requirements resulting from Articles 56 and 58 of the Treaty establishing the European Community, now Articles 63 and 65 of the Treaty on the Functioning of the European Union, be regarded as being justified by the need to ensure the effective collection of tax, since non-resident companies are not subject to the supervision of the French tax authorities, or by the need to safeguard the allocation of the power to impose taxes between the Member States?

3. If application of the withholding tax at issue may in principle be allowed with regard to the free movement of capital:

   — do those provisions preclude the collection of withholding tax on dividends paid by a resident company to a loss-making non-resident company of another Member State where the latter ceases to trade without returning to a surplus, while a resident company placed in that situation is not taxed on such dividends?

   — must those provisions be interpreted as meaning that where taxation rules apply which treat dividends differently depending on whether they are paid to residents or non-residents, it is appropriate to compare the actual tax burden borne by each of them in respect of those dividends, so that a restriction on the free movement of capital resulting from the fact that those rules preclude for non-residents alone the deduction of expenses which are directly linked to the actual payment of the dividends may be regarded as being justified by the difference in the rate of tax between the ordinary-law tax payable in a subsequent year by residents and the withholding tax levied on dividends paid to non-residents, where that difference compensates, with regard to the amount of tax paid, for the difference in the tax base?

Request for a preliminary ruling from the Cour de cassation (France) lodged on 12 October 2017 — Henri Pouvin, Marie Dijoux, wife of Henri Pouvin v Electricité de France (EDF)

(Case C-590/17)

(2017/C 437/24)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Henri Pouvin, Marie Dijoux, wife of Henri Pouvin

Defendant: Electricité de France (EDF)

Questions referred

1. Is Article 2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]) to be interpreted as meaning that a company such as EDF, where it grants an employee a mortgage loan covered by the scheme providing assistance for the purchase of a home, for which only members of the staff of that company are eligible, is acting as a seller or supplier?

2. Is Article 2 of Directive 93/13/EEC to be interpreted as meaning that a company such as EDF, where it grants such a mortgage loan to the spouse of an employee who is not a member of the staff of that company but is jointly and severally liable as co-borrower, is acting as a seller or supplier?

3. Is Article 2 of Directive 93/13/EEC to be interpreted as meaning that an employee of a company such as EDF who enters into an agreement with the company for such a loan is acting as a consumer?

4. Is Article 2 of Directive 93/13/EEC to be interpreted as meaning that the spouse of such an employee who enters into the same loan, not as an employee of the company but as a jointly and severally liable co-borrower, is acting as a consumer?

(1) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 16 October 2017 — Apple Sales International, Apple Inc., Apple retail France EURL v MJA, acting as liquidator of eBizcuss.com (eBizcuss)

(Case C-595/17)

(2017/C 437/25)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Apple Sales International, Apple Inc., Apple retail France EURL

Defendants: MJA, acting as liquidator of eBizcuss.com (eBizcuss)

Questions referred

1. Must Article 23 of Regulation No 44/2001 (1) be interpreted as allowing a national court before which an action for damages has been brought by a distributor against its supplier on the basis of Article 102 of the Treaty on the Functioning of the European Union to apply a jurisdiction clause set out in the contract binding the parties?

2. If the first question is answered in the affirmative, must Article 23 of Regulation No 44/2001 be interpreted as allowing a national court before which an action for damages has been brought by a distributor against its supplier on the basis of Article 102 of the Treaty on the Functioning of the European Union to apply a jurisdiction clause set out in the contract binding the parties, including in cases where that clause does not expressly refer to disputes relating to liability incurred from an infringement of competition law?

3. Must Article 23 of Regulation No 44/2001 be interpreted as allowing a national court before which an action for damages has been brought by a distributor against its supplier on the basis of Article 102 of the Treaty on the Functioning of the European Union to disregard a jurisdiction clause set out in the contract binding the parties where no infringement of competition law has been?

(1) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 16 October 2017 — Japan Tobacco International SA, Japan Tobacco International France SAS v Premier ministre, Ministre de l'Action et des Comptes publics, Ministre des Solidarités et de la Santé

(Case C-596/17)

(2017/C 437/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Japan Tobacco International SA, Japan Tobacco International France SAS

Defendants: Premier ministre, Ministre de l'Action et des Comptes publics, Ministre des Solidarités et de la Santé

Questions referred

1. Must Directive [2011]/64/EU of 21 June 2011 ([1]) be interpreted, as regards the definitions of tobacco products set out in Articles 2, 3 and 4 thereof, as also governing the price of packaged tobacco products?

2. If the answer to Question 1 is in the affirmative, must Article 15 of Directive 2011/64/EU, in laying down the principle that the price of tobacco products must be determined freely, be interpreted as prohibiting a rule setting the price of those products per 1 000 items or 1 000 grams which, in effect, prohibits manufacturers of tobacco products from adjusting their prices on the basis of potential differences in the cost of packaging those products?

([1]) Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24).

Request for a preliminary ruling from the Giudice di pace di Roma (Italy) lodged on 16 October 2017 — Pina Cipollone v Ministero della Giustizia

(Case C-600/17)

(2017/C 437/27)

Language of the case: Italian

Referring court

Giudice di pace di Roma

Parties to the main proceedings

Applicant: Pina Cipollone

Defendant: Ministero della Giustizia

Questions referred

1. Does the applicant, as a *Giudice di Pace* (magistrate), by reason of her occupation, come within the definition of 'fixed-term worker' for the purposes of Articles 1(3) and 7 of Directive 2003/88, ([1]) read in conjunction with Clause 2 of the Framework Agreement on fixed-term work implemented by Directive 1999/70 ([2]) and Article 31(2) of the Charter of Fundamental Rights of the European Union?

2. If Question 1 above is answered in the affirmative, may an ordinary or *'togato'* judge [a career judge engaged on a permanent basis and salaried] be regarded as a comparable permanent worker in respect of a '*Giudice di Pace*' fixed-term worker for the purposes of the application of Clause 4 of the framework agreement on fixed-term work implemented by Directive 1999/70?

3. If Question 2 above is answered in the affirmative, do the differences between the procedure for the permanent recruitment of ordinary judges and the selection procedures, laid down by statute, for the fixed-term recruitment of *Giudici di Pace* constitute an objective ground, within the meaning of Clause 4(1) and/or (4) of the framework agreement on fixed-term work implemented by Directive 1999/70, justifying a refusal to apply: (1) — as in the recent interpretation of 'vital law' by the Combined Chambers of the Corte di cassazione (Court of Cassation) in judgment No 13721/2017 and by the Consiglio di Stato (Council of State) in Opinion No 464/2017 of 8 April 2017 — to *Giudici di Pace*, such as the applicant fixed-term worker, the same employment conditions as those applied to comparable permanent ordinary judges; and (2) preventive measures and measures imposing penalties in respect of abusive use of fixed-term contracts, as referred to in Clause 5 of the framework agreement implemented by Directive 1999/70 and the national implementing laws, in the absence of rules in the Italian legal or constitutional system that could justify either discrimination as regards employment conditions or an absolute prohibition on converting employment contracts of *Giudici di Pace* into permanent contracts, also taking into account previous national legislation (Law No 217/1974), which had already provided that the employment conditions of honorary judges (specifically *'vice pretori onorari'*) should be equivalent to those of ordinary judges?

4. In any event, in a situation such as that in the main proceedings, is it contrary to the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and to the EU-law concept of an independent and impartial tribunal for a *Giudice di Pace*, having an abstract interest in the case being resolved in favour of the applicant, who, as her sole form of employment, performs the same judicial functions, to stand in the place of the Italian courts with jurisdiction to hear employment disputes in general, or disputes of the ordinary magistrates, as a result of a refusal by the court of last instance (the Combined Chambers of the Court of Cassation) to grant protection for the rights claimed and protected by EU law, thus obliging the court naturally having jurisdiction (the Tribunale del lavoro (Labour Court) or the Tribunale amministrativo regionale (T.A.R.) (Regional Administrative Court)) to decline jurisdiction, when requested, despite the fact that that right — payment for annual leave, as sought in the action — is founded in EU law, which is binding and takes precedence within the legal order of the Italian State? In the event that the Court of Justice should find that there is an infringement of Article 47 of the Charter, what domestic remedies are available in order to avoid a situation in which infringement of a provision of primary EU law also involves an absolute refusal under domestic law to protect fundamental rights guaranteed by EU law in the particular circumstances of the case?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

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

Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 19 October 2017 — Benoît Sauvage, Kristel Lejeune v État belge

(Case C-602/17)

(2017/C 437/28)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Benoît Sauvage, Kristel Lejeune

Defendant: État belge

Question referred

Does Article 15(1) of the Convention to prevent double taxation between Belgium and the Grand Duchy of Luxembourg signed on 17 September 1970, interpreted as allowing a restriction on the power of taxation of the source State in respect of the remuneration of an employee residing in Belgium and performing his activity for a Luxembourgish employer in proportion to the activity performed on Luxembourgish territory, interpreted as allowing a power of taxation to be attributed to the State of residence in respect of the amount of remuneration relating to the activity performed outside Luxembourgish territory, interpreted as requiring the employee to be permanently and every day physically present at the seat of his employer when it is not disputed that he regularly travels there as the result of a judicial assessment, conducted with flexibility, on the basis of objective and verifiable evidence and interpreted as requiring courts and tribunals to evaluate the existence and relevance of the services provided there and elsewhere, day by day, with a view to establishing a proportion over 220 business days, infringe Article 45 of the Treaty on the Functioning of the European Union in that it constitutes a tax hindrance which discourages activities across borders and breaches the general principle of legal certainty in that it does not provide for a stable and secure regime of exemption of the entirety of the remuneration received by a Belgian resident employed by an employer whose actual seat is situated in the Grand Duchy of Luxembourg and places him at risk of double taxation of all or part of his income and subjects him to an unpredictable legally uncertain regime?

Reference for a preliminary ruling from the Supreme Court of the United Kingdom made on 20 October 2017 — Peter Bosworth, Colin Hurley v Arcadia Petroleum Limited and others

(Case C-603/17)

(2017/C 437/29)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Peter Bosworth, Colin Hurley

Defendants: Arcadia Petroleum Limited and others

Questions referred

1. What is the correct test for determining whether a claim advanced by an employer against an employee or former employee ('an employee') constitutes a 'matter relating to' an individual contract of employment within the meaning of Section 5 to Title II (Articles 18-21) of the Lugano Convention?

   (1) Is it sufficient for a claim advanced by an employer against an employee to fall within Articles 18-21 that the conduct complained of could also have been pleaded by the employer as a breach of the employee's individual contract of employment — even if the claim actually advanced by the employer does not rely on, complain of, or plead any breach of that contract, but is (for example) advanced on one or more of the different bases indicated in paragraphs 26 and 27 of the Statement of Facts and Issues?

   (2) Alternatively, is the correct test that a claim advanced by an employer against an employee falls within Articles 18-21 only if the obligation on which the claim is actually based is an obligation in the contract of employment? If this is the correct test, does it follow that a claim which is based only on breach of an obligation which arose independently of the contract of employment (and, if relevant, is not an obligation which was 'freely consented to' by the employee) does not fall within Section 5?

   (3) If neither of the above is the correct test, what is the correct test?

2. If a company and an individual enter into a 'contract' (within the meaning of article 5(1) of the Convention), to what extent is it necessary for there to be a relationship of subordination between the company and the individual for that contract to constitute an 'individual contract of employment' for the purposes of Section 5? Can such a relationship exist where the individual is able to determine (and does determine) the terms of his contract with the company and has control and autonomy over the day-to-day operation of the company's business and the performance of his own duties, but the shareholder(s) of the company have the power to procure the termination of the relationship?

3. If Section 5 to Title II of the Lugano Convention only applies to claims which, but for Section 5, would fall within Article 5(1) of the Lugano Convention, what is the correct test to determine whether a claim falls within Article 5(1)?

   (1) Is the correct test that a claim falls within Article 5(1) if the conduct complained of could be pleaded as a breach of contract, even if the claim actually pleaded by the employer does not rely on, complain of, or plead any breach of that contract?

   (2) Alternatively, is the correct test that a claim falls within article 5(1) only if the obligation on which it is actually based is a contractual obligation? If that is the correct test, does it follow that a claim which is based only on breach of an obligation which arose independently of the contract (and, if relevant, is not an obligation which was 'freely consented to' by the defendant) does not fall within article 5(1)?

   (3) If neither of the above is the correct test, what is the correct test?

4. In circumstances in which:

   (1) companies A and B both form part of a group of companies;

   (2) defendant X performs, de facto, the role of CEO of that group of companies (as Mr Bosworth did for the Arcadia Group of companies: Statement of Facts and Issues, paragraph 14); X is employed by one group company, company A (and so is an employee of company A) (as Mr Bosworth was from time to time in circumstances set out in the Statement of Facts and Issues, paragraph 15); and is not, as a matter of domestic law, employed by company B;

   (3) company A brings claims against X, and those claims fall within Articles 18-21; and

   (4) the other group company, company B, also bring claims against X in respect of like conduct to that which forms the basis of company A's claims against X;

   what is the correct test for determining whether company B's claim falls within Section 5? In particular:

   (1) Does the answer depend on whether there was, as between X and company B, an 'individual contract of employment' within the meaning of Section 5 and, if so, what is the correct test for determining whether there was such a contract?

   (2) Is company B to be treated as the 'employer' of X for the purposes of Section 5 to Title II of the Convention, and/or do company B's claims against X (in paragraph 4(4) above) fall within Articles 18-21 in the same way that company A's claims against X fall within Articles 18-21? In particular:

      (a) Does company B's claim fall within article 18 only if the obligation on which it is actually based is an obligation in the contract of employment between company B and X?

      (b) Alternatively, does the claim fall within article 18 if the conduct complained of in the claim would have constituted a breach of an obligation in the contract of employment between company A and X?

   (3) If neither of the foregoing is the correct test, what is the correct test?

GENERAL COURT

Judgment of the General Court of 7 November 2017 — Frame v EUIPO — Bianca-Moden (BIANCALUNA)

(Case T-627/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU word mark BIANCALUNA — Earlier national figurative mark bianca — Procedural economy — Relative ground for refusal — Likelihood of confusion — Identity of the goods — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 437/30)

Language of the case: English

Parties

Applicant: Frame Srl (San Giuseppe Vesuviano, Italy) (represented by: E. Montelione, M. Borghese and R. Giordano, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Bianca-Moden GmbH & Co. KG (Ochtrup, Germany) (represented by: P. Lange, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 7 August 2015 (Case R 2952/2014-5), relating to opposition proceedings between Bianca-Moden and Frame.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Frame Srl to pay the costs.*

([1]) OJ C 68, 22.2.2016.

Judgment of the General Court of 7 November 2017 — Frame v EUIPO — Bianca-Moden (BiancalunA)

(Case T-628/15) ([1])

(EU trade mark — Opposition proceedings — Application for the EU figurative mark BiancalunA — Rejection — Earlier national figurative mark bianca — Relative ground for refusal — No likelihood of confusion — Identity of the goods — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001)

(2017/C 437/31)

Language of the case: English

Parties

Applicant: Frame Srl (San Giuseppe Vesuviano, Italy) (represented by: E. Montelione, M. Borghese and R. Giordano, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Bianca-Moden GmbH & Co. KG (Ochtrup, Germany) (represented by: P. Lange, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 7 August 2015 (Case R 2720/2014-5), relating to opposition proceedings between Bianca-Moden and Frame.

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 7 August 2015 (Case R 2720/2014-5);*

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

3. *Orders Bianca-Moden GmbH & Co. KG to bear its own costs.*

([1]) OJ C 7, 11.1.2016.

Judgment of the General Court of 8 November 2017 — De Nicola v Council and Court of Justice of the European Union

(Case T-42/16) ([1])

(Non-contractual liability — Civil service — EIB staff — Guidelines concerning laser treatment — Article 47 of the Charter of Fundamental Rights — Reasonable time — Failure to comply with the rules governing the right to a fair hearing — Material damage — Non-material damage — Claims made by the applicant in the context of a case pending before the Civil Service Tribunal — Partial referral of the case to the General Court)

(2017/C 437/32)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: initially by L. Isola and G. Isola, and subsequently by G. Ferabecoli, lawyers)

Defendants: Council of the European Union (represented by: E. Rebasti and M. Veiga, acting as Agents) and Court of Justice of the European Union (represented by: initially by J. Inghelram, P. Giusta and L. Tonini Alabiso, and subsequently by J. Inghelram, acting as Agents)

Re:

Application under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of, first, the adoption by the EU legislature of certain guidelines concerning laser treatment, second, the allegedly excessive duration of the proceedings before the European Union Civil Service Tribunal and the General Court in relation to his request for reimbursement of the medical fees connected with laser treatment, third, the supposedly unfair nature of those proceedings and, fourth, the numerous actions which he has been compelled to bring by the Civil Service Tribunal and the General Court.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Carlo De Nicola to pay the costs relating to the present proceedings before both the General Court of the European Union and the European Union Civil Service Tribunal.*

([1]) OJ C 279, 24.8.2015 (case initially registered before the European Union Civil Service Tribunal as Case F-82/15).

Judgment of the General Court of 8 November 2017 — De Nicola v Court of Justice of the European Union

(Case T-99/16) ([1])

(Non-contractual liability — Civil service — EIB staff — Psychological harassment — Failure to comply with the rules governing the right to a fair hearing — Article 47 of the Charter of Fundamental Rights — Reasonable time — Claims for compensation made in the context of an action pending before the Civil Service Tribunal — Partial referral of the case to the General Court)

(2017/C 437/33)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: initially by L. Isola and G. Isola, and subsequently by G. Ferabecoli, lawyers)

Defendant: Court of Justice of the European Union (represented by: initially by J. Inghelram, P. Giusta and L. Tonini Alabiso, and subsequently by J. Inghelram, acting as Agents)

Re:

Application under Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered as a result of, first, the psychological harassment to which he has been subjected by the European Investment Bank (EIB), on the one hand, and the supposedly unfair nature of the proceedings before the European Union Civil Service Tribunal and the General Court to which he has been a party, on the other, and, second, the allegedly excessive duration of those proceedings.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Carlo De Nicola to pay the costs relating to the present proceedings before both the General Court of the European Union and the European Union Civil Service Tribunal.*

([1]) OJ C 414, 14.12.2015 (case initially registered before the European Union Civil Service Tribunal as Case F-100/15).

Judgment of the General Court of 7 November 2017 — Mundipharma v EUIPO — Multipharma (MULTIPHARMA)

(Case T-144/16) ([1])

(European Union trade mark — Opposition proceedings — Application for EU word mark MULTIPHARMA — Prior EU word mark MUNDIPHARMA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC No 207/2009)

(2017/C 437/34)

Language of the case: German

Parties

Applicant: Mundipharma AG (Basel, Switzerland) (represented by: F. Nielsen, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Multipharma SA (Luxembourg, Luxembourg) (represented by: P. Goldenbaum and I. Rohr, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 22 January 2016 (Case R 2950/2014-1) concerning opposition proceedings between Mundipharma and Multipharma.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 January 2016 (Case R 2950/2014-1);*

2. *Orders EUIPO to bear its own costs and to pay the costs incurred by Mundipharma AG, including the costs necessarily incurred by Mundipharma for the purposes of the proceedings before the Board of Appeal of EUIPO;*

3. *Orders Multipharma SA to bear its own costs.*

([1]) OJ C 191, 30.5.2016.

Judgment of the General Court of 8 November 2017 — Oakley v EUIPO — Xuebo Ye (Representation of a discontinuous ellipse)

(Case T-754/16) ([1])

(European Union trade mark — Opposition proceedings — Application for registration of an EU figurative mark representing a silhouette in the shape of a discontinuous ellipse — Prior EU figurative mark representing an ellipse — Relative grounds for refusal — Article 8(1)(b) and (5) of Regulation (EC No 207/2009 (now Article 8(1)(b) and (5) of Regulation (EU) 2017/1001))

(2017/C 437/35)

Language of the case: Spanish

Parties

Applicant: Oakley, Inc. (Foothill Ranch, California, United States) (represented by: E. Ochoa Santamaría and V. Rodríguez Pombo, lawyers)

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: Xuebo Ye (Wenzhou, China)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 31 August 2016 (Case R 2608/2015-4) concerning opposition proceedings between Oakley and Xuebo Ye.

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 31 August 2016 (Case R 2608/2015-4) insofar as it confirmed the decision of the Opposition Division and rejected the opposition inasmuch as it is based on the ground set out in Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (now Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark);*

2. *Dismisses the remainder of the action;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 14, 16.1.2017.

Judgment of the General Court of 8 November 2017 — Isocell v EUIPO — iCell (iCell.)

(Case T-776/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark iCell. — Earlier EU word mark Isocell, earlier international word mark Isocell and earlier international and national word marks ISOCELL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 437/36)

Language of the case: German

Parties

Applicant: Isocell GmbH (Neumarkt am Wallersee, Austria) (represented by: C. Thiele, 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, intervener before the General Court: iCell AB (Älvdalen, Sweden) (represented by: J. Kroher, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 15 September 2016 (Case R 2496/2015-1), relating to opposition proceedings between Isocell and iCell.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Isocell GmbH to pay the costs.*

(1) OJ C 14, 16.1.2017.

Judgment of the General Court of 8 November 2017 — Isocell v EUIPO — iCell (iCell. Insulation Technology Made in Sweden)

(Case T-777/16) (1)

(EU trade mark — Opposition proceedings — Application for EU figurative mark iCell. Insulation Technology Made in Sweden — Earlier EU word mark Isocell, earlier international word mark Isocell and earlier international and national word marks ISOCELL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 437/37)

Language of the case: German

Parties

Applicant: Isocell GmbH (Neumarkt am Wallersee, Austria) (represented by: C. Thiele, 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, intervener before the General Court: iCell AB (Älvdalen, Sweden) (represented by: J. Kroher, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 28 July 2016 (Case R 181/2016-1), relating to opposition proceedings between Isocell and iCell.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Isocell GmbH to pay the costs.*

(1) OJ C 14, 16.1.2017.

Judgment of the General Court of 8 November 2017 — Steiniger v EUIPO — ista Deutschland (IST)

(Case T-80/17) (1)

(European Union trade mark — Opposition proceedings — Application for EU figurative mark IST — Prior EU figurative mark ISTA — Relative ground for refusal — Relevant public — Similarity of the goods and services — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2017/C 437/38)

Language of the case: German

Parties

Applicant: Ingo Steiniger (Nümbrecht, Germany) (represented by: K. Schulze Horn, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: ista Deutschland GmbH (Essen, Germany) (represented by: F. Lindenberg, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 1 December 2016 (Case R 2242/2015-5) concerning opposition proceedings between ista Deutschland and Mr Steiniger.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Ingo Steiniger to pay the costs.*

([1]) OJ C 112, 10.4.2017.

Action brought on 11 September 2017 — Previsión Sanitaria Nacional, PSN, Mutua de Seguros y Reaseguros a Prima Fija v SRB

(Case T-623/17)

(2017/C 437/39)

Language of the case: Spanish

Parties

Applicant: Previsión Sanitaria Nacional, PSN, Mutua de Seguros y Reaseguros a Prima Fija (Madrid, Spain) (represented by: R. Ariño Sánchez, lawyer)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Annul the contested act;

— In any event, order that the contract for the provision of services relating to the definitive valuation and the valuation referred to in Article 20(16) to (19) of Regulation No 806/2014 be awarded by means of a competitive selection procedure, in which the expert who carried out the provisional valuation of the Banco cannot participate, recognise the right to be heard of the parties adversely affected by the original act in the context of the ex post valuation, granting access to all the documents of the administrative procedure, and order that the applicant be awarded the maximum countervalue resulting from the ex post valuation and its payment by the Banco's [Banco de Santander] contractor or, in the alternative, by SRB;

— Irrespective of the second head of claim, and incidentally to the first, order SRB to make a payment to PSN in the sum of EUR 276 201,42 together with statutory interest as of the date of this application.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 27 September 2017 — Anabi Blanga v EUIPO — Polo/Lauren (HPC POLO)

(Case T-657/17)

(2017/C 437/40)

Language in which the application was lodged: English

Parties

Applicant: Gidon Anabi Blanga (Mexico, Mexico) (represented by: M. Sanmartín Sanmartín, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: The Polo/Lauren Company LP (New York, New York, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'HPC POLO' — Application for registration No 13 531 462

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 June 2017 in Case R 2368/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to bear its own costs and pay the costs of the applicant.

Plea in law

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

Action brought on 21 September 2017 — Alkarim for Trade and Industry v Council

(Case T-667/17)

(2017/C 437/41)

Language of the case: French

Parties

Applicant: Alkarim for Trade and Industry LLC (Tal Kurdi, Syria) (represented by: J.-P. Buyle and L. Cloquet, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Decision (CFSP) 2017/1245 of 10 July 2017 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria, as far as concerns the applicant;

— annul Council Implementing Regulation (EU) 2017/1241 of 10 July 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, as far as concerns the applicant;

— order the Council to pay all the costs of the action, including those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment of the facts in so far as the Council has not adduced any evidence proving that the applicant is an internationally recognised Syrian conglomerate.

   According to the applicant, that contention is completely flawed and is indicative of the numerous substantive inaccuracies in the Council's approach.

   In addition, the applicant considers that it has demonstrated that it is not a large company but that it qualifies as a small or medium-sized company under EU law and has no international reputation.

   It is also of the opinion that the Council failed to take into consideration both the judgment of 6 April 2017, *Alkarim for Trade and Industry* v *Council* (T-35/15, not published, EU:T:2017:262) and that of 11 May 2017, *Abdulkarim* v *Council* (T-304/15, not published, EU:T:2017:327), in which the General Court annulled the sanctions imposed, respectively, against the applicant and Mr Wael Abdulkarim as a result of manifest errors of assessment by the Council.

2. Second plea in law, alleging infringement of the general principle of proportionality, in so far as:

   — the contested measures allegedly result in international trade being closed to the applicant since the latter carries out a substantial part of its activities with European suppliers and customers;

   — the contested measures are also allegedly such as to render numerous existing, current contracts inoperative and give rise to the applicant's contractual and quasidelictual liability with regard to its customers and contracting parties, in an unjustified manner. The applicant regards that sanction as completely disproportionate.

3. Third plea in law, alleging disproportionate infringement of the right to property and the right to pursue an occupation since, by adopting those sanctions, the Council inevitably infringed the applicant's right to property and its right to pursue an economic activity, in breach of the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant is of the opinion that it cannot be prevented from peacefully enjoying its property and economic freedom, which therefore justifies the annulment of the contested decisions in so far as they concern the applicant.

4. Fourth plea in law, alleging misuse of power in so far as the measures adopted by the Council have no effect at all on the Syrian regime and in so far as the applicant remained at all times independent of the power in place. Thus, according to the applicant, the sanctions imposed by the Council are unfounded and unsubstantiated, and their intended subject is not the Syrian regime but the applicant alone, for reasons unknown to it.

5. Fifth plea in law, alleging infringement of the obligation to state reasons laid down in the second subparagraph of Article 296 of the Treaty on the Functioning of the European Union (TFEU). In that respect, the applicant claims that the Council's statement of reasons in support of the contested measures is cryptic and makes no reference to any relevant concrete evidence enabling it to identify the reason for which it is considered to be 'an internationally recognised Syrian conglomerate associated with Wael Abdulkarim, who is listed as a leading businessperson operating in Syria'.

Action brought on 11 October 2017 — MAN Truck & Bus v EUIPO — Halla Holdings (MANDO)

(Case T-698/17)

(2017/C 437/42)

Language in which the application was lodged: German

Parties

Applicant: MAN Truck & Bus AG (Munich, Germany) (represented by: C. Röhl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Halla Holdings Corp. (Yongin-si, Republic of Korea)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'MANDO' — Application for registration No 11 276 144

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of 13 July 2017 in Case R 1919/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 12 October 2017 — Cyprus v EUIPO — Papouis Dairies (Papouis Halloumi)

(Case T-703/17)

(2017/C 437/43)

Language in which the application was lodged: English

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Papouis Dairies LTD (Nicosia, Cyprus)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU figurative mark in colours containing the word elements 'Papouis Halloumi' — Application for registration No 11 176 344

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 3 August 2017 in Case R 2924/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

Plea in law

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

Action brought on 12 October 2017 — OPS Újpest v Commission

(Case T-708/17)

(2017/C 437/44)

Language of the case: Hungarian

Parties

Applicant: OPS Újpesti Csökkentmunkaképességűek Ipari és Kereskedelmi Kft. (Budapest, Hungary) (represented by: L. Szabó, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that Commission Decision SA. 29432 — CP 290/2009 — Hungary — 'Aid for the employment of disabled workers alleged to be unlawful due to the discriminatory nature of the legislation', of 20 July 2011, and Commission Decision SA.45498 (FC/2016) — 'Complaint made by OPS Újpest-lift Kft. concerning the State aid granted between 2006 and 2012 to companies employing disabled workers', of 25 January 2017, ('the contested decisions') do not find that the State aid is compatible on the basis of Article 107(1) TFEU;

— in the alternative, declare that the contested decisions do not constitute legally binding acts as regards the applicant in its action for damages brought against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) in Case No 28. P. 21.072/2016 (subsequently, 28. P. 21.143/2017) before the Fővárosi Törvényszék (Budapest High Court, Hungary), since the applicant bases its claim for damages on the infringement of Article 107(1) TFEU, and not on the infringement of Article 107(3) TFEU;

— in the event that the contested decisions should be characterised as legally binding acts as regards the applicant in its action for damages based on the infringement of Article 107(1) TFEU, declare the contested decisions invalid, since the State aid granted by the Hungarian authorities infringes Article 107(1) TFEU.

Pleas in law and main arguments

In support of its action, the applicant invokes a legal basis in relation to each of its claims.

1. Legal basis for the first claim

— The contested decisions do not find that the State aid is compatible on the basis of Article 107(1) TFEU; for that reason, those decisions do not constitute legally binding acts in the context of the action for damages brought by the applicant against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) before the Fővárosi Törvényszék (Budapest High Court, Hungary).

2. Legal basis for the second claim

— In the contested decisions, the Commission found that the State aid was compatible, not on the basis of Article 107 (1) TFEU, invoked by the applicant, but rather on the basis of Article 107(3) TFEU. Consequently, those decisions are irrelevant in relation to the legal basis of the claim made in the action for damages brought before the Fővárosi Törvényszék (Budapest High Court, Hungary) and do not constitute legally binding acts as regards the applicant.

3. Legal basis for the third claim

— According to the applicant, the contested decisions are invalid because the Hungarian authorities granted unlawful State aid that infringed Article 107(1) TFEU and, pursuant to Article 108(3) TFEU, the Commission should have been informed. In order to support its allegation that the aid is unlawful, the applicant relies on the Commission Notice on the notion of State aid as referred to in Article 107(1) [TFEU] ([1]) and on Commission Regulation (EC) No 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles [107] and [108 TFEU] (General block exemption). ([2])

([1]) OJ 2016, C 262, p. 1.
([2]) OJ 2008, L 214, p. 3.

Action brought on 13 October 2017 — M-Sansz v Commission

(Case T-709/17)

(2017/C 437/45)

Language of the case: Hungarian

Parties

Applicant: M-Sansz Kereskedelmi, Termelő és Szolgáltató Kft. (Pécs, Hungary) (represented by: L. Szabó, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that Commission Decision SA.29432 — CP 290/2009 — Hungary — 'Aid for the employment of disabled workers alleged to be unlawful due to the discriminatory nature of the legislation', of 20 July 2011, and Commission Decision SA.45498 (FC/2016) — 'Complaint made by OPS Újpest-lift Kft. concerning the State aid granted between 2006 and 2012 to companies employing disabled workers', of 25 January 2017, ('the contested decisions') do not find that the State aid is compatible on the basis of Article 107(1) TFEU;

— in the alternative, declare that the contested decisions do not constitute legally binding acts as regards the applicant in its action for damages brought against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) in Case No 23. P. 25.843/2016 before the Fővárosi Törvényszék (Budapest High Court, Hungary), and that, for that reason, the applicant is not directly and individually concerned, since it bases its claim for damages on the infringement of Article 107(1) TFEU, and not on the infringement of Article 107(3) TFEU;

— in the event that the contested decisions should be characterised as legally binding acts as regards the applicant in its action for damages based on the infringement of Article 107(1) TFEU, declare the contested decisions invalid, since the State aid granted by the Hungarian authorities infringes Article 107(1) TFEU.

Pleas in law and main arguments

In support of its action, the applicant invokes a legal basis in relation to each of its claims.

1. Legal basis for the first claim

— The contested decisions do not find that the State aid is compatible on the basis of Article 107(1) TFEU; for that reason, those decisions do not constitute legally binding acts in the context of the action for damages brought by the applicant against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) before the Fővárosi Törvényszék (Budapest High Court, Hungary).

2. Legal basis for the second claim

— In the contested decisions, the Commission found that the State aid was compatible, not on the basis of Article 107 (1) TFEU, invoked by the applicant, but rather on the basis of Article 107(3) TFEU. Consequently, those decisions are irrelevant in relation to the legal basis of the claim made in the action for damages brought before the Fővárosi Törvényszék (Budapest High Court, Hungary) and do not constitute legally binding acts as regards the applicant.

3. Legal basis for the third claim

— According to the applicant, the contested decisions are invalid because the Hungarian authorities granted unlawful State aid that infringed Article 107(1) TFEU and, pursuant to Article 108(3) TFEU, the Commission should have been informed. In order to support its allegation that the aid is unlawful, the applicant relies on the Commission Notice on the notion of State aid as referred to in Article 107(1) [TFEU] ([1]) and on Commission Regulation (EC) No 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles [107] and [108 TFEU] (General block exemption). ([2])

([1]) OJ 2016, C 262, p. 1.
([2]) OJ 2008, L 214, p. 3.

Action brought on 13 October 2017 — Lux-Rehab Non-Profit v Commission

(Case T-710/17)

(2017/C 437/46)

Language of the case: Hungarian

Parties

Applicant: LUX-REHAB Foglalkoztató Non-Profit Kft. (Szombathely, Hungary) (represented by: L. Szabó, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that Commission Decision SA.29432 — CP 290/2009 — Hungary — 'Aid for the employment of disabled workers alleged to be unlawful due to the discriminatory nature of the legislation', of 20 July 2011, and Commission Decision SA.45498 (FC/2016) — 'Complaint made by OPS Újpest-lift Kft. concerning the State aid granted between 2006 and 2012 to companies employing disabled workers', of 25 January 2017, ('the contested decisions') do not find that the State aid is compatible on the basis of Article 107(1) TFEU;

— in the alternative, declare that the contested decisions do not constitute legally binding acts as regards the applicant in its action for damages brought against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) in Case No 66. P. 22.195/2017 before the Fővárosi Törvényszék (Budapest High Court, Hungary), and that, for that reason, the applicant is not directly and individually concerned, since it bases its claim for damages on the infringement of Article 107(1) TFEU, and not on the infringement of Article 107(3) TFEU;

— in the event that the contested decisions should be characterised as legally binding acts as regards the applicant in its action for damages based on the infringement of Article 107(1) TFEU, declare the contested decisions invalid, since the State aid granted by the Hungarian authorities infringes Article 107(1) TFEU.

Pleas in law and main arguments

In support of its action, the applicant invokes a legal basis in relation to each of its claims.

1. Legal basis for the first claim

— The contested decisions do not find that the State aid is compatible on the basis of Article 107(1) TFEU; for that reason, those decisions do not constitute legally binding acts in the context of the action for damages brought by the applicant against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) before the Fővárosi Törvényszék (Budapest High Court, Hungary).

2. Legal basis for the second claim

— In the contested decisions, the Commission found that the State aid was compatible, not on the basis of Article 107 (1) TFEU, invoked by the applicant, but rather on the basis of Article 107(3) TFEU. Consequently, those decisions are irrelevant in relation to the legal basis of the claim made in the action for damages brought before the Fővárosi Törvényszék (Budapest High Court, Hungary) and do not constitute legally binding acts as regards the applicant.

3. Legal basis for the third claim

— According to the applicant, the contested decisions are invalid because the Hungarian authorities granted unlawful State aid that infringed Article 107(1) TFEU and, pursuant to Article 108(3) TFEU, the Commission should have been informed. In order to support its allegation that the aid is unlawful, the applicant relies on the Commission Notice on the notion of State aid as referred to in Article 107(1) [TFEU] ([1]) and on Commission Regulation (EC) No 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles [107] and [108 TFEU] (General block exemption). ([2])

([1]) OJ 2016, C 262, p. 1.
([2]) OJ 2008, L 214, p. 3.

Action brought on 9 October 2017 — Ntolas v EUIPO — General Nutrition Investment (GN Laboratories)

(Case T-712/17)

(2017/C 437/47)

Language in which the application was lodged: English

Parties

Applicant: Christos Ntolas (Wuppertal, Germany) (represented by: C. Renger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: General Nutrition Investment Co. (Delaware, Arizona, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'GN Laboratories' — Application for registration No 11 223 559

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 July 2017 in Case R 2358/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition brought against the application for the Community Trademark No 011223559;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 14 October 2017 — Motex v Commission

(Case T-713/17)

(2017/C 437/48)

Language of the case: Hungarian

Parties

Applicant: MOTEX Ipari és Szolgáltató Rehabilitációs Kft. (Esztergom-Kertváros, Hungary) (represented by: L. Szabó, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that Commission Decision SA.29432 — CP 290/2009 — Hungary — 'Aid for the employment of disabled workers alleged to be unlawful due to the discriminatory nature of the legislation', of 20 July 2011, and Commission Decision SA.45498 (FC/2016) — 'Complaint made by OPS Újpest-lift Kft. concerning the State aid granted between 2006 and 2012 to companies employing disabled workers', of 25 January 2017, ('the contested decisions') do not find that the State aid is compatible on the basis of Article 107(1) TFEU;

— in the alternative, declare that the contested decisions do not constitute legally binding acts as regards the applicant in its action for damages brought against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) in Case No 18. G. 40.399/2017 before the Fővárosi Törvényszék (Budapest High Court, Hungary), and that, for that reason, the applicant is not directly and individually concerned, since it bases its claim for damages on the infringement of Article 107(1) TFEU, and not on the infringement of Article 107(3) TFEU;

— in the event that the contested decisions should be characterised as legally binding acts as regards the applicant in its action for damages based on the infringement of Article 107(1) TFEU, declare the contested decisions invalid, since the State aid granted by the Hungarian authorities infringes Article 107(1) TFEU.

Pleas in law and main arguments

In support of its action, the applicant invokes a legal basis in relation to each of its claims.

1. Legal basis for the first claim

— The contested decisions do not find that the State aid is compatible on the basis of Article 107(1) TFEU; for that reason, those decisions do not constitute legally binding acts in the context of the action for damages brought by the applicant against the Emberi Erőforrások Minisztériuma (Ministry of Human Resources, Hungary) before the Fővárosi Törvényszék (Budapest High Court, Hungary).

2. Legal basis for the second claim

— In the contested decisions, the Commission found that the State aid was compatible, not on the basis of Article 107 (1) TFEU, invoked by the applicant, but rather on the basis of Article 107(3) TFEU. Consequently, those decisions are irrelevant in relation to the legal basis of the claim made in the action for damages brought before the Fővárosi Törvényszék (Budapest High Court, Hungary) and do not constitute legally binding acts as regards the applicant.

3. Legal basis for the third claim

— According to the applicant, the contested decisions are invalid because the Hungarian authorities granted unlawful State aid that infringed Article 107(1) TFEU and, pursuant to Article 108(3) TFEU, the Commission should have been informed. In order to support its allegation that the aid is unlawful, the applicant relies on the Commission Notice on the notion of State aid as referred to in Article 107(1) [TFEU] ([1]) and on Commission Regulation (EC) No 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles [107] and [108 TFEU] (General block exemption). ([2])

([1]) OJ 2016, C 262, p. 1.
([2]) OJ 2008, L 214, p. 3.

Action brought on 10 October 2017 — Aeris Invest v SRB

(Case T-714/17)

(2017/C 437/49)

Language of the case: Spanish

Parties

Applicant: Aeris Invest Sàrl (Luxembourg, Luxembourg) (represented by: M. Roca Junyent, J. Calvo Costa, R. Vallina Hoset and A. Sellés Marco, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicant as a result of both its actions and its omissions which deprived the applicant of the BANCO POPULAR ESPAÑOL, S.A. bonds and securities it owned;

— Order the Board to pay to the applicant by way of compensation for the harm suffered ('the amount due');

  — Principally, the reimbursement of EUR 113 022 558,44 for investments made in Banco Popular shares

  — In the alternative, the sum of EUR 93,74 million or

  — In the further alternative, the sum of EUR 54,29 million.

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17 *Vallina Fonseca* v *SRB*.

Order of the General Court of 25 October 2017 — Franmax v EUIPO — R. Seelig & Hille (her-bea)

(Case T-97/17) ([1])

(2017/C 437/50)

Language of the case: English

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

([1]) OJ C 112, 10.4.2017.

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