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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2018/C 063/01)

Last publication

OJ C 52, 12.2.2018.

Past publications

OJ C 42, 5.2.2018.

OJ C 32, 29.1.2018.

OJ C 22, 22.1.2018.

OJ C 13, 15.1.2018.

OJ C 5, 8.1.2018.

OJ C 437, 18.12.2017.

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Seventh Chamber) of 7 December 2017 — Eurallumina SpA v Italian Republic, European Commission

(Case C-323/16 P) ([1])

(Appeal — State aid — Article 181 of the Rules of Procedure of the Court of Justice — Intervention — Cross-appeal — Admissibility — Exemption from excise duty on mineral oils used as fuel for alumina production — Principle of presumption of the legality and of the effet utile of acts of the institutions — Principle lex specialis derogat legi generali — Selective nature of the measure — Existing or new aid — Regulation (EC) No 659/1999 — Article 1(b)(ii) — Principle of legal certainty — Principle of the protection of legitimate expectations — Duty to state reasons)

(2018/C 063/02)

Language of the case: English

Parties

Appellant: Eurallumina SpA (represented by: L. Martin Alegi, L. Philippou and A. Stratakis, Solicitors)

Intervener in support of the appellant: French Republic (represented by: D. Colas and R. Coesme, acting as Agents)

Other parties to the proceedings: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by P. Grasso, avvocato dello Stato), European Commission, (represented by: V. Bottka and N. Khan, acting as Agents)

Operative part of the order

The Court:

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

2. *Orders Eurallumina SpA to pay the costs relating to the main appeal.*

3. *Orders the Italian Republic to pay the costs relating to the cross-appeal.*

4. *Orders the French Republic to bear its own costs.*

([1]) OJ C 270, 25.7.2016.

Order of the Court (Seventh Chamber) of 7 December 2017 — Ireland v Aughinish Alumina Ltd, European Commission

(Case C-369/16 P) ([1])

(Appeal — State aid — Article 181 of the Rules of Procedure of the Court of Justice — Exemption from excise duty on mineral oils used as fuel for alumina production — Existing or new aid — Regulation (EC) No 659/1999 — Article 1(b)(i) and (iv), and (d) — Limitation — Article 15 — Principle of legal certainty — Principle of the protection of legitimate expectations)

(2018/C 063/03)

Language of the case: English

Parties

Appellant: Ireland (represented by: E. Creedon, L. Williams and A. Joyce, acting as Agents, and by P. McGarry, Senior Counsel)

Intervener in support of the appellant: French Republic (represented by: R. Coesme and D. Colas, acting as Agents)

Other parties to the proceedings: Aughinish Alumina Ltd (represented by: C. Little and C. Waterson, Solicitors), European Commission (represented by: V. Bottka and N. Khan, acting as Agents)

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Ireland to pay the costs.*

3. *Orders the French Republic to bear its own costs.*

([1]) OJ C 371, 10.10.2016.

Order of the Court (Seventh Chamber) of 7 December 2017 — Aughinish Alumina Ltd v Ireland, European Commission

(Case C-373/16 P) ([1])

(Appeal — State aid — Article 181 of the Rules of Procedure of the Court of Justice — Exemption from excise duty on mineral oils used as fuel for alumina production — Existing or new aid — Regulation (EC) No 659/1999 — Article 1(b)(i) — Principle of the protection of legitimate expectations — Duty to state reasons)

(2018/C 063/04)

Language of the case: English

Parties

Appellant: Aughinish Alumina Ltd (represented by: C. Little and C. Waterson, Solicitors)

Intervener in support of the appellant: French Republic (represented by: R. Coesme and D. Colas, acting as Agents)

Other parties to the proceedings: Ireland, European Commission (represented by: V. Bottka and N. Khan, acting as Agents)

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Aughinish Alumina Ltd to pay the costs.*

3. *Orders the French Republic to bear its own costs.*

(1) OJ C 305, 22.8.2016.

Order of the Court of Justice (Eighth Chamber) of 7 December 2017 (request for a preliminary ruling from the Vredegerecht te Antwerpen — Belgium) — Woonhaven Antwerpen v Khalid Berkani, Asmae Hajji

(Case C-446/17) (1)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Unfair terms — Rental contract concluded between a recognised social housing association and a tenant — Model rental contract made binding by an act of national legislation — Directive 93/13/EEC — Article 1(2) — Inapplicability of that directive)

(2018/C 063/05)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Woonhaven Antwerpen

Defendants: Khalid Berkani, Asmae Hajji

Operative part of the order

Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that that directive is not applicable to conditions contained in the social rental contract concluded between a recognised social housing association and a tenant, which are determined by national legislation such as Article 11 of the model rental contract annexed to the Besluit van de Vlaamse Regering tot reglementering van het sociale huurstelsel ter uitvoering van titel VII van de Vlaamse Wooncode (Flemish Government Decree to regulate the social rental system implementing Title VII of the Flemish Housing Code), of 12 October 2007.

(1) OJ C 318, 25.9.2017.

Request for a preliminary ruling from the Landgericht Düsseldorf (Germany) lodged on 26 October 2017 — Eurowings GmbH v Klaus Rövekamp, Christiane Rupp

(Case C-615/17)

(2018/C 063/06)

Language of the case: German

Referring court

Landgericht Düsseldorf

Parties to the main proceedings

Applicant: Eurowings GmbH

Defendants: Klaus Rövekamp, Christiane Rupp

Question referred

Can a right to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) also exist when a passenger does not catch a directly connecting flight due to a relatively minor delay in arrival, with the result that there is a delay in arrival at the final destination of three hours or more, but the two flights were operated by different air carriers and the booking confirmation was issued by a tour operator who combined the flights for its customer?

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

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 9 November 2017 — SF v Inspecteur van de Belastingdienst

(Case C-631/17)

(2018/C 063/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: SF

Defendant: Inspecteur van de Belastingdienst

Question referred

The legislation of which Member State is designated by Regulation No 883/2004 ([1]) in a situation in which the person concerned (a) resides in Latvia, (b) has Latvian nationality, (c) is employed by an employer established in the Netherlands, (d) works as a seafarer, (e) works on board a vessel at sea flying the flag of the Bahamas, and (f) performs those activities outside the territory of the European Union?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Rechtbank Den Haag, sitting in Haarlem (Netherlands) lodged on 14 November 2017 — E. v Staatssecretaris van Veiligheid en Justitie

(Case C-635/17)

(2018/C 063/08)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, sitting in Haarlem

Parties to the main proceedings

Applicant: E.

Defendant: Staatssecretaris van Veiligheid en Justitie

Questions referred

1. Having regard to Article 3(2)(c) of Directive 2003/86/EC ([1]) and to the *Nolan* judgment (EU:C:2012:638), does the Court of Justice have jurisdiction to answer questions referred for a preliminary ruling by courts in the Netherlands on the interpretation of provisions of Directive 2003/86/EC in proceedings concerning the right of residence of a member of the family of a person with subsidiary protection status, if that directive has, under Netherlands law, been declared directly and unconditionally applicable to persons with subsidiary protection status?

   (see the order for reference made by the Afdeling bestuursrechtspraak van de Raad van State (Chamber for Contentious Administrative Proceedings of the Council of State) of 21 June 2017, ECLI:NL:RVS:2017:1609; registered with the Court of Justice as Case C-380/17);

2. Must Article 11(2) of Directive 2003/86/EC be interpreted as precluding the rejection of a refugee's application for family reunification solely because of the fact that that refugee has not provided any official documentary evidence of the family relationship with his application,

   or

   must Article 11(2) of Directive 2003/86/EC be interpreted as precluding the rejection of a refugee's application for family reunification on the sole ground of a lack of any official documentary evidence of the family relationship only if that refugee has given a plausible explanation for the fact that he has not provided such documentary evidence and for his statement that he is not yet able to provide such documentary evidence?

([1]) Council Directive of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Request for a preliminary ruling from the Landesgericht Korneuburg (Austria) lodged on 14 November 2017 — Germanwings GmbH v Emina Pedić

(Case C-636/17)

(2018/C 063/09)

Language of the case: German

Referring court

Landesgericht Korneuburg

Parties to the main proceedings

Appellant: Germanwings GmbH

Respondent: Emina Pedić

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]), to be interpreted as meaning that 'all reasonable measures' which the operating air carrier must have taken in order, in the event of extraordinary circumstances, to avoid an obligation to pay compensation in accordance with Article 7 of that regulation must be aimed merely at avoiding the 'extraordinary circumstances' (in this particular case, the allocation of a new (later) air traffic control slot by the European air surveillance organisation EUROCONTROL), or is the operating air carrier also required to take reasonable measures to avoid cancellations or long delays themselves?

2. If the operating air carrier is required to take reasonable measures to avoid long delays themselves, is Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, to be interpreted as meaning that, in the case of the carriage of passengers on a route consisting of two (or more) flights, the air carrier must, in order to avoid an obligation to pay compensation in accordance with Article 7 of that regulation, merely take reasonable measures aimed at avoiding a delay to the flight which it is due to operate and which is subject to possible delay, or that it must also take reasonable measures to avoid a long delay for the individual passenger at the final destination (for example, by examining the possibility of rebooking the passenger onto another flight)?

3. Are Articles 5, 6, 7 and 8 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, to be interpreted as meaning that, in the event of a long delay at the final destination, the operating air carrier — if it wishes to avoid an obligation to pay compensation in accordance with Article 7 of that regulation — must state and prove that it has taken reasonable measures to rebook the passenger onto a flight expected to enable him to reach his final destination without a long delay?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 1 December 2017 — Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry

(Case C-674/17)

(2018/C 063/10)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry

Other parties: Suomen riistakeskus, Risto Mustonen, Kai Ruhanen

Questions referred

1. Can regionally restricted derogation permits based on applications from individual hunters be granted for hunting for 'population management purposes' under Article 16(1)(e) of the Habitats Directive, ([1]) having regard to the wording of that provision?

   — In considering that question, is it relevant that the discretion exercised when deciding on derogation permits is governed by a national population management plan and by the maximum number of individual animals killed laid down in a regulation, under which derogation permits may be granted annually for the territory of the Member State?

   — As part of that consideration, may account be taken of other factors, such as the objective of preventing harm to dogs and increasing the general feeling of security?

2. Can derogation permits be granted for hunting for population management purposes, as described in the first question, on the basis that there is no satisfactory alternative within the meaning of Article 16(1) of the Habitats Directive to prevent poaching?

— In such circumstances, may account be taken of the practical difficulties associated with the monitoring of illegal poaching?

— In considering whether a satisfactory alternative exists, is the objective of preventing harm to dogs and increasing the general feeling of security also potentially a relevant factor?

3. How is the requirement laid down in Article 16(1) of the Habitats Directive concerning the conservation status of species' populations to be assessed when regionally restricted derogation permits are granted?

— Is the conservation status of a species to be assessed by reference both to a particular area and to the territory of the Member State as a whole or by reference to an even wider range of the species in question?

— Is it possible to satisfy the requirements for granting a derogation permit laid down in Article 16(1) of the Habitats Directive even though the conservation status of a species cannot be regarded as favourable within the meaning of the directive on the basis of a proper assessment?

— If the previous question is answered in the affirmative, in which circumstances could that be possible?

(1) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Request for a preliminary ruling from the Curtea de Apel Ploiești (Romania) lodged on 1 December 2017 — Oana Mădălina Călin v Direcția Regională a Finanțelor Publice Ploieşti — Administrația Județeană a Finanțelor Publice Dâmbovița, Statul Român — Ministerul Finanțelor Public, and Administrația Fondului pentru Mediu

(Case C-676/17)

(2018/C 063/11)

Language of the case: Romanian

Referring court

Curtea de Apel Ploieşti

Parties to the main proceedings

Appellant: Oana Mădălina Călin

Respondents: Direcția Regională a Finanțelor Publice Ploieşti — Administrația Județeană a Finanțelor Publice Dâmbovița, Statul Român — Ministerul Finanțelor Public, and Administrația Fondului pentru Mediu

Question referred

Can Article 4(3) TEU, which refers to the principle of sincere cooperation, Articles 17, 20, 21 and 47 of the Charter of Fundamental Rights, Article 110 TFEU, the principle of legal certainty and the principles of equivalence and effectiveness stemming from the principle of procedural autonomy be interpreted as precluding national legislation, namely Article 21(2) of Law No 554/2004 on administrative proceedings as interpreted by Ruling No 45/2016 of the Înalta Curte de Casație și Justiție (ICCJ) — Completul pentru dezlegarea unor chestiuni de drept (High Court of Cassation and Justice — Panel for the Resolution of Points of Law), under which the period within which a request for revision based on Article 21(2) of Law No 554/2004 may be submitted is one month from the date of notification of the final judgment subject to revision?

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats Utrecht (Netherlands) lodged on 5 December 2017 — Sumanan Vethanayagam, Sobitha Sumanan, Kamalaranee Vethanayagam v Minister van Buitenlandse Zaken

(Case C-680/17)

(2018/C 063/12)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats Utrecht

Parties to the main proceedings

Applicants: Sumanan Vethanayagam, Sobitha Sumanan, Kamalaranee Vethanayagam

Defendant: Minister van Buitenlandse Zaken

Questions referred

1. Does Article 32(3) of the Visa Code ([1]) preclude a sponsor, as an interested party in connection with the visa applications of applicants, from having a right of objection and appeal in his or her own name against the refusal of those visas?

2. Should representation, as regulated in Article 8(4) of the Visa Code, be interpreted as meaning that responsibility (also) remains with the represented State, or that responsibility is wholly transferred to the representing State, with the result that the represented State itself is no longer competent?

3. In the event that Article 8(4)(d) of the Visa Code allows both forms of representation as referred to in Question 2, which Member State must then be regarded as the Member State that has taken the final decision as referred to in Article 32(3) of the Visa Code?

4. Is an interpretation of Article 8(4) and Article 32(3) of the Visa Code according to which visa applicants can lodge an appeal against the rejection of their applications only with an administrative or judicial body of the representing Member State, and not in the represented Member State for which the visa application was made, consistent with effective legal protection as referred to in Article 47 of the Charter? Is it relevant to the answer to that question that the avenue of legal recourse offered should guarantee that an applicant has the right to be heard, that he has the right to bring proceedings in a language of one of the Member States, that the level of the charges or court fees for the procedures governing the lodging of objections and appeals are not disproportionate for the applicant and that there is a possibility of funded legal aid? Given the margin of discretion enjoyed by the State in matters relating to visas, is it relevant to the answer to this question whether a Swiss court has sufficient insight into the situation in the Netherlands to be able to provide effective legal protection?

([1]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

Request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg (Luxembourg) lodged on 11 December 2017 — Pillar Securitisation Sàrl v Hildur Arnadottir

(Case C-694/17)

(2018/C 063/13)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Applicant: Pillar Securitisation Sàrl

Defendant: Hildur Arnadottir

Question referred

In the context of a credit agreement which, by reason of the total amount of the loan, does not come within the scope of Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, ([1]) can a person be regarded as a 'consumer' within the meaning of Article 15 of the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in the absence of any national legislation applying the provisions of that directive to areas which do not come within its scope, on the ground that the contract was concluded for a purpose that can be regarded as a purpose other than that person's professional activity?

([1]) OJ 2008 L 133, p. 66.

Appeal brought on 3 January 2018 by the Hellenic Republic against the judgment of the General Court (Seventh Chamber) delivered on 25 October 2017 in Case T-26/16, Hellenic Republic v European Commission

(Case C-6/18 P)

(2018/C 063/14)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: G. Kanellopoulos, I. Pachi and A. Vasilopoulou)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that this appeal should be upheld, that the judgment under appeal of the General Court of the European Union of 25 October 2017 in Case T-26/16 should be set aside in so far as the General Court thereby dismissed its action, that the action brought by the Hellenic Republic on 22 January 2016 should be upheld, that the decision of the European Commission 2015/2098 of 13 November 2015 ([1]) should be annulled to the extent to which that decision imposed on the Hellenic Republic, following the IR/2009/004/GR and IR/2009/0017/GR investigations, one-off and flat-rate financial corrections with respect to delays in recovery procedures, non reporting and weaknesses in debt management procedures, to a total amount of EUR 11 534 827,97, and that the Commission should be ordered to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant relies on two grounds of appeal.

The first ground of appeal, with reference to the part of the Decision whereby the Commission imposed a flat-rate financial correction on the Hellenic Republic, is based on a claim that the General Court misinterpreted and misapplied Articles 31 and 32-33 of Regulation No 1290/2005, ([2]) erred in law, with respect to the application of the guidelines in Commission Document 5330/1997 for the application of flat-rate corrections in the case of Article 32(4) of Regulation 1290/2005, infringed the principle of legal certainty, and failed to state sufficient reasons in the judgment under appeal.

The second ground of appeal, with reference to the part of the Decision whereby the Commission imposed a one-off correction, is based on a claim that the General Court in the judgment under appeal misinterpreted and misapplied Articles 32(4) and 49 of Regulation No 1290/2005, disregarded the principles of non-retroactivity and legal certainty, and stated contradictory and insufficient reasons in that judgment.

([1]) Commission Implementing Decision (EU) 2015/2098 of 13 November 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2015) 7716) (*OJ 2015 L 303, p. 35*).

([2]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (*OJ 2005 L 209, p. 1*).

GENERAL COURT

Order of the General Court of 15 December 2017 — Kaane American International Tobacco v EUIPO — Global Tobacco (GOLD MONT ORIGINAL Super Slims)

(Case T-292/16) ([1])

(EU trade mark — Invalidity proceedings — Revocation of the earlier EU figurative trade mark GOLD MOUNT — No need to adjudicate)

(2018/C 063/15)

Language of the case: English

Parties

Applicant: Kaane American International Tobacco Co. FZE, formerly Kaane American International Tobacco Co. Ltd (Jebel Ali, United Arab Emirates) (represented by: G. Hinarejos Mulliez and I. Valdelomar Serrano, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Global Tobacco FZCO (Dubai, United Arab Emirates) (represented by: G. Hussey, Solicitor, and B. Brandreth, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 April 2016 (Case R 2492/2014-4), relating to invalidity proceedings between Kaane American International Tobacco and Global Tobacco.

Operative part of the order

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

2. *Each party shall bear its own costs.*

([1]) OJ C 279, 1.8.2016.

Order of the General Court of 15 December 2017 — Kaane American International Tobacco v EUIPO — Global Tobacco (GOLD MONT)

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

(EU trade mark — Opposition proceedings — Revocation of the earlier EU figurative trade mark GOLD MOUNT — No need to adjudicate)

(2018/C 063/16)

Language of the case: English

Parties

Applicant: Kaane American International Tobacco Co. FZE, formerly Kaane American International Tobacco Co. Ltd (Jebel Ali, United Arab Emirates) (represented by: G. Hinarejos Mulliez and I. Valdelomar Serrano, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Global Tobacco FZCO (Dubai, United Arab Emirates) (represented by: G. Hussey, Solicitor, and B. Brandreth, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 8 April 2016 (Case R 2699/2014-4), relating to opposition proceedings between Kaane American International Tobacco and Global Tobacco.

Operative part of the order

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

2. *Each party shall bear its own costs.*

(1) OJ C 279, 1.8.2016.

Order of the General Court of 14 December 2017 — Lackmann Fleisch- und Feinkostfabrik v EUIPO (Национальный Продукт)

(Case T-246/17) (1)

(EU trade mark — Application for EU figurative mark Национальный Продукт — Disregard of the procedural requirements — Article 177(1)(d) and (e) of the Rules of Procedure — Manifest inadmissibility)

(2018/C 063/17)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 16 February 2017 (Case R 1017/2016–1), concerning an application for registration of the figurative sign Национальный Продукт as an EU trade mark.

Operative part of the order

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

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

(1) OJ C 195, 19.6.2017.

Action brought on 28 November 2017 — Medora Therapeutics v EUIPO — Biohealth Italia (LITHOREN)

(Case T-776/17)

(2018/C 063/18)

Language in which the application was lodged: English

Parties

Applicant: Medora Therapeutics LTD (Halandri, Greece) (represented by: S. Santos Rodríguez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Biohealth Italia Srl (Rivoli, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'LITHOREN' — EU trade mark No 12 744 901

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 September 2017 in Case R 178/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs, including those incurred in the proceedings before EUIPO.

Pleas in law

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

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

Action brought on 28 November 2017 — Moreira v EUIPO — Da Silva Santos Júnior (NEYMAR)

(Case T-795/17)

(2018/C 063/19)

Language in which the application was lodged: Portuguese

Parties

Applicant: Carlos Moreira (Guimarães, Portugal) (represented by: T. Soares Faria, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Neymar Da Silva Santos Júnior (Barcelona, Spain)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Word mark 'NEYMAR' — European Union trade mark No 11 432 044

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 September 2017 Case R 80/2017-2

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision and declare valid, in accordance with Article 52(1)(b) and Article 53(2)(a) of Regulation No 207/2009, the trade mark 'NEYMAR' No 00000 held by Carlos Morera, for all the goods or services for which the mark has been registered;

— Order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(2) of Regulation No 207/2009.

Action brought on 11 December 2017 — Správa železniční dopravní cesty v Commission and Innovation and Networks Executive Agency (INEA)

(Case T-815/17)

(2018/C 063/20)

Language of the case: Czech

Parties

Applicant: Správa železniční dopravní cesty, státní organizace (Prague, Czech Republic) (represented by: F. Korbel, lawyer)

Defendants: European Commission and Innovation and Networks Executive Agency (INEA)

Form of order sought

— annul Decision C(2014) 8572, reference INEA/ASI/MZ apr Ares(2017), of the European Commission of 11 October 2017.

Pleas in law and main arguments

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

1. First plea in law, alleging incorrect assessment of the connection between the public contracts 'Engineering and environmental analysis of the new rail link Lovosice-Dresden in the territory of the Czech Republic', 'Evaluation of the project of the new rail link Prague-Dresden in the territory of the Czech Republic' and 'New railway Litoměřice-Ústí nad Labem-German frontier'.

   According to the contested decision, those public contracts are closely linked together and should have been awarded together as being above the threshold. That conclusion is based on an incorrect legal assessment of the matter; the subjects of those public contracts are mutually distinguishable and their implementation required different professional qualifications.

2. Second plea in law, alleging that the contested decision does not contain sufficiently specific reasons on the connection between the public contracts, and in particular

   — does not state detailed reasons for the technical connection between the public contracts which it incorrectly deduces;

   — does not state which specific national and European rules, or which specific provisions of those rules, were infringed;

   — does not state any consideration capable of being reviewed as to what the defendant was guided by and what it took and what it did not take into account in reaching its decision on the actual amount it describes as ineligible.

3. Third plea in law, based on the fact that the decision on financial aid which the applicant was obliged to comply with states clearly, on page 13, that 'in the case of the Czech beneficiary, three contracts are planned: for activity No 4 (first part — technical study), for activities Nos 2, 3, 5 and 6, and for activities Nos 1, 4 (second part — economic study) and 7'.

   — When delimiting the subject of the public contracts, the applicant took those provisions into account, and legitimately expected that the approach provided for by the decision on financial aid would not subsequently be regarded as mistaken.

   — The contested decision none the less now states, however, that 'the whole (technical) subject of the public contract could be covered by a single agreement', which infringes the applicant's legitimate expectations, which it was able to have, and did have, in the light of the decision on financial aid.

Action brought on 14 December 2017 — Schokker v EASA

(Case T-817/17)

(2018/C 063/21)

Language of the case: French

Parties

Applicant: Boudewijn Schokker (Hoofddorp, Netherlands) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Aviation Safety Agency

Form of order sought

— Declare and rule:

   — That the EASA shall pay the applicant the sum of EUR 80 000 as compensation for the non-pecuniary harm which he has suffered;

   — That the EASA shall pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law, seeking to establish that EASA's authority empowered to conclude contracts ('the AECC') committed a number of administrative errors.

1. First plea in law, alleging that the AECC made an unlawful offer of employment to the applicant which, due to that fact, he was unable to accept unconditionally.

2. Second plea in law, alleging that the AECC refused to correct that offer of employment, despite the fact that it was manifestly vitiated by illegality.

3. Third plea in law, alleging that the abrupt withdrawal of the offer of employment by the AECC resulted in the definitive closure of the procedure to recruit the applicant.

4. Fourth plea in law, alleging that the AECC failed to have regard to the purpose of the pre-litigation procedure by systematically frustrating all proposals for an out-of-court resolution to the dispute.

Action brought on 20 December 2017 — Weber-Stephen Products v EUIPO (iGrill)

(Case T-822/17)

(2018/C 063/22)

Language of the case: English

Parties

Applicant: Weber-Stephen Products LLC (Palatine, Illinois, United States) (represented by: R. Niebel and A. Jauch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'iGrill' — Application for registration No 15 456 726

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 September 2017 in Case R 579/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Misinterpretation of the legal requirements of articles 7(1)(b), 7(1)(c) and 7(2) of Regulation no. 2017/1001.

Action brought on 22 December 2017 — H2O Plus v EUIPO (H 2 O+)

(Case T-824/17)

(2018/C 063/23)

Language of the case: English

Parties

Applicant: H2O Plus LLC (San Francisco, California, United States) (represented by: R. Niebel and F. Kerl, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word elements 'H 2 O+' — International registration No W 1 313 244

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 October 2017 in Case R 499/2017-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Erroneous application of Article 7(1)(b) and (c) of Regulation No 2017/1001.

Action brought on 27 December 2017 — Aeris Invest v ECB

(Case T-827/17)

(2018/C 063/24)

Language of the case: Spanish

Parties

Applicant: Aeris Invest Sàrl (Luxembourg, Luxembourg) (represented by: R. Vallina Hoset, A. Sellés Marco, C. Iglesias Megías and A. Lois Perreau de Pinninck, lawyers)

Defendant: European Central Bank (ECB)

Form of order sought

The applicant claims that the Court should:

— Annul the Decisions of the ECB LS/MD/17/405, LS/PT/17/406 and LS/MD/17/419 of 7 November 2017; and

— Order the ECB to pay the costs.

Pleas in law and main arguments

In accordance with Article 263 TFEU and Article 8(3) of the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3), this action seeks annulment of the Decisions of the European Central Bank LS/MD/17/405, LS/PT/17/406 and LS/MD/17/419 of 7 November 2017 relating to confirmatory requests for access to ECB documents.

In support of the action, the applicant relies upon four pleas in law:

1. First plea in law: Decisions LS/MD/17/405, LS/PT/17/406 and LS/MD/17/419 infringe Article 4(1)(c) of the Access Decision inasmuch as they deny the applicant access to information on the grounds that the documents are claimed to be, fully or in part, protected by a general presumption of non-accessibility because they are confidential documents covered by the principle of professional secrecy applicable to the institutions.

2. Second plea in law: Decision LS/PT/17/406 infringes the second and sixth indents of Article 4(1)(a) of the Access Decision inasmuch as it states that disclosure of Banco Popular's use of ELA (emergency liquidity assistance) in the days preceding its resolution and of information regarding its liquidity situation and capital ratios could in fact specifically sap the efficiency of the monetary policy and financial stability of the Union or of a Member State.

3. Third plea in law: Decision LS/PT/17/406 and Decision LS/MD/17/419 infringe the first indent of Article 4(2) of the Access Decision by stating that the documents and information requested are commercially sensitive material that could affect the commercial interests of the Banco Popular and Banco Santander.

4. Fourth plea in law: the ECB has infringed Article 47 of the Charter of Fundamental Rights of the European Union by denying the applicant access to the documents upon which the ECB based its decision to declare the resolution of the Banco Popular.

Action brought on 22 December 2017 — Quadri di Cardano v Commission

(Case T-828/17)

(2018/C 063/25)

Language of the case: French

Parties

Applicant: Alessandro Quadri di Cardano (Alicante, Spain) (represented by: N. de Montigny and J.-N. Louis, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule:

— That the decision of the PMO of 28 February 2017 notifying the applicant that the expatriation allowance of 16 % granted to him and the transport expenses which he had received under Article 4 of Annex VII to the Staff Regulations, during the period of employment at EASME, with effect from 16 May 2014, is annulled;

— Insofar as necessary, that the salary slips corrected following the notification of that decision [are annulled];

— That the defendant shall pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 85 of the Staff Regulations of Officials of the European Union.

2. Second plea in law, alleging infringement of the principle of legitimate expectations and the principle of legal certainty, a manifest error of assessment and infringement of the principle of sound administration.

Action brought on 27 December 2017 — Coesia v EUIPO (Representation of a circular shape consisting of two oblique red lines)

(Case T-829/17)

(2018/C 063/26)

Language of the case: Italian

Parties

Applicant: Coesia SpA (Bologna, Italy) (represented by S. Rizzo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark (Representation of a circular shape consisting of two oblique red lines) — Application for registration No 13 681 151.

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 September 2017 in Case R 1272/2017-5.

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

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

— Infringement of Article 75 of Regulation No 207/2009.

Action brought on 22 December 2017 — Szentes v Commission

(Case T-830/17)

(2018/C 063/27)

Language of the case: French

Parties

Applicant: Gyula Szentes (Luxembourg, Luxembourg) (represented by: F. Moyse, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of 24 February 2017 and, insofar as necessary, the act rejecting the applicant's claim of 29 September 2017;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the unlawfulness of the competition notice. The applicant argues that Article 6.4 of Annex III, which precludes requests for review made by reason of a challenge to the assessment made by the selection board having a positive result, is unlawful, being contrary to the right to an effective remedy provided for in Article 47 of the Charter of Fundamental Rights. The contested decision, which is based on that provision, is accordingly unlawful.

2. Second plea in law, alleging infringement of the obligation to state reasons. The contested decision merely cites extracts from case-law and does not set out the list of selection criteria drawn up by the selection board prior to the assessment of the application forms.

3. Third plea in law, alleging distortion of the facts and a manifest error of assessment. The applicant criticises, in that regard, the manner in which the selection board assessed the data entered in the application form.

4. Fourth plea in law, alleging infringement of the competition notice. The applicant submits that the selection board failed to cross-match the various sections of the application form in order to decide whether the applicant met one of the conditions for admission to the competition.

Action brought on 22 December 2017 — achtung! v EUIPO (achtung!)

(Case T-832/17)

(2018/C 063/28)

Language of the case: German

Parties

Applicant: achtung! GmbH (Hamburg, Germany) (represented by: G.J. Seelig and D. Bischof, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word element 'achtung!' — International registration No 1 297 443

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 October 2017 in Case R 490/2017-4

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the defendant of 23 October 2017 (Case R 490/2017-4);

— amend the decision of the Fourth Board of Appeal of the defendant of 23 October 2017 (Case R 490/2017-4) in such a way that international registration No 1 297 443 'achtung!' (word/figure) is protected for the European Union;

— order the defendant to pay the costs of the proceedings and the costs necessarily incurred by the applicant for the purposes of the proceedings before the Board of Appeal.

Pleas in law

In support of the action, the applicant alleges an infringement pursuant to Article 72(2) of Regulation 2017/1001. The defendant, it submits, erred in law in assessing the distinctive character of the trade mark under Article 7(1)(b) of Regulation 2017/1001 and infringed the principles of equal treatment and sound administration.

Action brought on 27 December 2017 — Ryanair and Airport Marketing Services v Commission

(Case T-833/17)

(2018/C 063/29)

Language of the case: English

Parties

Applicants: Ryanair DAC (Swords, Ireland) and Airport Marketing Services Ltd (Dublin, Ireland) (represented by: E. Vahida and I.-G. Metaxas-Maranghidis, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Articles 1(2)-(4), 2, 3, and 4 of Decision (EU) 2017/1861 ([1]) insofar as they concern the applicants;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violates the principle of good administration enshrined in Article 41 of the EU Charter of Fundamental Rights and the applicants' rights of defence.

2. Second plea in law, alleging that the Commission violated Article 107(1) TFEU and the obligation to state reasons because it failed to apply the market economy operator (MEO) test and instead applied the *Altmark* test to the commercial relationship between Cagliari airport and the applicants, including the alleged aid payments, even though these were made on the basis of contracts concluded prior to the adoption of Law 10/2010.

3. Third plea in law, alleging that the Commission violated the principle of non-discrimination by not applying the MEO test to the agreements between Cagliari airport and the applicants, on the ground that the Sardinian Region was only a minority shareholder of Cagliari airport.

4. Fourth plea, alleging that the Commission violated Article 107(1) TFEU because it failed to identify Cagliari airport as a beneficiary of aid.

5. Fifth plea in law, alleging that, even if it is assumed that Cagliari airport was not a beneficiary of Law 10/2010, the Commission violated Article 107(1) TFEU because it should have applied the MEO test to the Sardinian Region's conduct, even under its own assumption that Cagliari airport was a passive 'vehicle' for the Region's funds.

6. Sixth plea in law, alleging that, even if it is further assumed that Law 10/2010 concerns Services of General Economic Interest and the MEO test is inapplicable, the contested decision would nevertheless violate Article 107(1) TFEU because it erroneously considered payments for marketing services as a hidden subsidy for the operation of aeronautical routes.

7. Seventh plea in law, alleging that the Commission infringed Article 107(1) TFEU because it failed to show selectivity.

8. Eighth plea in law, alleging that, even if the Court were to find that aid existed, the Commission infringed Articles 107(1) and 108(2) TFEU by committing a manifest error in its instructions to the Member State regarding the determination of the quantum of recoverable aid.

([1]) Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI) (OJ 2017 L 268, p. 1).

Action brought on 29 December 2017 — Sports Group Denmark v EUIPO — K&L (WHISTLER)

(Case T-836/17)

(2018/C 063/30)

Language in which the application was lodged: English

Parties

Applicant: Sports Group Denmark A/S (Ikast, Denmark) (represented by: E. Skovbo, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: K&L GmbH & Co. Handels-KG (Weilheim, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'WHISTLER' — Application for registration No 12 870 648

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 18 October 2017 in Case R 311/2017-1

Form of order sought

The applicant claims that the Court should:

— reject the opposition in its entirety;

— order EUIPO to bear the costs.

Plea in law

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

Action brought on 8 January 2018 — Deutsche Lufthansa v Commission

(Case T-1/18)

(2018/C 063/31)

Language of the case: English

Parties

Applicant: Deutsche Lufthansa AG (Köln, Germany) (represented by: S. Völcker and J. Ruiz Calzado, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 27 October 2017 in Case No. M.8633 — *Lufthansa/Certain Air Berlin Assets, Commission decision pursuant to Article 7(3) of Council Regulation (EC) No 139/2004 and Article 57 of the Agreement on the European Economic Area;*

— in the alternative annul paragraph 44(c) of the contested decision, and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission lacked the power to impose that Lufthansa could acquire aircraft from third-party lessors that these lessors had leased to NIKI or its parent company Air Berlin on the condition that Lufthansa make those aircraft available on market terms to NIKI or an alternative acquirer of NIKI if the NIKI Transaction were to fail for whatever reason ('the Condition') under Article 7(3) ECMR ([1]), because aircraft purchases do not constitute partial implementation.

   The applicant puts forward that the Commission lacked any power under Article 7(3) of the ECMR to impose the Condition, as Lufthansa's purchase of aircraft from third parties was unrelated to the NIKI Transaction ([2]) and did not constitute a partial 'implementation' of the planned acquisition of NIKI that would have required a derogation from the stand-still provision in Article 7(1) of the ECMR.

2. Second plea in law, alleging that by requiring Lufthansa to facilitate the sale of NIKI to another buyer, the Condition exceeds the permissible scope of Article 7(3) ECMR and thereby infringes the principle of proportionality.

   According to the applicant, conditions under Article 7(3) ECMR are appropriate only to the extent they are needed in a given case to ensure that undue impact on the target's market conduct and the implementing steps for a notified transaction can be reversed in order to restore the status quo ante.

3. Third plea in law, alleging that the vague standard of 'market terms' and the lack of any procedural safeguard or limiting principles by design operates against Lufthansa and thus breaches the principles of proportionality, legal certainty, and Lufthansa's right to property and freedom to conduct business.

4. Fourth plea in law, alleging that the contested decision lacks adequate reasoning with respect to the number of aircraft covered.

   Lufthansa submits that the Commission has failed to state adequate reasons because its interpretation of its own decision creates fundamental uncertainty over the scope of the Condition, which is highly prejudicial to Lufthansa's ability to seek judicial protection, and the Court's ability to perform its duty of judicial review.

5. Fifth plea in law, alleging that the applicant's right to be heard was breached.

   Lufthansa submits that the Commission did not respect Lufthansa's right to be heard and ignored the provisional procedure provided for in Article 18 ECMR and Article 12 of Commission Regulation (EC) No. 802/2004 ([3]) by adopting the contested decision as 'final' without having afforded Lufthansa an opportunity to make known its views on the Condition and any alleged competitive harm the Condition was supposed to remedy, neither before (Article 18(1) ECMR) nor after (Article 18(2) ECMR) the adoption of the Decision.

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

([2]) in the context of Lufthansa's proposed acquisition of the shares of NIKI Luftfahrt GmbH ('NIKI') and Luftfahrtgesellschaft Walter mbH ('LGW') from Air Berlin PLC & Co. Luftverkehrs KG ('Air Berlin') (the 'Transaction') (in relation to NIKI alone, the 'NIKI Transaction').

([3]) Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ 2004, L 133, p. 1).

Action brought on 8 January 2018 — Wirecard v EUIPO — AXA Banque (boon.)

(Case T-2/18)

(2018/C 063/32)

Language in which the application was lodged: English

Parties

Applicant: Wirecard AG (Aschheim, Germany) (represented by: A. Bayer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: AXA Banque SA (Fontenay sous Bois, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'boon.' — Application for registration No 14 672 562

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 25 September 2017 in Case R 706/2017-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition brought by AXA Banque, société anonyme, and grant the application for registration of the trade mark applied for;

— order EUIPO to pay the costs, and extend this order to AXA Banque, société anonyme, if the latter decides to intervene in the proceedings.

Plea in law

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

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